
Appeal Decision

Site visit made on 19 April 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 19 May 2016

Appeal Ref: APP/H0738/W/15/3139645

6 High Church Wynd, Yarm, Cleveland TS15 9BQ

- 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 Mistell Limited against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 15/2008/REV, dated 11 August 2015, was refused by notice dated 23 November 2015.
 - The development proposed is the change of use of part of garden to No 6 High Church Wynd to provide a children's play area.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of part of garden to No 6 High Church Wynd to provide a children's play area at 6 High Church Wynd, Yarm, Cleveland TS15 9BQ in accordance with the terms of the application, Ref 15/2008/REV, dated 11 August 2015, subject to the conditions contained within the attached schedule.

Procedural Matters

2. I have used the description of the development given on the planning application form with slight amendment to remove superfluous wording. I am satisfied that neither party would be disadvantaged by this subtle change to the wording as set out in the banner heading above, and I have therefore determined the appeal accordingly.
3. The appeal before me relates to part of the rear garden area associated with No 6 High Church Wynd. The proposal seeks to create a children's play area to be associated with, for the use of and to be accessed from, the Cross Keys Public House and grounds.

Main Issue

4. I have noted the outcome of a previous appeal¹ against refusal of planning permission for the change of use of part of the garden to No 6 High Church Wynd to provide a children's play area to be associated with the Cross keys Public House. In considering the evidence before me in the current instance I have also had regard to the Inspector's reasoning in respect of the previous appeal in reaching my conclusions on the matter currently before me.

¹ APP/H0738/W/14/3001245 – Dismissed – 14 May 2015

5. I therefore consider the main issue to be the effect of the proposal on the living conditions of the occupiers of neighbouring residential properties, with particular regard to privacy and overlooking.

Reasons

6. The appeal relates to a broadly rectangular shaped piece of land previously used as part of the back garden area of 6 High Church Wynd. The appeal site is located within the Yarm District Centre, which comprises a mixture of predominantly commercial uses, amongst which a number of residential properties are located.
7. The appeal site is bounded by residential properties along its northern boundary and at its north western corner. To the west, beyond a brick boundary wall, lies a car parking area associated with The Orchard. An ornamental landscaped garden area lies to the south of the appeal site, from which it is intended to provide access to the proposed play area from the beer garden at the Cross Keys Public House.
8. The former garden area to No 6 High Church Wynd appeal site currently lies at a higher level than the existing beer garden, higher than the rear garden areas of Nos 10 and 12 High Church Wynd and higher than the ground levels at the rear of The Orchard. I note, and agree with the previous Inspector's observations regarding the relationship between the appeal site and the rear of The Orchard. I note too the Inspector's further observation that levels within the appeal site are such that the nearest first floor balcony at the rear of The Orchard is only around 2 metres higher than the appeal site.
9. The Inspector concluded in respect of the previous scheme, that the proposal was such that a substantial loss of privacy to occupiers of neighbouring properties would occur. The proximity of the appeal site to Nos 10 and 12 High Church Wynd and the balcony at No 6 The Orchard, together with the difference in ground levels between those properties and the site was such that the measures offered in mitigation were not sufficient to overcome that harm.
10. The appeal proposal before me now is, however, materially different to that previously considered. Most significantly, the ground level within the play area would be reduced from current levels by between 0.8 metres and 1 metre. Further detail regarding supplementing the landscaping proposals with additional and trellis-work to sit atop the boundary walls also accompanies the current proposal.
11. The appellant contends however that the levels within the appeal site have been artificially made up in the past, resulting in higher levels than the surrounding land. Certainly, from my observations the brick walls around the boundary of the site appeared to have been foreshortened by the current ground levels. I also observed an excavated area in the south-western corner of the site that hinted at the lower levels immediately beyond the appeal site.
12. Whatever the reasons for the difference in ground levels between the site and surrounding land, it is clearly stated that the levels within the site would be reduced by between 0.8 metres and 1 metre in depth. The boundary walls around the northern and north-western portions of the site boundary are noted as currently being between 1.2 metres and 1.4 metres in height. By dropping the finished levels of the play area by up to 1 metre and by incorporating

trellis-work and suitable planting, the level of screening afforded by the boundary treatment would be significantly greater than that considered previously by my colleague Inspector. With these measures and on the basis of all the evidence before me, I am satisfied that the appellant has demonstrated that close proximity overlooking of, and loss of privacy to, the closest neighbouring residential properties from the proposed play area would be sufficiently mitigated against.

