



Appeal Decision

Site visit made on 23 August 2010

by **D H Brier** BA MA MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Decision date:
17 September 2010

Appeal Ref: APP/H0738/A/10/2130043

Hide Cafe Bar and Grill, Fairfax Court, 32 High Street, Yarm TS15 9QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hide Bars Limited against the decision of Stockton-on-Tees Borough Council.
- The application Ref 10/0279/RET, dated 9 February 2010, was refused by notice dated 27 April 2010.
- The development proposed is the creation of an external smoking area at first floor level on existing flat roof (retrospective).

Decision

1. I dismiss the appeal.

Procedural Matters

Costs Application

2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Section 73A

3. The planning application is described as 'retrospective' and the scheme for which permission was sought has been implemented, in which case I shall treat the proposal as having been made under the provisions of section 73A of the 1990 Act as amended.

The Yarm Conservation Area

4. The appeal site lies within the Yarm Conservation Area. In this respect I have had regard to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The development in question is so well screened from view by existing buildings that the visual impact of the works on the surrounds is negligible, in which case the effect of the scheme on the conservation area is essentially neutral. I am satisfied therefore that the character or appearance of the area has been preserved.

Main issue

5. The main issue is whether the living conditions of local residents would be adversely affected.
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Reasons

6. The appeal premises lie just off Yarm's High Street. This part of Yarm, together with Fairfax Court, via which access to the property is gained, is predominantly commercial in nature, with a typical mix of town centre uses, including eating and drinking establishments. Away from the High Street however, the character changes noticeably, the area to the east and south-east, off Castle Dyke Wynd and Mill Wynd, being mainly residential.
7. Despite the not insignificant residential presence in the locality, my impression was that the surrounds of the site are rather different from a quiet residential suburb, and the locality is likely to be subject to a greater degree of activity than would normally be experienced in a wholly residential area. Indeed, in this respect, I have read that the appeal premises benefit from a planning permission that enables them to remain open for business until 00.30 hours. And, as the appellant points out, there are other outdoor facilities associated with licensed premises not far away, as well as a hot food take-away. The presence of these establishments means that there would be an element of late night activity in the area come what may. That said, PPG24 advises that uses like the appeal premises pose particular difficulties, not least because associated activities are often at their peak in the evening and late at night.
8. The Black Bull's beer garden, to which many of the objectors refer, is very large and its eastern edge is very close to some of the living accommodation in Castle Dyke Wynd. The development in question, however, is relatively modest in extent, only about 15m² or so. Moreover, I estimate that it is some 40m to 60m away from the living accommodation to the east and south-east. And, the bulk of the eastern part of Fairfax Court and the rest of the appeal premises provide a not insubstantial physical barrier that separates the development from these dwellings. While the concerns expressed are not matters I set aside lightly, the circumstances of this case are such that I am not satisfied that the retention of the development in question would impinge upon the living conditions of the residents in Castle Dyke Wynd and Mill Wynd to an unacceptable extent.
9. On the face of it, the above finding offers a persuasive reason for viewing the proposal favourably, perhaps all the more so, given that the Council's Environmental Health Unit raise no objections in principle to it. However, I am concerned that there is living accommodation above a shop in High Street¹ which has windows that look towards the smoking area. According to the Council, these windows are only 17m away from the disputed development. I acknowledge that the surrounds of this property are largely commercial, no objections have been forthcoming from its occupier(s), and I have no information regarding what the rooms served by the windows are. Be that as it may, the proximity of this particular living accommodation to the development in question is such that I consider that noise and general activity associated with the use of the smoking area would prove disturbing to its occupiers to an unacceptable degree, to the detriment of their living conditions.
10. Even though conditions were recommended by the Council's Environmental Health Unit, I am not satisfied that ones on the lines suggested, or indeed any

¹ The Council's submissions identify this property as No.36 whereas the appellant refers to No.38.

others, would be sufficient to overcome my concern. In particular, mindful that the premises are allowed to remain open until 00.30hrs, my view is that placing a greater restriction on a facility that appears to be very closely related to the permitted use would be perverse and unreasonable. Furthermore, were I to impose such a condition, or indeed one limiting the use to the daytime, I believe that it is highly likely the Council would come under pressure to relax it to bring it into line with the permitted opening hours, and this pressure could well prove difficult to resist.

Conclusion

11. For the reasons given above, I conclude that the appeal should be dismissed.

D H Brier

Inspector



Costs Decision

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Costs application in relation to Appeal Ref: APP/H0738/A/10/2130043 Hide Cafe Bar and Grill, 32 High Street, Yarm TS15 9QZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Hide Bars Limited for a full award of costs against Stockton-on-Tees Borough Council.
- The appeal was against the refusal of planning permission for the creation of an external smoking area.

Summary of Decision: The application fails and no award of costs is made.

1. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
2. In essence, the application, which refers expressly to paragraphs B16, B18 and B20 of Circular 03/2009, is based upon the premise that the Council failed to substantiate the reasons for refusal. I am unable to concur with this view. I accept that while the question of noise lies at the heart of the refusal, the Council produced no quantitative evidence, such as a noise survey, relying instead upon a subjective assessment. But, as my experience is that people's reaction to noise can be somewhat subjective, I do not equate the absence of such information with unreasonableness. Indeed, the appellant's assertions about noise are made on a similar basis.
3. The mixed nature of the area is abundantly clear from the officer's report. The officer's report and the Council's decision clearly give more weight to the residents' living conditions than they do to the commercial interests of the appellant company. But, this is a matter of judgement – the Council were entitled to apportion weight as they saw fit. I see nothing untoward or unreasonable in the process that led to the decision, or the decision itself. And, while the views of the Environmental Health Unit are clearly relevant to the issue of noise, such a matter is not exclusive to that discipline. It is a material planning consideration, in which case the Council - at both officer and member level - were reasonably entitled to come to a different view by applying a subjective judgement to the particular circumstances of the case. Moreover, I am satisfied that the decision has been supported by relevant and soundly based evidence appertaining to the appeal site and its surrounds.

Conclusion

4. In the light of the foregoing, I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

5. I refuse the application for an award of costs.

D H Brier

Inspector