



Appeal Decision

Site visit made on 12 September 2023

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal Ref: APP/X1355/W/23/3326624

The Farmers Arms, South Side, Shadforth, Durham DH6 1LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Colin Curran against the decision of Durham County Council.
 - The application Ref DM/22/03040/FPA, dated 14 October 2022, was refused by notice dated 13 June 2023.
 - The development proposed is retrospective planning application for extended terrace and 5 beach huts / dining areas including change of use of part of carpark to outside drink and dining terrace.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The application form states that the development was completed on 20 April 2020. Prior to this, the land comprised an outdoor terrace for customers, soft landscaping, car park and refuse store. However, in order to continue trading during the Covid-19 pandemic, part of the car park was incorporated into an extended beer garden that includes the original terrace, 5 beach huts, a wooden deck with seating, and various other tables.
3. During my visit, I saw that the appeal site corresponds to proposed site plan ref 2119_SP_P_01 rev 1. However, amended plans were accepted during the processing of the planning application to overcome the Council's concerns in relation to parking. Notwithstanding the development that has been implemented, I have determined the appeal on the basis of the plans that were considered by the Council.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance.

Reasons

5. The Farmers Arms is an established public house (the PH) in Shadforth, which is a small rural settlement developed around a linear village green. The PH lies to the south of the village green and the appeal relates to land to its rear. To the east and south is George Square, this being a short street leading from South Side between the PH and the village hall, with modest single storey semi-detached dwellings arranged on the opposite side of the road to the

appeal site. The western boundary of the appeal site abuts the rears of residential properties on Oliver Crescent.

6. The proposed beer garden, including the dining huts, would have a maximum capacity of 150 people. The capacity of the pre-existing terrace is not stated, but the plans suggest that the proposal would perhaps triple the capacity of the outdoor area. The dining huts would be suitable for year-round use including during inclement weather when the beer garden would not otherwise be in use. Consequently, the proposal would result in a marked increase in the numbers of people and the frequency, intensity and duration of use of the beer garden.
7. The proposal would operate from midday until 2100 Monday to Thursday and until 2200 Friday to Sunday. As such, while it would not operate late into the night, it would operate during the evenings including on Sundays, which are the times of the day and week when the neighbouring occupiers could reasonably expect to enjoy their homes and gardens free from significant and regular noise disturbance. By its nature, neither the PH nor its beer garden have the characteristics of a domestic dwelling in terms of comings and goings, activity and visitor numbers. Even so, and while there may be no restrictions on the use of the pre-existing terrace, the proposed intensification of use would result in a greater level of activity, with associated noise and disturbance, on a more frequent and regular basis.
8. There is evidence, in the form of third party representations to the application and to the appeal, that the use of the beer garden does disturb the nearby residential occupiers in their homes and gardens, particularly the rears of the closest Oliver Crescent properties. The noise levels rise when customers are inebriated and when music is played in the beer garden. As a result, there are times when the neighbours are unable to enjoy their gardens and they need to close their windows to mitigate the noise. The representations also indicate that vehicular movements, including overspill on street parking, causes inconvenience to nearby residents, many of whom do not have access to off street parking. While the PH pre-dates the neighbouring residential dwellings, such that some degree of disturbance may be expected, nearby occupiers find the noise from the beer garden is at times intolerable.
9. The Council's evidence confirms that there has been a history of complaints to its Environmental Health Nuisance Action Team (the EHNAT) about the noise emanating from the beer garden. Details including the number, timing or outcome of those complaints have not been provided. While some complaints may therefore pre-date the appellant's tenure, at least some do relate to the operation of the extended beer garden during the coronavirus pandemic.
10. The EHNAT considers that the proposal would potentially result in statutory noise nuisance. However, despite the previous complaints and that effectively the same development has been operating since early 2020, I am not aware that there has been statutory nuisance. Irrespective, the consideration of impacts on residential amenity includes more widely the day to day effect of the proposal on the nearby residents. In this regard and as noted, there is evidence in the form of the complaints and the third party representations that the operation of the beer garden results in adverse noise and disturbance.
11. While the focus of the business may be the dining experience, and many outdoor customers may be elderly, there would be little guarantee that this would always be the case. The boundary fences and vegetation would screen

the proposal from view. However, there does not appear to have been any monitoring of sound levels to demonstrate that either the enclosed nature of the dining huts or the boundary treatments would be effective in mitigating the noise at the nearby sensitive receptors. Moreover, while the beer garden might not be used regularly for music events, there is little evidence in relation to how often music would be played, at what volume or for how long.