13. With regard to longer views across the proposed play area, I find that the drop in levels across the appeal site as a whole would fundamentally alter its relationship with the nearest balcony at The Orchard. As a result of lower levels within the appeal site, the brick side wall to the balcony would provide more robust screening to the balcony and the window behind.
14. I note the concerns of both the Council and the previous Inspector that the play equipment, although designed for younger children, may not be sufficient to discourage use by older and taller children. I note too, the concerns regarding the presence of adults supervising younger children whilst they play on the equipment. I have no reason to doubt these conclusions, and that such incidences may well occur. I am satisfied however that the material differences between the proposal before me now and that previously considered by my colleague Inspector, are such that the effect of this on neighbouring properties would not be harmful to the privacy levels of occupiers of those neighbouring residential properties.
15. I acknowledge too, the Council's contention that this balcony is the only outdoor area associated with No 6 The Orchard. However, the balcony overlooks a shared car parking area at the rear of The Orchard. It is therefore neither entirely private nor unobserved from longer views, particularly in the context of the surrounding area where inter-visibility over longer distances is commonplace.
16. For these reasons therefore, I am satisfied that in close views there would be no direct overlooking of the balcony at The Orchard, or the rear of Nos 10 and 12 High Church Wynd. Furthermore, I am also satisfied that the appellant has adequately demonstrated that the balcony's brick side wall is such that longer views of that balcony from the lower levels of the appeal site would be over the top of this screen.
17. The Council have not directed me towards any policies within the development plan² relevant to, or quoted in, their sole refusal reason. However, for the reasons set out above, I conclude that the proposal would not have a harmful effect on the living conditions of occupiers of neighbouring properties, with particular regard to overlooking and privacy. In this respect, the proposal would align with paragraph 17 of the National Planning Policy Framework which, amongst other matters seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

18. I have noted the concerns of third parties regarding existing noise levels from the current use of the beer garden and that the proposed play area would exacerbate these levels. However, on the advice of the Council's

² The development plan is comprised of Stockton on Tees Borough Council Core Strategy Development Plan Document 2010 and the saved policies of the Stockton on Tees Local Plan 1997 (and Alteration No 1 2006)

Environmental Health Unit and the Inspector's previous conclusions on this matter, I note that the Council have accepted that such matters could be adequately controlled by condition. The matter did not form a reason for refusal and I am satisfied that this matter may indeed be addressed through appropriate conditions.

19. The Council has not raised any objections to the impact of the proposed development on the character and appearance of the Yarm Conservation Area or the Cross Keys Public House which is a Grade II listed building. I have had special regard to the statutory duties to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area and the listed building or its setting or any features of special architectural or historical interest which it possesses. In these respects, I am satisfied that it would preserve those interests.

Conditions

20. I have had regard to the conditions suggested by the Council in the event that the appeal should succeed. I have adopted these conditions with amendment to wording where necessary and appropriate.
21. In addition to the time limit and plans conditions, the latter of which is necessary to provide certainty, I am satisfied that the limitations on the play area's proposed hours of operation, hours of construction, lighting, and the extent of its use can be appropriately controlled by conditions in the interests of living conditions.
22. I note that the previous Inspector accepted that a condition to provide control over the number of children playing in the area at any one time to 15 was reasonable, necessary and enforceable. I have not been presented with any evidence that would suggest otherwise in this instance, and I too have imposed such a condition for those reasons.
23. Due to the excavations required to reduce the ground levels within the walled boundaries of the site, I agree that a condition regarding the protection of the walls is necessary in the interests of the character and appearance of the surrounding area.

Conclusion

24. For the reasons set out, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 14 41 03; 14 41 01 H; 14 41 02 B & 14 41 04 B.
- 3) Notwithstanding the submitted information, no development shall commence until details of the layout, surface treatment, fencing, and landscaping of the children's play area and of the associated play equipment, shall be submitted to and be approved in writing by the local planning authority. The development shall thereafter be implemented in completed accordance with those agreed details prior to the bringing into use of the play area, and shall be maintained in accordance with those approved details and in accordance with the manufacturer's specifications thereafter.
- 4) Prior to the commencement of development adequate protection and structural support must be provided to support the historic boundary wall for the duration of the building works, the details of which must first be submitted to and be approved by the local planning authority. The approved support works shall be in place prior to any construction works commencing on the site and shall be maintained in situ for the course of the construction and play equipment installation period.
- 5) No construction / building works or deliveries shall be carried out except between the hours 08:00 and 18:00 Monday to Friday and between 09:00 to 13:00 on Saturdays. There shall be no construction activity, including demolition, on Sundays or on bank holidays.
- 6) The hours of operation of the play area shall be limited to 10:00 – 18:00 Monday to Sunday with the play area not being occupied or utilised outside of these hours.
- 7) The play area hereby approved shall not be occupied at any time by more than 15 children.
- 8) The hereby approved children's play area shall be utilised solely as a children's play area and shall not be used for any other purpose associated with the public house.
- 9) Details of any proposed lighting for the development shall be submitted to, and approved in writing by, the local planning authority prior to its installation and shall include such details as may be necessary in order to shield and align the lights to avoid the spread of light there from. Thereafter the lighting and any screening shall be maintained and operated in accordance with the manufacturer's specifications.
- 10) No loudspeakers or other equipment for the reproduction of sound, and no singing or other forms of live entertainment shall be permitted within the play area.
- 11) No food or drink shall be consumed in the play area hereby approved.