



Appeal Decision

Site visit made on 21 January 2025

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th February 2025

Appeal Ref: APP/C2741/W/24/3352230

The Dick Turpin, 49 Moorcroft Road, York YO24 2RQ

- 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 Admiral Taverns against the decision of City of York Council.
 - The application Ref is 24/00678/FUL.
 - The development proposed is erection of a covered external seating area incorporating existing smoking shelter, to the southern side elevation of the Dick Turpin Public House, comprising of 1800mm high timber fencing to the side elevation, 900mm high enclosing timber planters, relocated 6m x 4m parasol and festoon lighting.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit, external seating was provided by benches which did not represent the submitted scheme and covered a smaller area. However, as set out in the appellant's Grounds of Appeal and proposed plan and elevations, the proposal includes the installation of French windows and I saw that these were in place. For the avoidance of doubt, I have determined this appeal based on the submitted plans and evidence.
3. A revised National Planning Policy Framework (the Framework) was published in December 2024 but there are no material changes relevant to the substance of the appeal.
4. In its reason for refusal, the Council refers to policies in the emerging Publication Draft York Local Plan 2018 (the PDLP), although I am not aware of the extent of any unresolved objections to the policies of this document. The PDLP has not been formally adopted as part of the statutory development plan. On that basis I have given these policies only limited weight in accordance with paragraph 49 of the Framework.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of nearby residents in respect of noise and disturbance.

Reasons

6. The appeal site is an established public house located within a shopping and service centre which serves a large residential estate. Despite its location in a shopping area, there are residential properties in close proximity to the appeal site,

including those on Glenridding whose back gardens adjoin the site of the pub. There are also residential properties on Moorcroft Road in the vicinity of the site.

7. Planning permission for a drinking area has previously been refused on appeal¹, although this was for a larger area than the proposal before me, which would also be set further from the rear gardens of houses on Glenridding. However, many of the concerns expressed in relation to the previous proposal remain in respect of this appeal. The evidence suggests that external seating areas have been well-used in the past with associated noise and disturbance from customers. Even though the current appeal relates to a smaller area, it is highly likely that the noise and disturbance from customers would continue with commensurate harm to the living conditions of nearby residents.
8. The appellant refers to a new 1800mm high timber fence, but given the open aspect of much of the proposal and the proximity of residential properties it has not been demonstrated that this fence would be effective as an acoustic barrier. Although there is an existing smoking area outside the pub, this is of a much smaller extent than the appeal proposal and would not generate the same level of activity and associated noise and disturbance.
9. The proposed French windows add to my concerns. The existing public entrances to the pub consist of vestibules with double doors, which would be effective in limiting noise emerging from within the pub. In contrast, the French windows provide direct access between the external seating area and the lounge within the pub, which would enable noise to break out from within the building. In that respect, I am mindful of objections referring to noise from amplified music from the pub. Even if steps are taken to ensure the automatic closure of the French windows, the number of movements through them would still lead to significant noise break out from within the pub.
10. The Council's Officer Report sets out that the Environmental Protection consultee refers to a single complaint since the application, and that they have no objection in principle as it appears that the site has been well managed. Nevertheless, objections from nearby residents to the application refer to ongoing noise issues, particularly during periods of fine weather, and given their direct experience this should carry great weight. In any event, the Environmental Protection consultee still expresses concerns about the proposal and refers to further evidence and controls, including in respect of noise mitigation and limitations on hours of use.
11. Furthermore, the appellant has questioned the conditions suggested by the Council, asking that suggested hours of use be extended to 22:00 in the evening Monday to Saturday, and challenging a limitation on the extent of seating. Although correspondence with the Council refers to the potential use of conditions, these remain a matter of dispute. I am also mindful that nearby residents have not been given the opportunity to comment on the potential conditions. It has therefore not been demonstrated that conditions would satisfactorily mitigate noise and disturbance issues arising from the proposal.
12. Considered objectively and in context, the proposal would lead to significant harm to the living conditions of nearby residents due to noise and disturbance. It has also not been demonstrated that this issue can be addressed by conditions. The proposal would therefore be contrary to the Framework with regards to achieving a

¹ Appeal Ref: APP/C2741/W/23/3324886

high standard of amenity as well as mitigating adverse impacts resulting from noise from new development. The proposal would also be contrary to the amenity and environmental quality requirements of Policies D1 and ENV2 of the PDLP, although for the reasons stated previously these policies carry limited weight.

Planning Balance and Conclusion

13. There are no relevant adopted development plan policies, and paragraph 11(d) of the Framework therefore applies. 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 having particular regard to key policies.
14. The pub provides an accessible service for the community, and it is clear that there is demand for the external seating area which would enhance the service provided. However, it has not been demonstrated that the provision of the seating area is vital for the continued operation of the pub. Although the proposal would be in a sustainable location with regard to access from the surrounding area, it would not be an efficient use of land due to the identified harm from noise and disturbance. Given the context and scale of the proposal, the benefits carry no more than moderate weight in favour of the appeal.
15. I have concluded that the proposal would lead to significant harm to the living conditions of nearby residents.
16. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, and in respect of key policies individually and in combination. The proposal would not represent sustainable development and the appeal should therefore be dismissed.

David Cross

INSPECTOR