12. The Noise Management Plan (the NMP) states that guidelines for the use of the outdoor area would be included in the staff induction process and that managers would be responsible for monitoring and enforcing the guidelines. However, except for setting out the opening hours, the NMP does not appear to include guidelines for use. The onus would be on the neighbours to monitor noise and to complain to the landlord. It would be at the landlord's discretion, with no transparent framework, as to whether or not the complaint was substantiated. There would be little guarantee that appropriate action would be taken at the time to rectify the problem. This does not appear reasonable nor do the measures appear precise or robust so as to be enforceable. The NMP would not guarantee that adverse noise impacts would be avoided.
13. The EHNAT originally advised that reduced hours of operation, noise barriers and a reduction in hut numbers should be explored. However, it subsequently concluded that measures could not be imposed to mitigate the adverse impact and the Council did not explore alternative solutions with the appellant before refusing the application. It is not clear what evidence informed the EHNAT's conclusion. Nevertheless, taking into account the close proximity of residential occupiers, and in the absence of substantive information such as a robust noise impact assessment, there is little certainty that the additional noise and disturbance arising from the proposal could be adequately mitigated. As such, I am not satisfied that mitigation could be adequately addressed by the imposition of a planning condition.
14. Therefore, I conclude that the proposal would harm the living conditions of nearby residential occupiers, with particular regard to noise and disturbance. It would conflict with policies 6, 29 and 31 of the County Durham Plan adopted 2020. These require, among other things, that proposals should not be prejudicial to the use of adjacent land, they should provide high standards of amenity and minimise impacts on nearby occupants, and avoid unacceptable noise impacts. It would also conflict with the aims of the National Planning Policy Framework (the Framework) in relation to residential amenity and the need to mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life.

Other Considerations

15. The Framework emphasizes the importance of community facilities, including public houses, in terms of their contribution to a prosperous rural economy. To provide social, recreational and cultural facilities and services the community needs, planning decisions should plan positively for the provision and use of shared spaces, community facilities (including public houses) and other local services to enhance the sustainability of communities and residential environments. Planning decisions should enable the retention and development of accessible local services and community facilities, including public houses. Consequently, there is support for the principle of development.

16. The extended external drinking and dining facilities enabled the PH to operate under coronavirus social distancing restrictions. The enhanced beer garden has continued to operate since that time and the beach huts have been popular for dining and use by social groups. Third party representations in support of the proposal evidence that the PH is an asset to the community. I accept that the coronavirus lockdowns and subsequent economic climate have been difficult for the hospitality sector. However, there is little evidence about the business such as the number of covers or the occupancy rate for diners and no business plan nor financial information has been provided. Notwithstanding that the appellant considers the dining huts are vital to the success of the business, it has not been demonstrated that the PH would not be viable if the appeal should fail. While I have had regard to the support for the PH from the wider community, in the absence of evidence that the PH would not be able to operate in the absence of the proposal, this carries little weight in favour of the proposal. The additional employment would however be a modest benefit.
17. The PH parking does not meet the Council's parking standards, but no parking spaces would be lost and the application was not refused on grounds relating to parking or harm to highway safety. However, the appellant acknowledges that the car parking spaces are mostly used by employees and the majority of customers that drive to the PH park on the surrounding roads. While I note the suggestion that a resident only parking scheme around the community hub of the village would alleviate the on street parking pressure arising from the proposal, this is not a matter for the appeal.
18. The PH is in the Shadforth Conservation Area (the CA), which covers a large area including the historic rural settlement and surrounding countryside. The significance of the CA derives in part from the historic layout of the village, comprising generally modest and harmonious dwellings and buildings around a linear village green. The appeal site is to the rear of the PH such that the proposal would not be prominent in views to or from the historic core of the village. The proposal would not therefore be capable of harming the significance of the CA. The absence of harm is a neutral factor.

Conclusion

19. For the reasons set out above, I conclude that the proposal would conflict with the development plan and there are no material considerations, including the additional employment, that would outweigh that conflict.
20. Therefore, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR