



Appeal Decision

Site visit made on 13 November 2023

by S Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/U2750/W/23/3328446

61, Cold Bath Road, Harrogate HG2 0NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Daniel Simpson against the decision of North Yorkshire Council.
 - The application Ref ZC23/02401/DVCON, dated 26 June 2023, was refused by notice dated 14 August 2023.
 - The application sought planning permission for an existing structure previously granted semi-permanent permission under application Ref 20/03483/FUL without complying with a condition attached to planning permission Ref ZC23/01541/FUL, dated 14 June 2023.
 - The condition in dispute is No 2 which states that: 'The area enclosed by the development hereby permitted shall not be used for seating, eating and/or drinking between the hours of 21:00 and 08:30. The tables and chairs shall be cleared away during these stated times so that they are not used'.
 - The reason given for the condition is: 'In the interest of residential amenity'.
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Decision

1. The appeal is allowed and planning permission is granted for an existing structure previously granted temporary permission under application Ref 20/03483/FUL at 61, Cold Bath Road, Harrogate HG2 0NL in accordance with application ref: ZC23/02401/DVCON, dated 26 June 2023 without compliance with condition 2 of application ref: ZC23/01541/FUL dated 14 June 2023, but subject to the following conditions:
 1. The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details.
 2. The area enclosed by the development hereby permitted shall not be used for seating, eating and/or drinking between the hours of 23:00 and 08:30. The tables and chairs shall be cleared away during these stated times so that they are not used.

Preliminary Matter

3. Since the planning application was refused, the government has introduced an updated version of the National Planning Policy Framework. I have had regard to the updated version in my consideration of the appeal.

Background and Main Issues

2. Planning permission was originally granted in 2019 for the erection of a single storey semi-permanent structure to the front of the building for a temporary period¹.
3. In 2023 full, permanent, planning permission was sought and granted for an enclosed canopy which provides a covered area for outdoor tables and chairs associated with the bar and restaurant at No 61, Cold Bath Road known as District Bar. The permission is subject to a condition which requires that the area enclosed by the canopy is not used for seating, eating and/or drinking between the hours of 21:00 and 08:30 and that the tables and chairs are cleared away during these stated times so that they are not used. Permission is now sought to, in effect, to vary that condition to allow the outdoor seating to be used as part of the function of the bar until 23:00.
4. The main issue of the appeal is the effect of the proposed extension of opening hours on the living conditions of neighbouring residents, having particular regard to noise and disturbance.

Reasons

5. 61 Cold Bath Road is set in a parade of commercial premises, with some residential properties on upper floors, located in a wider commercial area of shops, bars and restaurants and close to a school and a Sainsbury's Local supermarket. Whilst I envisage that the area quietens at night it seems to me that there is likely to be a degree of local activity well into the evening given the character of the area and the nature of the road which leads to and from the town centre. Side roads off Cold Bath Road, in close proximity to the appeal site, tend to be predominantly residential and therefore have a quieter character.
6. It is unclear from the information before me why the structure was initially only granted a temporary consent but nevertheless it has been in existence now for a few years, during which time there has been ample opportunity for its effect, in terms of noise and disturbance, to be monitored. Whilst it appears there have been complaints to the Council about noise, those complaints were nevertheless limited in number, and partly related to a breach of the permitted hours. I am not aware the issues raised were so significant they resulted in the Council taking enforcement action. Moreover, there are also very few objections to the proposal before me. On the other hand, there is a considerable body of support for the proposal, including from within the local community.
7. From what I have read, objections relate primarily to noise from the use of the seating area which is said to become more disruptive as the evening wears on. However, there is little specific evidence about when, where or to what degree the disturbance occurs, or from where it is experienced. Other issues relating to the disposal of glass, and odour from outdoor smoking, are also noted although it seems to me that such matters are commonly associated with a bar

¹ Application ref: 20/03483/FUL granted 04.09.2019

- use. In this case the bar is established, and the principle of the use is not at issue.
8. The canopy covers a seating area which accommodates some 10-15 people. It is a modestly sized area, well contained and defined by the canopy, such that it would be unlikely to attract large groups. In addition, given the size of the external area and its proximity to the main part of the bar, which is also limited in terms of its size, it should be readily capable of being monitored and managed by bar staff. On that basis the risk of anti-social behaviour and undue noise arising from the use of the seating area is likely to be limited.
 9. Concern has been expressed about noise and disturbance from patrons leaving the premises and loitering close to residential properties. Again, there is limited evidence of this before me and nothing which would definitively attribute such behaviour to the appeal premises. Whilst the closing of the seating area at 23:00 is likely to increase the number of patrons leaving the premises at around that time, it is unlikely they would all leave together. Across a wider area such noise and disturbance is likely to be indistinguishable from that associated with patrons leaving the indoor element of the bar, or from people passing by having left other establishments.
 10. The canopy itself is likely to contain noise to a degree, but I recognise that the sides of the canopy are capable of being removed in the summer months. I note that open sided covered outdoor seating areas exist at other premises in the area, and in some cases the seating area is much larger than it is here. I understand that other bars and restaurants locally operate officially until 21:00 or 22:00 although I do not have the details of the authorised operating times of all commercial premises. Nevertheless, despite their existence, there is no convincing evidence before me that these external seating areas, which appear to be well used, cause significant harm to the living conditions of neighbouring residents. I acknowledge the Council's point that there may be a difference between drinking only establishments and restaurants in terms of the noise generated. Nevertheless, whilst it may be a predominantly drinking establishment, food is served at District Bar. In addition, even with the sides removed, there is no reason why the area could not be effectively managed at the later time by staff given the limited number of patrons it would accommodate.
 11. Concern has been expressed about a precedent being set for other premises in the area to extend their opening hours. However, I am satisfied that the Council would be able to resist such a proposal if the individual or cumulative harm it would cause was shown to be demonstrably adverse.
 12. Taking all of the above into account, on the basis of the evidence before me I therefore conclude that the proposed variation in opening hours would be unlikely to cause significant harm to the living conditions of nearby residents. Consequently, it would not therefore conflict with Policy HP4 of the Harrogate District Local Plan adopted in 2020 which requires that development proposals should not result in significant adverse impacts on the amenity of occupiers and neighbours. This policy is consistent with the National Planning Policy Framework which requires that planning decisions should both promote social interaction and create places which promote health and well being with a high standard of amenity for existing and future users. I am also satisfied that the

proposed variation in condition would preserve the character and appearance of the Conservation Area in which the premises lie.

13. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed. I have therefore granted a new permission for the canopy with a new condition in place of the disputed one. The new condition reflects the opening hours sought.

S Ashworth

INSPECTOR