



Appeal Decision

Site visit made on 28 February 2025

by **S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 12th March 2025

Appeal Ref: APP/W3005/W/24/3346022

Ballers Bar, 76-78 High Street, Hucknall, Nottinghamshire, NG15 7AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ashley Stockton (All Sports Leisure Ltd) against the decision of Ashfield District Council.
 - The application reference is V/2024/0070.
 - The application sought planning permission for the change of use of the premises from retail (A1) to a lounge bar (A4) with a smoke shelter and mechanical extraction to the rear of the property, without complying with a condition attached to planning permission reference V/2012/0207
 - The condition in dispute is No. 8 which states that *"no tables or seating shall be sited in the external yard area located at the rear of the application premises"*.
 - The reason given for the condition is *'to safeguard the amenities of residents living in the vicinity of the application site'*.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the premises from retail (A1) to a lounge bar (A4) with a smoke shelter and mechanical extraction to the rear of the property at Ballers Bar, 76-78 High Street, Hucknall, Nottinghamshire, NG15 7AX, in accordance with the terms of the application ref: V/2012/0207, subject to the following conditions: -
 - i. The development hereby permitted shall be carried out only in accordance with the details and specifications included in the submitted application form and shown on the submitted drawings approved under planning application V/2012/0207 and the proposed floor plans submitted under planning application V/2024/0070.
 - ii. Notwithstanding the submitted information, before the development hereby permitted is commenced, details of all ventilation and extraction equipment shall be submitted to and approved in writing by the Local Planning Authority. The information submitted shall specifically cover noise and odour attenuation matters. The ventilation and extraction equipment shall be installed in

accordance with the approved details, or as otherwise agreed in writing by the Local Planning Authority before the change of use is implemented.

- iii. The fire escape stairs at the rear of the application premises shall be used for means of escape purposes only and shall not be used for general seating/standing purposes by customers at any time.
- iv. The flat roof area at the top of the means of escape shall not be used by customers as a general seating/standing area at any time.
- v. The pedestrian access between Baker Street and the rear of the application premises shall not be used by customers to access or egress the application premises at any time.
- vi. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- vii. The external yard area shall only be used as a beer garden during the hours that the premises are open to the public, and in any event, not later than 10 pm each day, and shall be used in accordance with the floor plans submitted under planning application V/2024/0070.

Procedural Matters

- 2. The National Planning Policy Framework was revised in December 2024 and amended on 7 February 2025 to correct cross references from footnotes 7 and 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear. The 2025 Framework (the Framework) has not materially changed in terms of the identified main issues below and therefore, it has not been necessary for me to seek comments from the main parties.

Background and Main Issue

- 3. Planning permission was approved in 2012 for the change of use of appeal premises from a retail unit to a drinking establishment, including a smoking shelter in the rear yard and a mechanical extractor unit, when the condition now the subject of the appeal was imposed. The change of use has occurred, though on my site visit I saw no evidence of the approved smoking shelter.
- 4. The appeal is for the removal of condition No. 8 as stated in the banner heading above, in order that the rear yard can be used as a small beer garden with tables and chairs.
- 5. In the context of the above, the main issue in respect of this appeal is whether the appeal condition is necessary to protect the living conditions of occupants of adjoining premises in terms of noise and disturbance.

Reasons

6. The local planning authority (LPA), neither in its decision notice nor in its officer report, gives specific details of occupiers of premises which might be affected by noise and disturbance, but is rather a general objection upon this basis. However, on my site visit, I was able to see that the rear yard has a limited area of approximately 50 square metres and adjoins mainly commercial premises.
7. The land is contained within wooden fencing with vegetation above it in certain areas. The land beyond the fence on its southeastern side is unmaintained.
8. An external metal staircase for fire escape purposes from the adjoining flat roof is accessed from the proposed beer garden.
9. The proposed plans show the proposed beer garden to have four tables, each with four chairs.
10. On my site visit, I was able to see that any residential accommodation is generally set sufficiently away from the proposed beer garden to be insignificantly affected by any noise or disturbance from its use. However, there is one French window which is close to it. While I could not be certain from the evidence that it is associated with residential accommodation, I have assumed for the purposes of the appeal that it is so used. Its main view is of the roof of the appeal property, though I accept that noise from the proposed beer garden might impact upon it.
11. So far as the current site and proposal is concerned, I give substantial weight to the fact that planning permission already exists to use the space for a smoking shelter, and while its use as a beer garden might be a more intensive use, the space available is limited and is unlikely to be used to any great extent in inclement weather.
12. In addition, the appellant has suggested that its use should be limited to no later than 10 pm, and I have given the parties an opportunity to comment upon such a restriction. I consider that such a condition would sufficiently mitigate the effects of any possible and relative additional noise and disturbance upon the living conditions of any residents in the area including the possible occupiers of the property with the French window. While not a decisive matter in this appeal, I also give weight to the fact that the site falls within a town centre location where noise and general activity are likely to be higher than elsewhere.
13. I have no reason to believe that, subject to the imposition of conditions attached to the original approval, there would be no unreasonable impediment to the use of the fire escape if it is needed for this purpose.
14. For the above reasons, I conclude that the existing condition is not necessary. I find that its removal would accord with Policy ST1 of the Ashfield Local Plan Review (2002) which aims to protect the amenity of the environment, and with chapter 12 of the Framework which requires a high standard of amenity for development for existing and future users.

Conditions

15. 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed by the parties.
16. In addition, it is necessary to impose a further condition relating to the hours of use of the rear yard area. Such a condition was suggested by the appellant in its statement of case and the Council has also suggested such a condition. I have consulted the parties further regarding such a condition so that it is enforceable, and I have taken into account the comments received.
17. The Council has suggested a drawings condition which also refers to the drawing submitted as part of the subject application and relating to the number and position of tables and chairs in the rear yard area. I find that this is necessary to further control the intensity of the use of the rear yard area. Indeed, it would seek to further mitigate, to an acceptable level, any relative increase in noise and disturbance to occupiers of the nearby residences including that with the French window.

Conclusion

18. For the reasons outlined above, I conclude that the appeal should be allowed.

S. Hartley

INSPECTOR