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# Appeal Decision

Site visit made on 4 April 2024

**by J Symmons BSc (Hons) CEng MICE**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 July 2024**

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**Appeal Ref: APP/U2750/W/23/3334440**

**The Mill at Stokesley, Springfield, Stokesley, North Yorkshire TS9 5ER**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Alex Cook against the decision of North Yorkshire Council.
  - The application reference is ZB23/01075/FUL.
  - The development proposed is the retention of seating approved under application ref 21/00001/FUL.
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## Decision

1. The appeal is dismissed.

## Background and Preliminary Matters

2. The appeal site is in the rear car park of the Mill; a public house located on the outskirts of Stokesley Town Centre.
3. The external seating area already exists and was constructed over part of the rear car park under a temporary planning permission granted in 2021 (LPA Ref: 21/00001/FUL). This permission was subject to several planning conditions including the installation of a 2 metre high close-boarded fence. The permission expired in September 2022. It is advised that the planning permission was granted on a short-term basis to support the business through the COVID-19 restrictions.
4. The appellant contends that under case law the use of the parking area as a seated area does not require planning permission as it is on land that falls within the planning unit of the public house. The appellant cites the appeal for Land at Forest Hill Hotel, 41-42 Stanstead Road, Forest Hill, London (Appeal Ref: APP/X/94/C5690/2092) as supporting this argument. However, notwithstanding that the car park is used by the customers of the public house, unlike the Forest Hill Hotel appeal, there is little substantive evidence presented confirming the public house and car park as a single planning unit. As such it is not possible to confirm planning permission is not required and, in any event, an appeal under this ground has not been made. I have proceeded with the appeal on the basis that planning permission is required.
5. The site was formerly part of the administrative area of Hambleton District Council, which has now merged with several Councils to form North Yorkshire Council. The development plan policies for the former merged Councils remain in place until they are revoked or replaced. I have determined the appeal on this basis.

6. An update to the National Planning Policy Framework (the Framework) was published on 19 December 2023. Other than changes to paragraph numbering, there are no material changes relevant to the substance of the appeal.

### **Main Issue**

7. The main issue is the effect of the development on the living conditions of the adjacent neighbouring residents with respect to noise and disturbance.

### **Reasons**

8. The Mill fronts Springfield (the B1365) and its rear car park is accessed off Eastfields. The external seated area is located to the boundary next to a narrow public right of way which connects Eastfields with Springfield. The seating area consists of a wood chip surfaced area with tables and seating and is separated from the car park by a series of planters. There is housing with gardens on Springfield and Eastfields that is very close to the appeal site. The boundaries to the public right of way and Eastfields is a mix of fencing, vegetation and some trees.
9. The development consists of the retention of the external seating area as permitted under the temporary planning permission. While I only observed three tables with bench seating in the area at my visit, the appellant refers to the area as having four tables with bench seating and a maximum capacity of six people per table. The seated area is available for use in the evening until 21:00 hours. The close-boarded fencing required by the temporary planning permission was not completed however, it has been confirmed that this could be installed if required and a planning condition used to secure it.
10. Even though the area is small and seating limited, it still allows a reasonably large number of people to use it. While it is suggested that the maximum capacity of the four tables is rarely if ever achieved, little evidence is provided to support this. I consider that congregating customers in this area, with its associated comings and goings and mix of activities at the tables, is likely to create a significant level of noise and disturbance adjacent to the nearby housing and their gardens. Furthermore, from the public house's opening hours, this noise and disturbance effect would likely be a reasonably regular occurrence.
11. While there is existing fencing, vegetation and trees on the development boundaries, due to their limited form and extent they are unlikely to provide any significant noise and disturbance protection. Moreover, little evidence such as a noise assessment is presented to demonstrate that an acceptable level of protection from noise and disturbance is achieved from either these features or the addition of the proposed close-boarded fence.
12. Consequently, noise and disturbance from the development, even with it only occurring up to 21:00 hours, will likely have a significant adverse effect on the occupants of the neighbouring properties' enjoyment of their gardens. It could also potentially affect the use of some of the properties' rooms when their rear windows and doors are opened for ventilation or cooling.
13. I note that the Environmental Health Officer did not object to the development subject to the inclusion of the conditions applied to the temporary planning permission. However, considering the proximity of housing, even if the planning conditions proposed were strictly managed, I am not convinced that

they would be sufficient to protect the nearby residents' living conditions for the permanent use of the development. The mitigation proposed does not change the concerns I have regarding the development.

14. While there have been no recorded noise complaints relating to the development in the last six years, this does not render the development acceptable. I have considered the development on its own planning merits and found harm.
15. Overall, the development significantly adversely affects the living conditions of the adjacent neighbouring residents with respect to noise and disturbance. It conflicts with Policy E2 of the Hambleton Local Plan 2022 (Local Plan) which seeks, amongst other matters, to protect residential occupants of neighbouring land and buildings from significant adverse noise impacts.

### **Other Matters**

16. National and local planning policies such as Sections 6 and 7 of the Framework and Policy EG3 of the Local Plan provide support for business and economic growth and the maintenance of the vitality and viability of town centres. In this case, the evidence indicates that the temporary nature of the development was in response to the COVID-19 pandemic and the associated impacts on the hospitality industry. Retaining and making the outdoor seating area permanent will attract some customers. However, the economic benefits have not been quantified nor has it been demonstrated that the business would not be viable if the appeal should fail. It has therefore not been sufficiently demonstrated that the economic benefit outweighs the harm.
17. It is indicated that in response to concerns raised by third parties, changes have been made to the public house's car park lighting and timing of the emptying of the bins. While this is welcomed, this does not resolve the development's noise and disturbance impacts.
18. The site lies next to but outside Stokesley Conservation Area (the CA). Paragraph 212 of the Framework requires new development within the setting of CAs to enhance or better reveal their significance. The Framework defines the setting of a heritage asset as "the surroundings in which a heritage asset is experienced". The development is located at the rear of the public house, in a car park which is bounded by more modern housing. It is disconnected from the town's historic character and does not intrude unduly on the appearance of the CA. Accordingly, it does not harm the setting of the CA. However, a lack of harm carries neutral weight in my assessment and does not overcome the harm that I have already identified.

### **Conclusion**

19. The development harms the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. It conflicts with the development plan and there are no material considerations that would demonstrably outweigh that harm. Therefore, the appeal should be dismissed.

*J Symmons*

INSPECTOR