



Appeal Decision

Site visit made on 26 September 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/D1265/W/23/3315616

3 East Street, Wimborne Minster BH21 1DS

- 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 Ms Georgie Boyd c/o Chapman Lily Planning against the decision of Dorset Council.
 - The application Ref 3/21/0745/FUL, dated 9 April 2021, was refused by notice dated 2 September 2022.
 - The development proposed is use of the rear patio area as an outdoor seating space and the erection of a pergola.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The site consists of an outside area to the rear of The Thirsty Bird, 3 East Street (No 3), a wine bar and café. When planning permission¹ was granted for these uses, conditions were imposed requiring (amongst other things) that the rear outside area should not be used for drinking, smoking and socialising and only for access to storage, bins or in an emergency. This condition was imposed to prevent disturbance to adjoining occupiers. Close behind the rear outside area are residential units, in particular The Studio and River Cottage², at 77 High Street. These properties have windows and rooflights serving habitable rooms which face directly towards the rear outside area of the appeal site.
3. During the Covid pandemic and its social distancing requirements, the appellant sought permission from the Council for a levelled patio within the rear outside area and its use by customers. In the circumstances, the Council confirmed that subject to conditions this would be tolerated for various periods ending in May 2021. It also made clear that permanent use of the rear patio area, and retention of a timber pergola structure that had been erected over it, would require separate planning permission.
4. In April 2023, at a time when the appellant says the property was closed and no breach was occurring, the Council issued a Breach of Condition Notice. Amongst other things, this requires compliance with the conditions imposed and that the use of the outside rear area shall cease.
5. The appeal application seeks to use the rear patio area for customer seating on a permanent basis, and retention of the pergola structure. On the basis that

¹ LPA reference 3/16/0804/FUL

² Also referred to as Riverside Cottage

use of the patio has ceased, I have treated the submission as a proposal in respect of its use.

Main Issue

6. The main issue is the effect of the proposal on the living conditions of the occupiers of The Studio and River Cottage, 77 High Street, with regard to noise, disturbance and privacy.

Reasons

7. The site lies within the primary shopping area of Wimborne Minster. This has a range of properties in retail, food and drink uses, together with offices and residential uses at first floors. There are cafés and drinking establishments close to the site which, along with the appeal site itself, contribute to the economy of the town.
8. No specific noise data is before me, but use of the patio area by customers as proposed would inherently generate noise and disturbance, caused for example by talking, eating, socialising, and the movement of people arriving and leaving. Such noise effects are likely to be greater during the evenings, when surrounding background noise levels may well be lower, and noise from patrons higher, particularly if consuming alcohol.
9. To mitigate against this impact, the proposal includes a revised Management Plan. This would prevent use of the patio area after 5pm on Mondays to Wednesdays, after 9pm on Thursdays to Saturdays and after 4pm on Sundays and Bank Holidays. Other measures are also proposed, including a maximum of 25 people within the external area, restrictions on standing, waiter/waitress service only, and a prohibition on smoking or music.
10. However, I have doubts about the practicality of enforcing some of these measures, such as the restrictions on standing, particularly now that Covid regulations are not in place to support this. The Management Plan would also be subject to review by the manager annually, suggesting that its measures could change over time.
11. The rear boundary treatment is currently formed of a brick wall, together with a raised planted border. The width of the planted border would discourage customers from being close to the edge of the site. However, given the height of the wall and the insubstantial natural form of the planted border, they would not provide a significant barrier to noise from the patio and its use.
12. Moreover, notwithstanding the mitigation measures suggested, the intrinsically close physical proximity between the patio and the dwellings and their windows means that the proposal would in my view inevitably cause noise and disturbance to the occupiers of the dwellings. The impact of this would be heightened, because River Cottage and in particular The Studio have limited external amenity areas, restricting the ability of its occupiers to escape the noise caused by the proposal.
13. The wall and the planted border limit the degree of intervisibility between the patio area and the facing windows of The Studio and River Cottage. However, through gaps in the planting, I saw that views into the windows of The Studio in particular were possible from within the patio area, including when standing. Whilst perhaps only allowing views to the upper sections of ground floor

windows, this would still be intrusive for the occupiers of those rooms. Moreover, as a natural feature, the screening effects of the planted border cannot be guaranteed in the winter or in the long term.

14. The Council's Environmental Health Officer (EHO) did not object to the proposal. However, the EHO did suggest a temporary consent, to allow the noise impacts on neighbouring properties to be assessed before granting any permanent planning permission. The appellant and the Council dispute whether complaints were made by neighbouring occupiers to the EHO whilst use of the patio was taking place.
15. However, objections were received to the appeal planning application including on grounds of noise. Moreover, even in the absence of these, for the reasons I have already given, I would remain concerned at the relationship between the proposal and the adjacent properties. Temporary use of the rear patio area was tried during the Covid pandemic and so I see little justification for a further temporary consent.
16. There are other food and drink properties close by. At Le Petit Prince, 9 East Street (No 9), planning permission³ was granted to allow its outdoor seating area to be used between April and October, until 3pm each day. This area is also adjacent to River Cottage and follows the same rear boundary line as the proposal. However, No 9 appears to be more of a café than a bar and it differs from No 3 in terms of alcohol availability. Compared to the proposal before me, it also has much shorter hours for its large outside area, and for use by fewer people at any one time. Moreover, unlike the proposal, its rear garden is not immediately adjacent to The Studio.
17. Reference has also been made to The Butcher's Dog, 6 East Street (No 6), where planning permission⁴ has been refused for use of its outdoor area by customers. However, I understand that this property is a drinking-only establishment. For these reasons, I consider that the outdoor areas at No 6 and No 9 are not directly comparable to those of the proposal, and so I give them little weight.
18. Consequently, I conclude that the proposal would have a harmful effect on the living conditions of the occupiers of The Studio and River Cottage, 77 High Street, with regard to noise, disturbance and privacy. As such, it would conflict with Policy HE2 of the Christchurch and East Dorset Core Strategy, adopted April 2014 (CELP), which requires development to be compatible with nearby properties, including minimising disturbance to amenity.
19. For similar reasons, the proposal would conflict with Policy DES2 of the East Dorset Local Plan, adopted January 2002, which resists unacceptable impacts on existing land uses in terms of noise, disturbance, or other pollution. It would also conflict with paragraph 185 of the National Planning Policy Framework (the Framework), which seeks to avoid noise giving rise to significant adverse impacts on health and quality of life.

Other Considerations

20. The vision of the CELP for Wimborne town centre includes support for restaurants, cafés, and pubs in locations such as the appeal site, to enhance

³ LPA reference 3/20/1067/CONDR

⁴ LPA reference 3/21/1282/CONDR

the vibrancy of the afternoon and evening economy of the town. The Framework also aims to build a strong, responsive, and competitive economy. However, whilst recognising that dismissal of the appeal could well have economic implications for the business, the proposal relates to the expansion of the café/bar rather than provision of the facility itself. As such, I give moderate weight to these benefits.

21. No 3 is part of a terrace of buildings (1-6 East Street) that are Grade II listed, and the appeal site is also within the Wimborne Minster Conservation Area (CA). There is no dispute that the proposal, including the pergola, would have no adverse effect on the character or appearance of the CA or its setting, or on the special architectural or historic interest of the listed buildings or their settings. I see no reason to disagree, but this does not alter my conclusions on the main issue.

Planning Balance and Conclusion

22. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR