
Appeal Decision

Site visit made on 23 May 2025

by **N Duff BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Appeal Ref: APP/M2840/W/24/3355304

Windmill Club, 12 Edmund Street, Kettering, Northants NN16 0HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr R Benamore against the decision of North Northamptonshire Council.
 - The application Ref NK/2024/0322 was approved on 26 July 2024 and planning permission was granted subject to conditions.
 - The development permitted is garden tables, seating and booths.
 - The condition in dispute is No 3 which states that: The outdoor seating hereby approved shall not be used by patrons, members or customers of the premises between the hours of 21:00 and 08:00 Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority.
 - The reason given for the condition is: To ensure the amenity of occupants of neighbouring properties. To comply with the provisions of Policy 8 of the North Northamptonshire Joint Core Strategy (2016).
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Decision

1. The appeal is allowed and the planning permission Ref NK/2024/0322 for Garden tables, seating and booths at Windmill Club, 12 Edmund Street, Kettering, Northants NN16 0HU granted on 26 July 2024 by North Northamptonshire Council, is varied by deleting condition No 3 and substituting it with the following condition:

3) The garden tables, seating and booths hereby approved shall only be used by patrons, members or customers of the premises between the following hours 0800-2300 Mondays-Sundays and on Bank or Public Holidays.

Preliminary Matters

2. The appellant's statement refers to the planning approval¹ being for a certificate of lawfulness, however elsewhere in the evidence, including the application form and decision notice it is demonstrated that it was a full planning application. Therefore, I have proceeded on this basis.
3. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024 following the submission of the appeal. Whilst some paragraph numbers have changed, the relevant paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Background and Main Issue

4. Planning permission was granted for garden tables, seating and booths subject to conditions. I understand that planning permission was required for these structures

¹ Application Ref: NK/2024/0322

due to their height. The appellant is seeking to remove condition 3 which relates to the hours in which the approved outdoor seating in the private outdoor area of the Windmill Club can be used by patrons, members and customers. The reason for the condition was in the interest of the living conditions of the occupants of neighbouring properties, which is set out in the appeal statement of the Council as being particularly regarding noise and smells.

5. The main issue is whether condition 3 is reasonable and necessary having particular regard to the living conditions of the occupiers of neighbouring properties in respect of noise and odours.

Reasons

6. The appeal site is located on Edmund Street which is within an area with a mixture of uses, with relatively high-density residential development close to the site. The site is the Windmill Club which is a snooker/pool hall, with associated bar area. The site has a modest outdoor area with some informal seating including tables and a small, covered area immediately outside of the rear doors of the club, the outdoor area is also used as a smoking area. The rear garden/yard area is enclosed and is surrounded on two sides by the gardens of residential properties, in addition to the club itself. The residential properties are close to the garden/yard area, due to the urban nature of the location and traditional terraced streets nearby.
7. The planning application sought permission for several covered booths for seating and tables with barrel planters around the garden formalising the garden area.
8. Based on the information before me, it is my understanding that the Windmill Club currently operates between the hours of 1100 and 2300, 7 days a week, and that the outdoor area which currently has some seating was part of a certificate of lawful use in 2010 for primary drinking establishment purposes. Therefore, the use of the outdoor area in connection with the main premises is long established, including its use as smoking area, albeit without specific restriction of hours.
9. Condition 3 restricted hours of use of the proposed outdoor seating to 2100 Monday to Sunday. The reason for the restriction was to protect the living conditions of neighbouring occupiers primarily from noise and odours who are within close proximity to the site.
10. In my view, the formalising of the area would make it more attractive for customers, due to the booths being covered. Furthermore, it could encourage customers to enjoy the outside area for longer, particularly in the warmer months, even though the undercover booths would likely dampen noise to some degree. The use of the area would therefore be intensified as a result of the improved seating.
11. Rear gardens of two neighbouring properties adjoin the garden area of the Windmill Club, where the proposed seating is to be located. To my mind, increased activity adjacent to their gardens and close to their properties could cause additional noise, particularly in warmer months when windows are more likely to be open. Therefore, for the garden tables, seating and booths, to be completely unrestricted with regard to their hours of use could cause issues with regard to noise, even though customers could use the garden area itself.

12. The Council has suggested an alternative condition that the use of the seating should cease at 2200 in accordance with the Environmental Health Officer comments, however, given the existing use of the garden area which is unrestricted and has been for many years and has some seating, I do not consider this to be reasonable.
13. I note that no neighbour objections were received, or objections from the Town Council, which indicates to me that the Windmill Club currently operates in a neighbourly way.
14. Nonetheless, the use of the booths and seating to be completely unrestricted could cause issues with noise should the hours of operation, or indeed the use or management of the host building change in the future. Whilst other safeguards are available through other legislation to protect occupiers from nuisance, for the reasons mentioned, I consider that to restrict the hours of use of the proposed seating to align with the existing operating hours of the host premises until 2300 to be reasonable. In addition, the area currently operates as a smoking area, therefore I do not consider the hours of use of the seating aligning with the hours of operation of the club to be more harmful to neighbouring properties with regard to odours than the existing situation.
15. Given all of the above, I conclude that condition 3 is not reasonable in its current format. I have therefore deleted the condition and have reimposed condition 3 with different hours of operation to reflect those of the host premises, which I consider to be reasonable and necessary in the interests of the living conditions of neighbouring occupiers in relation to noise. In addition, the condition includes Bank or Public Holidays for the purposes of clarity, and refers to 'garden tables, seating and booths' for preciseness to align with the planning consent.
16. For the reasons mentioned, the imposition of a condition restricting hours of use to 2300 would comply with Policy 8 e) of the North Northamptonshire Joint Core Strategy 2011-2031 which seeks to ensure that development should not result in an unacceptable impact on the amenities of neighbouring properties by reason of noise, smell, light or other pollution.

Other Matters

17. Correspondence from within the Council relating to a condition for the restriction of amplified music or sound has been provided within the evidence. This does not appear to have been considered necessary by the Council in their final decision. I do not consider that such a condition would meet the tests of necessity or reasonableness as it relates to the use of the outdoor area which benefits from the certificate of lawful use for the use of the garden area in connection with the Windmill Club.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting condition 3 for a new condition.

N Duff

INSPECTOR

