



Appeal Decision

Site visit made on 18 December 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2024

Appeal Ref: APP/C2741/W/23/3324886

49 Moorcroft Road, York YO24 2RQ

- 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 My Ian Tyldsley of Admiral Taverns against the decision of City of York Council.
 - The application Ref 23/00393/FUL, dated 23 February 2023, was refused by notice dated 18 May 2023.
 - The development is a drinking area to side of building, complete with festoon lighting and 6 x 4m jumbrella.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I saw on my site visit that a drinking area currently exists at the site. This area appeared to align with the provided plans. I have therefore determined the appeal on a retrospective basis.
3. In reaching this decision, I have had regard to the revised version of the National Planning Policy Framework ('the Framework'), that was published on 20 December 2023, but as it does not involve changes to national policy affecting the proposal, I have not sought the parties' comments upon it.
4. The Council has referred to policies in the City of York Draft Local Plan Incorporating the 4th Set of Changes (2005) ('the DLP'). Although this document has been approved by the Council for development control purposes, there is no indication that it has been formally adopted. I therefore consider that it does not form part of the development plan. Although policies within the DLP comprise material considerations insofar as they are consistent with the Framework, the weight to which I afford them is limited.
5. The Council has also made reference to the Publication Draft City of York Local Plan 2018 ('the ELP'). I understand that this is also not yet adopted, and I am unaware of the extent of any unresolved objections. On the basis of the advice set out at Paragraph 48 of the Framework, I therefore afford these policies limited weight also.

Main Issues

6. The main issues are:

- the effect of the development on the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance, and;
- the effect of the development on the character and appearance of the area.

Reasons

Living conditions

7. The appeal site relates to 49 Moorcroft Road, which operates as “The Dick Turpin” public house (‘the PH’). The PH is located within a small local centre which serves a large residential estate. The PH was not open for trading hours at the time of my mid-morning visit, and although only a snapshot in time, I noted that the area had a relatively quiet residential character, even within the local centre.
8. There are a number of residential properties close to the appeal site. The gardens of properties on Glenridding adjoin the car park of the PH, within which the development is situated, and one side of the drinking area lies in close proximity to the garden boundary. Other houses on Moorcroft Road are generally further away but are nevertheless close to the appeal site.
9. The drinking area is surrounded by a low timber fence with transparent sheeting above, and contains around 10 picnic benches, a large jumbrella and a covered smoking area. It provides sufficient seating for a significant number of customers, as well as standing space. The pub is located in a central location within a residential area, and the relatively sheltered accommodation for outside customers leads me to believe that the drinking area is well-used, and could continue to be used during inclement weather. Such use, in a relatively quiet area, together with the proximity of residential properties weighs heavily against the appeal.
10. Representations received from several third parties indicate that the use of the drinking area is, at times, audible both within the gardens of nearby properties, as well as inside the properties themselves both during the day and at night. It is also stated that this level of noise has a significance adverse effect upon the living conditions of the occupiers of those properties. Given the location and likely level of use of the drinking area, I consider that these concerns are well-founded.
11. The Council’s Public Protection Officer, although acknowledging that noise complaints received in relation to the development were not able to be confirmed, nevertheless also raises concerns about the development in relation to this issue.
12. From all of the above, and with no other evidence before me to demonstrate to the contrary, I therefore find that the development leads to harm to the living conditions of the occupiers of nearby residential properties with regard to noise and disturbance. The high fence and hedge row to the rear of properties on Glenridding would be unlikely to sufficiently reduce the harm that I have found.

13. The appellant has indicated that the hours of use of the drinking area could be controlled by means of a planning condition. However, there is no indication as to the hours of operation that are sought, and in any case, a condition to restrict the late-night use of the drinking area would not prevent high levels of noise being generated during daytime use, for example over summer weekends, which third parties have identified currently occurs. Such a condition would not, therefore, overcome the harm that I have identified.
14. The development harms the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance. It is therefore contrary to Paragraph 180 of the Framework, which states that planning decisions should contribute to the local environment by preventing existing development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.
15. It is also contrary to Policy GP1 of the City of York Draft Local Plan 2005 as well as Policies D1, D11 and ENV2 of the City of York Local Plan – Publication Draft 2018. Together and amongst other factors, these policies state that development which would be subject existing communities to significant adverse environmental impacts such as noise, or would harm the character or quality of the area will not be permitted, that development should ensure that residents living nearby are not unduly affected by noise, and that development proposals to add to existing buildings should protect the amenity of neighbouring occupiers.

Character and appearance

16. The fencing, transparent sheeting and festoon lighting are of lightweight appearance. Although the jumbrella was closed at the time of my site visit, given its stated dimensions, I acknowledge that it would be a more substantial element of the scheme, when unfurled.
17. However, along with the picnic benches and smoking shelter, such structures are commonly found in association with public houses and the development is visually well-related to the PH itself. Furthermore, the drinking area is located within an existing car park associated with the PH, which itself is of only limited character. Therefore, despite the openness of the site, I find that that the jumbrella and other structures do not appear incongruous in this case.
18. Although the Council has said that outdoor drinking areas are usually found to the rear of an establishment and not visible from public land, in my experience this is not always the case, and the fact that the drinking area is visible, does not mean that it is necessarily harmful.
19. The development does not harm the character and appearance of the area. It therefore accords with Chapter 12 of the Framework which highlights the importance of well-designed places. It also accords with DLP Policy D1, insofar as it relates to this main issue. This policy states, amongst other factors, that new development should not harm the character and quality of the area.

Other Matters

20. The appellant states that the development does not harm the daylight of any adjoining properties. Even if I were to agree, this would be a neutral factor and would not weigh in favour of the appeal.

Planning Balance and Conclusion

21. Although I have found that the development does not harm the character and appearance of the area, I have found that the development leads to harm to the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance. This harm and conflict with the Framework would be significant and I afford it significant weight. The proposal would also conflict with policies within the DLP and ELP, however, as neither document is adopted, I afford these conflicts limited weight.
22. As there are no relevant adopted development plan policies, I am taken to paragraph 11 (d) of the Framework. This states that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole.
23. I acknowledge that the pub provides an amenity for the community, and that the development enhances this role as it provides a socially distanced external space for customers. This is a moderate benefit of the scheme.
24. However, the development conflicts with the Framework insofar as, amongst other things, it requires development to contribute to the local environment by preventing existing development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. This adverse impact significantly and demonstrably outweighs the moderate benefit of the scheme. Consequently, the presumption in favour of sustainable development does not apply in this case.
25. For the reasons given above, having considered the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR