



Appeal Decision

Site visit made on 1 October 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/X4725/W/24/3345331

The Quarry Restaurant, Bar and Business Space, 70 Quarry Hill, Horbury, Wakefield WF4 5NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ashtree Partners LLP against the decision of Wakefield Metropolitan District Council.
 - The application Ref is 17/02587/FUL/S7301.
 - The application sought retrospective planning permission for extension to existing bar/restaurant (A3), demolition works and installation of external flue and plant equipment without complying with a condition attached to planning permission Ref 17/02587/FUL, dated 21 December 2018.
 - The condition in dispute is No 3 which states that: *Notwithstanding the submitting plans and information, no DJs, karaoke, live music or similar entertainments shall be permitted in the first floor of the premises and/or the outdoor terrace area as identified in proposed plans – terrace upgrade details 1664/2010, at any time.*
 - The reason given for the condition is: *In the interests of the amenity of the occupiers of neighbouring properties and to accord with the requirements of policy D20 of the Local Development Framework.*
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Decision

1. The appeal is allowed and planning permission is granted for extension to existing bar/restaurant (A3), demolition works and installation of external flue and plant equipment at The Quarry Restaurant, Bar and Business Space, 70 Quarry Hill, Horbury, Wakefield WF4 5NF in accordance with the application Ref 17/02587/FUL/S7301, without compliance with condition number 3 previously imposed on planning permission Ref 17/02587/FUL, dated 21 December 2018 and subject to the following conditions listed in the attached schedule.

Applications for costs

2. An application for costs was made by Ashtree Partners LLP against Wakefield Metropolitan District Council. This is the subject of a separate decision.

Preliminary Matters

3. The appellant submitted with the appeal several documents which were not available at the time the application was determined. This included a Noise Management Plan, an addendum to the Noise Impact Assessment (NIA), a layout plan, site photographs and details of fire exit door seals. Whilst these documents seek to clarify, rather than result in a fundamental change to the

application, I have considered in line with Holborn¹ whether accepting these would cause procedural unfairness to interested parties. As a result of a number of representations made on the application, I am concerned that if I accepted these, it would prejudice the interests of these parties who have not been consulted on these documents. Consequently, I have proceeded to determine the appeal on the basis of the plans and information that was before the Council when the application was determined.

4. The Wakefield District Local Plan 2036 was adopted, 24 January 2024 (LP). Therefore, Policy D20 listed within the reasons for condition 3 of the previous permission² is no longer relevant. Instead, the application was refused as being contrary to Policies LP56 and LP67 of the LP.

Background and Main Issue

5. Planning permission was previously granted³ for extension and demolition works to The Quarry Inn (The Quarry). As the works did not conform to the permission, a further application⁴ was applied and granted permission for an extension to the existing bar/restaurant (A3), demolition works and installation of external flue and plant equipment. This was subject to conditions, including a number which were intended to mitigate and avoid noise affecting the occupiers of adjacent properties. Condition 3 prevented DJs, karaoke, live music or similar entertainment on the 1st floor and terrace.
6. An application in 2019⁵ which sought to vary condition 3, as well as remove other conditions, was refused. The tenancy of The Quarry has changed since the planning application subject to this appeal was submitted, however, the appellant continues to want to have recorded and live music within the internal area of the 1st floor. The application subject to this appeal therefore sought to change the wording of condition 3 to:
7. *Notwithstanding the submitted plans and information, no karaoke or amplified live bands shall be permitted indoors in the first floor of the premises as identified in 'proposed plans-terraced updated details 1664/210 and no DJs, karaoke, live music or similar entertainments shall be permitted on the outdoor terrace areas at any time. Any music system will be fitted with a noise limiter which will be set in conjunction with the Environmental Health Officer.*
8. Therefore, the main issue is the effect that varying the condition would have on the living conditions of neighbouring occupiers with regards to noise and disturbance.

