



Appeal Decision

Site visit made on 24 September 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 October 2024

Appeal Ref: APP/U1105/W/24/3340283

The Maltsters Arms, Greenway, Woodbury, Devon EX5 1LN

- 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 Ms Sam Knighton of The Maltsters Arms against the decision of East Devon District Council.
 - The application Ref is 24/0017/FUL.
 - The development proposed is retrospective application for retention of marquee to be used as ancillary accommodation to the Maltster's Public House.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the appeal development as set out in the Council's Decision Notice, which is slightly more accurate than that used in the application form. The appellant has used this revised description in the appeal form and so I am satisfied that no party would be prejudiced as a result.

Main Issues

3. The main issues are the effect of the marquee on:
 - the character and appearance of the area, including the Woodbury Conservation Area (CA) and the setting of The Maltsters Arms, a Grade II listed building, and
 - the living conditions of the occupiers of nearby dwellings, with regard to noise and disturbance.

Reasons

Character and Appearance

4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that I have special regard to the desirability of preserving the listed building and its setting, or any features of special architectural or historic interest. Section 72 of the Act requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
5. The CA encompasses much of the historic village, which has a pleasing informality and spaciousness of layout, with some parts densely developed and other areas less so. The CA also has a rich assortment of traditional external

- materials. Relevant to this appeal, the significance of the CA is the attractive architectural appearance of its buildings, spaces and street scenes.
6. The Maltsters Arms is a public house dating principally from the mid-19th century, together with 1920s extensions, and amalgamated cottages. It is an attractive two-storey brick building set back from Greenway Road behind a verge. In the context of this appeal, the significance of the listed building is its age and traditional, historic appearance.
 7. Only the front of The Maltsters Arms is specifically identified in the undated Woodbury Conservation Area Appraisal as being part of an unspoilt frontage. There is seating, parking and other paraphernalia associated with its use to the rear of the building. Nevertheless, its side and rear elevations and surrounding space all form part of its historic and attractive appearance and setting. As such, the site makes a positive contribution to the character and appearance of the CA.
 8. The application seeks retrospective consent for a marquee, used as additional public floorspace and seating. It has been erected to the rear of the building, is unattached to it and is subservient to the building and plot. Even so, the marquee has a large size and scale, and a utilitarian and temporary form. It also has a position and orientation that extends well beyond the footprint of the main building and does not respect its plan form, thus appearing as an unsympathetic addition.
 9. The external materials of the marquee include white uPVC and unfinished metal. Whilst robust, their modern appearance fails to reflect the rich local vernacular, and so contributes to the discordant visual effects of the marquee. For the reasons given above, its design contrasts sharply and harmfully with the historic and attractive appearance of the listed building.
 10. The marquee is located on a rising gradient and where public views of it are clearly obtainable from Greenway Road, above the side entrance gates. As such, the marquee undermines the sense of openness and glimpsed vistas of mature trees to the rear of the building, which provide relief from the more densely developed parts of the CA.
 11. For these reasons, the marquee adversely affects its surroundings, and would do so even if retained on a temporary basis. It therefore harms the character and appearance of the CA as a whole, and the setting of The Maltsters Arms as a listed building, thus failing to preserve them. As a result, it conflicts with policies D1, EN8, EN10 and Strategy 6 of the East Devon Local Plan (EDLP), adopted January 2016. These require development to be compatible with the character of the site and its surroundings, and to preserve or enhance the character and appearance of the CA.
 12. Bearing in mind the requirements of the Act, and as required by the National Planning Policy Framework (the Framework), I give great weight to this harm. In the language of the Framework, this would amount to less than substantial harm. Consequently, I will weigh this harm against the public benefits in the planning balance below, as required by Framework Paragraph 208 and EDLP Policy EN9.

Noise and Disturbance

13. The public house is centrally located in the village. Dwellings and their gardens adjoin the site including the beer garden and car park, with other residential units within the property itself. Many of these properties post-date the pub or a brewery at the site, and those living close by would expect a degree of noise and disturbance from it. The Council's Environmental Health Officer did not object to the application, subject to a condition restricting amplified music.
14. No specific noise data is before me. However, the marquee structure is relatively flimsy and so in all likelihood has poor noise-limiting qualities. Moreover, by being enclosed, heated and lit, it allows for greater levels of activity and use of the rear area, for longer into the evenings, than would otherwise be the case. As such, even if occupation of the marquee were prohibited beyond 10pm, and it was not used for weddings, it would result in materially greater noise and disturbance to those living in nearby dwellings.
15. A planning condition restricting amplified music would not prevent other forms of noise resulting from the marquee, such as customers talking and socialising, particularly when consuming alcohol. Nor would it prevent noise from the additional movements of people arriving and leaving. A planning condition might seek to restrict noise to a specified level at the site boundaries. However, I have little evidence as to what this level should be, nor the practicality or enforceability of such a measure here. The licencing regime is separate to planning control and the Planning Practice Guidance¹ (PPG) advises that licencing conditions cannot be presumed to provide for noise management in all instances.
16. For these reasons, the marquee has a harmful effect on the living conditions of the occupiers of nearby dwellings, with regard to noise and disturbance. Consequently, it conflicts with EDLP policies D1 and RC6, which require no detriment to the amenity of neighbouring properties from undue noise, and the similar requirement of the Framework. I therefore give this harm significant weight. However, EDLP Strategy 6 does not refer to this issue and so I find no conflict with it in respect of this matter.

Other Matters

17. Part 4, Class BB of the Town and Country Planning (General Permitted Development Order) 2015 permits the erection of moveable structures within the curtilage of (amongst other things) listed public houses. This right imposes no controls on the hours of use or music played. However, it only applies to marquees much smaller than the one before me. It is also subject to other restrictions regarding siting. As such, utilisation of the permitted right may well have lesser adverse effects on the living conditions of neighbouring properties, the listed building and the CA than the appeal development. It does not therefore provide sufficient reason to overcome my concerns.
18. The Maltsters Arms provides employment and a social hub for the local community. The marquee provides flexible space for the business to accommodate a variety of functions and to respond to demand. It is also accessible by those with limited mobility. As evidenced by national closure and insolvency data, I do not doubt the financial pressures on public houses, and

¹ Paragraph: 006 Reference ID: 30-006-20190722

the adverse effects that its closure would have on the building and the village. The PPG² advises that harmful development may sometimes be justified to realise the optimum viable use of an asset, provided that the harm is minimised.

19. However, I do not have substantive evidence to demonstrate that dismissal of the appeal would necessarily result in the closure of the public house, or that the appeal development is essential for the optimum use of the site to be maintained or realised. The desirability of sustaining heritage assets and putting them to viable uses is identified by Framework Paragraph 203. Nevertheless, it also makes clear that this must also be consistent with their conservation, which I have already found is not the case. For these reasons, I give the public benefits of the appeal development only moderate weight.

Planning Balance and Conclusion

20. For the reasons given, I conclude that the public benefits are not of sufficient weight to outweigh the less than substantial harm to the designated heritage assets. Nor do these benefits outweigh the overall harm resulting from the appeal development which I have identified above. I therefore conclude that it also conflicts with EDLP Policy EN9.
21. I have found conflict with the Development Plan as a whole. The material considerations in this case, and the weight I give them, do not indicate a decision other than in accordance with it. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR

² Paragraph: 015 Reference ID: 18a-015-20190723