
Appeal Decision

Site visit made on 15 May 2017

by C L Humphrey BA (Hons) DipTP MRTPI

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

Decision date: 30th May 2017

Appeal Ref: APP/H0738/W/16/3162585

5 High Street, Yarm, Stockton-on-Tees TS15 9BW

- 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 Maher Entertainments Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 15/2082/FUL, dated 21 July 2015, was refused by notice dated 26 May 2016.
 - The development proposed is construction of boutique hotel and related bar and bistro.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development upon the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance, overlooking, privacy and sense of enclosure.

Policy Considerations

3. The Council has confirmed that there are no policies within the adopted development plan which specifically relate to residential amenity. In the absence of relevant development plan policies I have therefore had regard to the National Planning Policy Framework (the Framework).

Reasons

4. The appeal site is located at the southern end of High Street on the edge of the defined district centre and is currently vacant, having previously been occupied by a commercial garage. Development immediately surrounding the site is residential, with commercial uses including cafes, restaurants and pubs being focussed in the central and northern parts of the High Street. I noted during my site visit that whilst much of the High Street has a bustling character, the southern end is far more subdued. Given the limited number of existing late opening uses in the immediate vicinity of the appeal site, I would expect pedestrian and vehicular activity to reduce and the area to be even quieter during the mid to late evening than it is during the day. Neighbouring residents would therefore have a reasonable expectation that their living environment would be fairly quiet in the late evening.
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5. It is proposed that a new 3 storey building would be erected on the appeal site incorporating a hotel on the 2 upper floors and a bar and bistro at ground floor. I note the appellant's agreement to a condition restricting the use of the bar to residents of the hotel to prevent the premises operating as a stand-alone bar. However, the bistro would serve both hotel guests and the general public, and it is proposed that it would open 7 days a week until 23:00 hours.
6. Noise would result from customers arriving at and departing from the appeal premises on foot or by private car or taxi, talking and possibly congregating in groups on the footway outside. In addition, noise would arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time. Such noise would occur in close proximity to neighbouring residential properties, including those under construction immediately to the north, 15, 17, 19, 2, 4 and 6 High Street and Bentley House to the west. Even in the context of the comings and goings at other local premises, this would be more intrusive during the late evening when background noise levels would be lower and residents could expect to be sleeping.
7. I note that the entrance to the bistro would be located on the eastern elevation fronting the High Street. Nevertheless, the bistro would be substantial with the submitted plans indicating around 90 covers. As such, it would be likely to cater for significantly more customers than the guests staying at the proposed 20 bedroom hotel. I would therefore expect the appeal proposal to draw a considerable number of customers to the appeal site, and have the effect of extending the night time economy further down the High Street into a principally residential area. Recent permissions for new housing around the southern boundaries of Yarm may increase comings and goings along the southern end of the High Street. However, this transient pass-by activity is likely to cause less noise and disturbance to the residents of properties referred to above than the appeal proposal, which would draw people to the appeal site.
8. Whilst I understand that there is an extant permission for the redevelopment of the appeal site incorporating a café/bistro with flats above, I note that the opening hours of this use are limited to 20:00 hours which would prevent harm to the living conditions of neighbouring residents arising from noise and disturbance in the late evening. In considering an appeal relating to the proposed extension of these opening hours until 23:00 Sunday to Thursday and midnight on Friday and Saturday (Appeal Ref APP/H0738/A/10/2131675), the Inspector concluded that noise arising from the appeal premises in the mid to late evening would be likely to give rise to noise which would cause significant disturbance to nearby residents resulting in unacceptable harm to their living conditions. Although other food and drink establishments located on the High Street have permission to open into the late evening, unlike the appeal site they are not situated in a predominantly residential area. Based upon the evidence before me and my observations on site, I am not persuaded that the character of the southern extremities of the High Street has significantly altered since the appeal decision referred to above. I therefore give these matters limited weight.
9. Permitted development rights under Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 would enable the change of use existing nearby retail uses to other uses, including restaurants or cafes. However, such permitted development rights

are subject to limitations relating to floor space and to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to, inter alia, the noise impacts of the development and impacts of the hours of opening of the development. Accordingly, I give this matter little weight.

10. The Council's planning and environmental health officers raised no objection to the proposed development with regard to noise and disturbance. Nevertheless, the local planning authority is not bound to accept the recommendations of its officers and nor am I. Accordingly, I afford this matter very little weight.
11. The Council and residents have raised concerns regarding the scale and proximity of the appeal proposal in relation to neighbouring residential development and the resultant potential for a loss of privacy and a sense of enclosure. Given the tight-knit urban grain and scale of existing development surrounding the appeal site and the proposed measures to overcome direct overlooking, such as the incorporation of angled windows and obscured glazing, I am not persuaded that the proposal would give rise to a loss of privacy or sense of enclosure such that it would be harmful to the living conditions of neighbours.
12. Overall however, I conclude that the appeal proposal would have a harmful effect upon the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance. As such, it would be contrary to the amenity protection aims of paragraphs 17 and 123 of the Framework.

Other matters

13. The appeal site is situated within the Yarm Conservation Area (the Conservation Area) and adjacent to the Grade II listed Bentley House. Listed buildings also line both sides of the High Street (2 onwards on the eastern side and 13 onwards on the western side), and there is a Grade II listed church opposite the appeal site. In considering whether to grant planning permission for development which affects a listed building or its setting, I have a statutory duty to have special regard to the desirability of preserving the building or its setting. I must also pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
14. The proposed development would step down in scale at the rear and retain a reasonable degree of separation from Bentley House whilst maintaining the tight urban grain within the immediate area which is a notable characteristic of the Conservation Area. The church on the opposite side of the High Street and the listed buildings that line both sides of the High Street to the north are largely seen in separate view points and would maintain their relationship with the High Street and surrounding area. As such, I conclude that the appeal proposal would not affect the setting of the nearby listed buildings and would preserve the character and appearance of the Conservation Area, in accordance with the heritage conservation and enhancement aims of Policy CS3 of the Stockton-on-Tees Core Strategy Development Plan Document, Policies EN24 and EN28 of the Stockton-on-Tees Local Plan and Part 12 of the Framework. A finding of no harm in respect of these other matters is a neutral factor which does not weigh for or against the appeal proposal.

Conclusion

15. I have had regard to the accessible location of the appeal site and to the benefits of the appeal proposal, including its contribution to the night time economy and tourism, job creation and redevelopment of a vacant previously developed site. However, these matters do not outweigh the harm I have identified in respect of the main issue, particularly as I see no reason why these benefits could not reasonably be achieved through another form of development. Consequently the appeal proposal cannot benefit from the presumption in favour of sustainable development.
16. For the reasons set out above and having regard to all other matters raised I conclude that the appeal should be dismissed.

CL Humphrey

INSPECTOR