Reasons

9. The Quarry is a detached, stone built, former public house, which is presently operating as a restaurant. Surrounding it on three sides is a large car park. It is sited adjacent to the A642 which falls steeply towards the west.
10. Close to the site, small groups of mainly terraced housing are located next to the A642. These are separated from the appeal site on one side by an area of

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

² Ref 17/02587/FUL

³ Ref 16/02230/FUL

⁴ Ref 17/02587/FUL

⁵ Ref 19/00682/FUL

open land that has had planning permission granted for 20 new dwellings⁶, and has an application submitted for 22 dwellings⁷. Opposite the site is an area of woodland, whilst to the rear and above the stone, former quarry face, is Laburnum Grove. This is a residential area of detached housing whose rear gardens extend to the 'quarry' edge.

11. The host building has a large two storey extension to the rear. The facilities are spread over two floors, with the 1st floor having an external terrace. The ground floor was being used as a restaurant at the time of my visit, with the 1st floor being used for storage.
12. The previous planning permission⁸ sought to control noise levels resulting from entertainment activity within the building, as reports of loud music had been investigated and substantiated by the Council. Therefore, the development included the construction of a lobby and self-closing door to the terrace, the installation of a wooden elliptical fin in the outdoor terrace, the installation of terrace perimeter walls up to 2.8 metres in height, and measures to control the use of the terraced area.
13. I saw the terrace located on the 1st floor. It was enclosed by timber clad high panelling to a height where it was not possible to see out, or from the ground, see in. There was a wooden roof structure to form the elliptical fin. To enter the terrace, a lobby with aluminium constructed windows and doors, separated it from the rest of the 1st floor. I noted too, that the windows on the rear 1st floor elevation had been permanently blocked up with matching stone as required by condition 7.⁹
14. It is proposed that any amplified music would pass through a noise limiter which would be set at 90.4dB. Furthermore, the ground and 1st floors would not be used concurrently for any live music or similar amplification of recorded music, with no amplified live bands or karaoke on the 1st floor.
15. Several noise assessments, which were carried out by a suitably qualified acoustics expert, were submitted, with version 4¹⁰ used to determine the application. Three Noise Sensitive Receptors (NSR)s were identified, all on Laburnum Grove. A baseline noise survey was undertaken¹¹ which established typical external background noise levels at the site, as well as a survey¹² to establish noise breakout from the 1st floor. This was done with the sound system at a maximum viable operating volume. Two measurement locations were used, location 1 where a sound level meter was positioned at a height of 5m above ground level along the northern boundary of the car park, and location 2 at a height of 1.5m above ground level along the western boundary of the car park.
16. The NIA predicted that the impact of levels of entertainment noise breakout within surrounding residential gardens would accord with No Observed Effect Level (NOEL)¹³. Assessments were made for neighbouring bedrooms, based on

⁶ Ref 16/01374/REM

⁷ Ref 22/01526/FUL

⁸ Ref 17/02587/FUL

⁹ Ref 17/02587/FUL

¹⁰ Noise Impact Assessment DC4179-NR1v4, Dragonfly Consulting, December 2023

¹¹ 15-17 May 2023

¹² 2 June 2023

¹³ Noise Policy Statement for England (NPSE), March 2010

open windows at a music level of 90.4dB on the 1st floor recorded 2 metres from the external façade. Noise levels calculated inside bedrooms were assessed against the Noise Rating Curve¹⁴ (NR), in this case, NR20, which found the criteria at 1KHz and 2KHz to be slightly exceeded at Laburnum Grove and marginally exceeded in bedrooms to the west of the premises.

17. Based on the evidence, the 1st floor fire door is a source of noise escaping from the building as it is presently not adequately sealed, with a gap around it. In the past the door has been left open, allowing noise to be heard outside the premises. The proposal includes improved seals to the fire door, with appropriate testing to ensure that they would be effective. If these do not reduce external noise levels, the appellant has suggested that an internal noise lobby would be constructed. This again would need to accord with the NR20 Curve to achieve NOEL.
18. Although the Council has raised concerns over the use of the fire door by customers or staff, there is no substantive evidence for this. Whilst I agree that ensuring the door is always kept closed is not enforceable, a suitably worded condition for the door being properly sealed to prevent any noise escaping, is. Furthermore, the use of the fire door could be included in a noise management plan for the site.
19. The evidence suggests that the Council had not visited the site and were unaware that the internal lobby on the 1st floor had been constructed. However, I saw that it is of a size that would accommodate numbers of people and the two-way movement of customers. The terrace is accessed through the lobby, and the proposed changes to condition 3 would, as previously, prevent the playing of any music on it. The appellant has suggested restricting the use of the terrace if music events were being held on the 1st floor. This would prevent any seepage of noise from the 1st floor onto the terrace which could potentially disturb neighbours.
20. There is no substantive evidence to suggest that it would be impractical for staff to lock the doors onto the terrace. Appropriate signage could be provided, and customers could be informed at the time of booking. It could be addressed in a suitably worded condition, and details contained within a noise management plan for the site could prevent its use on such occasions. In any case, an existing condition restricts the use of the terrace between the hours of 0900 and 2200.
21. The area surrounding the site has many residential properties and there have been historic noise issues from this premises. However, the evidence indicates that the existing noise levels, which are mainly from traffic on the A642, and which I heard when I visited, already exceed the predicted noise levels that would arise from music on the 1st floor by at least 10dB. Moreover, the Council's Environmental Health Officer (EHO) has, following v4 of the NIA, no objection to the proposal, as the report predicts that post mitigation, the noise impacts would be between the NOEL and the Lowest Observable Adverse Effect Level¹⁵. It would, therefore, avoid significant adverse impacts and would mitigate and minimise other adverse impacts.

¹⁴ Noise Policy Statement for England (NPSE), March 2010

¹⁵ Noise Policy Statement for England (NPSE), March 2010

22. Whilst the Council has concerns regarding mitigation and the implementation of conditions to prevent disturbance to residents, the use of the 1st floor for music events would be intermittent, most likely in the evenings, and at weekends. Yet, the existing permission has no restrictions on music being played on the ground floor which has a door onto a small, terraced area at the rear, with a picnic table located on it. Moreover, there is no substantive evidence that testing on the site needs to be over a protracted period and would cause harm to adjoining occupiers. In addition, the proposal would not remove existing conditions that were necessary when permission was granted in 2017, and further conditions are proposed to ensure that the proposal would not result in harm to neighbouring occupiers.
23. Paragraph 191 of the National Planning Policy Framework (the Framework) states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects on living conditions. Furthermore, decisions should avoid noise giving rise to significant adverse impacts on health and quality of life. However, despite the concerns of the Council I do not consider that there would be a significant adverse impact resulting from the proposal.
24. Therefore, for the above reasons I conclude that the proposed changes to condition 3 would not harm the living conditions of neighbouring occupiers with regards to noise and disturbance.
25. It would accord with LP Policies LP56 and LP67 which together require development to have no significant detrimental impact on the amenity of neighbouring users or residents and that approved mitigation measures should be in place prior to the operation of the development commencing.

Other Matters

26. Planning permission has previously been granted for residential development on an adjacent site¹⁶, as well as an application that has not been determined¹⁷. Third parties have referred to this site not being included in the NIA. However, paragraph 187 of the Framework states that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities, such as pubs and music venues. Existing businesses and facilities should not have unreasonable restrictions placed on them because of development permitted after they were established. In this regard, it is for the applicant, or 'agent of change' to provide suitable mitigations before the development has been completed. Therefore, not addressing this within the NIA does not count against the proposal.
27. Third parties, particularly residents of Laburnum Grove, have set out the disturbance caused by the operation of this site in previous years, and the discussions that took place over the conditions on the previous permission. At times the premises has operated in contravention of the conditions which has caused residents distress and inconvenience. However, despite the concerns of third parties regarding the NIA, there is limited substantive evidence as to which version of the NIA is being referred to. Moreover, the NIA has addressed the effect on neighbouring residents and the EHO has advised that suitable

¹⁶ Ref 16/01374/REM

¹⁷ Ref 22/01526/FUL

mitigation could be provided subject to relevant conditions, which I have no reason to disagree with.

28. Reference has been made to the assessment of the previous application¹⁸ to amend condition 3 which was refused. However, although a noise limiter was rejected in 2019, the level of noise was predicted to be 6.7dB higher than the appeal case. Therefore, the two cases are not directly comparable, and I am determining the appeal on the evidence and application before me.
29. As there is now a new tenant, the Council considers that the appellant should have provided further information on how the business could be developed as a result of the previous noise concerns at the site, as well as providing revised drawings. However, there are no physical changes to the building requiring additional drawings, and the appeal only relates to the specific issues surrounding condition 3, not wider concerns beyond the disputed condition. This is the basis on which I have determined the appeal.
30. Third parties have referred to the loss of temporary car parking if the adjacent site¹⁹ is built on. However, this is not a matter of dispute between the main parties, and that site is not part of this appeal.

Conditions

31. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Whilst I have seen the development and entered the building, I have insufficient information before me about the status of the other conditions imposed on the original planning permission, and so I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have, however, reworded conditions 4, 5, 6, 7 and 9 removing the reference to within 2 or 3 months of the date of the original decision.
32. Condition 3 has been reworded, as this is the condition that is in dispute, although includes details of the noise limiter and noise levels, concerns identified by the Council. Conditions 10 and 11 ensure that no music events would take place on the 1st floor until the proposed mitigation in line with NIA DC4179-NR1v4 have been put in place and tested. This is reasonable, necessary and enforceable.
33. Condition 12 requires the submission of a noise management plan detailing the operation of the site to ensure that neighbouring occupiers would not be harmed by noise levels from the site. This is necessary and enforceable. Condition 13 would prevent the use of both the ground and 1st floors for booked music events. This would not prevent the simultaneous amplification of music on both floors, as long as the music on at least one floor is not above normal background music levels and is only for the purpose of providing ambient sound on that floor. This could also be detailed within the management plan required as part of condition 12 and would prevent noise levels when music events are being held exceeding what is acceptable.

¹⁸ Ref 19/00682/FUL

¹⁹ Ref 16/01374/REM; Ref 22/01526/FUL

Conclusion

34. For the reasons set out above, I have found that a revised form of condition 3 is reasonable and necessary. Therefore, the appeal is allowed.

M J Francis

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be carried out strictly in accordance with the following approved plans as listed below and at the end of this decision notice unless required otherwise by this decision or its attached conditions:

Application form 03.10.2017

Noise Documentation DC2709-L1

MISUDO – Miscellaneous Support Documentation – Air Conditioning data
06.02.2018

SIPL1 – Site Plans – Proposed Site Footprint – 1664/118 Rev A (Excluding all details marked 'Storage container elevations', 'storage container 1' and 'storage container 2'.

SIPL1 – Site Plans – 1664/100 Rev A

SIPL1 – Terrace Upgrade Details – 1664/210

MISUDO - Miscellaneous Support Documentation – Air Conditioning –
Technical Data EEDEN15-100

MISUDO - Miscellaneous Support Documentation – Agent Letter – DHR/PB

Emails from agent in respect of agreed conditions 20.06.2018 and
16.11.2018.

- 2) The works recommended by Dragonfly Consulting in the letter dated 16 July 2018 emailed to Mr David Rock shall be undertaken and fully completed. The works shall increase the attenuation of the whole first floor flat roof by installing additional insulation of 100mm light steel grid, with 60mm 10kg/m³ insulation in the cavity, underlined with 2 no. layers of 12.5mm British Gypsum Soundblock Plasterboard (or equivalent) to provide a total sound reduction of DnTw + Ctr 54 dB(A) across the whole roof. The works shall thereafter be retained and maintained for the lifetime of the development.
- 3) Notwithstanding the submitted plans and information, no karaoke or amplified live bands shall be permitted indoors in the first floor of the premises as identified in 'Proposed plans- terrace upgrade details 1664/210' and no DJs, karaoke, live music or similar entertainments shall be permitted on the outdoor terrace areas at any time. Any permitted amplified music

entertainments in the first floor indoors, must be passed through a music system fitted with a noise limiter which will be set to prevent internal music noise levels at the first floor exceeding 90.4dB as set out in the Noise Impact Assessment DC419-NR1v4 (Dragonfly Consulting, December 2023).

- 4) The works to provide the revised access to the first floor terrace via the doors and lobby shall be undertaken and fully completed in accordance with the details shown on plan no. 1664/210 entitled Terrace Upgrade Details, July 2018, which shall thereafter be retained and maintained for the lifetime of the development. The doors to the outdoor terrace shall remain closed at all times other than for means of access or egress to/from the terrace. The outdoor terrace shall not be used until the lobby and door arrangement are installed in accordance with the approved details.
- 5) The works to raise the external walls of the terrace to a height of 2.65m from the base of the terrace (as identified on plan no.1664/210 entitled Terrace Upgrade Details, July 2018) shall be undertaken and fully completed and shall thereafter be maintained at that height. The walls shall be constructed in accordance with the approved details.
- 6) The wooden elliptical fin shown on 1664/210 entitled Terrace Upgrade Details, July 2018, shall be fully installed in accordance with the approved details, and shall thereafter be retained and maintained for the lifetime of the development.
- 7) The windows to the first floor of the building facing Laburnum Grove shall be removed and permanently blocked up as detailed on 1664/210 entitled Terrace Upgrade Details, July 2018, and shall be retained as such for the lifetime of the development.
- 8) The outdoor terrace area shall only be used between the hours of 09.00 and 22.00 hours on any day of the week. No sound amplification equipment shall take place on, within or be used in connection with the outside terrace area at any time.
- 9) A written scheme shall be submitted to the Local Planning Authority for approval in writing outlining how odour and noise from the kitchen extraction equipment will be mitigated/controlled. The odour scheme shall include a grease filter and draw, pre filter, carbon filter with minimum dwell time for gases of 0.4 seconds and an electrostatic precipitator, a discharge height to be 1 metre above the ridge and a cleaning and maintenance schedule. The noise scheme shall include the noise level in at a given distance in dB, the installation of a fan speed controller and the proposed hours of operation. Within 2 months of the Local Planning Authority approving the scheme the works comprising the odour and noise scheme shall be undertaken in accordance with the approved details. The system shall thereafter be maintained and serviced in accordance with the manufacturer's specification and detail approved by the condition whilst the extraction equipment remains in-situ.
- 10) No use of the first floor for events involving live music performance or similar amplification of recorded music shall take place until mitigation measures, including the sealing of the first-floor fire door and the use of a noise limiter have been carried out in accordance with the recommendations of Noise Impact Assessment DC4179-NR1v4. Details of the completed

mitigation measures shall be submitted to and approved by the Local Planning Authority.

11) Following the completion of all mitigation measures in accordance with the recommendations of Noise Impact Assessment DC4179-NR1v4, a further noise assessment representing the active use of the first floor for music events shall be undertaken and the report submitted to the Local Planning Authority. No use of the first floor for such events shall take place until there has been written approval from the Local Planning Authority. The use of the first floor shall thereafter be in accordance with the implemented mitigation measures and shall be retained for the duration of the development.

12) A noise management plan which shall detail effective noise management practices, including no access to the terrace when live music events are taking place, shall be submitted to and agreed in writing with the Local Planning Authority prior to the use of the first floor for live music events and recorded music of similar amplification. The plan shall thereafter be implemented prior to such events taking place and retained for the duration of the development.

13) At any time, if either the ground or first floor is in indoor use for an event that involves live music performance or similar amplification of recorded music then the other floor shall not be simultaneously in use for any similar event.

End of conditions