



Appeal Decision

Site visit made on 5 July 2022

by **C Megginson BA(hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2022

Appeal Ref: APP/H0738/W/22/3296015

117 High Street, Norton TS20 1AA

- 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 Mr A Pickett against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 21/2474/COU, dated 22 September 2021, was refused by notice dated 16 March 2022.
 - The development proposed is described as the change of use of part of the rear garden area to provide outdoor seating area to include 1.8m high fence to rear in association with 117 High Street.
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Decision

1. The appeal is allowed and planning permission is granted for the Change of use of part of the garden area from garden area to Cafe outdoor seating area at 117 High Street, Norton, TS20 1AA in accordance with the terms of the application, Ref 21/2474/COU, dated 22 September 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Block Location Plans and Fence Detail AJR21:61/01 dated September 2021.
 - 2) Notwithstanding the plans hereby approved, the outdoor seating area shall be limited to a maximum of 24 covers at any one time.
 - 3) The outdoor seating area hereby approved shall only be open for customers between 1000 – 1700 Mondays-Sundays and staff between 0900 – 1730 Mondays-Sundays.
 - 4) The playing of music shall not take place anywhere on the site outside of the building.
 - 5) Full details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority prior to being installed. Such details shall include the siting of any lighting; angle of alignment; light colour; and luminance levels. The lighting shall be implemented in accordance with the agreed details and retained in accordance with these details for the lifetime of the development.
 - 6) Prior to the first use of the outdoor seating area, self-closing doors shall be installed at the rear access door of the premises and shall be maintained and retained for the lifetime of the development.

Procedural Matters

2. At the time of my site visit the timber fence has been erected, the site cleared, and bark chippings laid down, however, there was no evidence that the use as an outdoor seating area had commenced.
3. For clarity I have used the Council's description of development in the decision notice.

Main Issue

4. The effect of the proposed development on the living conditions of the occupiers of the neighbouring properties, with particular regard to privacy and noise and disturbance.

Reasons

Privacy

5. The appeal site lies to the rear of Café Maison and forms part of a much larger outside space. To the north the site shares a boundary with a residential garden. This boundary features a high brick wall and the dwelling beyond has a dormer window within the roof space and a first-floor window that overlook the appeal site, beyond the rear extension of the café, at an oblique angle. The rear extension of this dwelling has a large first floor bow window, facing west, which would overlook the end of the appeal site. In addition, it has two small first floor side windows close to the main elevation which directly face the rear extension of the café and the appeal site at an angle.
6. The introduction of the outside seating area would represent a change from the existing relationship, where residents of the dwelling to the north would be able to look down over parts of the outside seating area, albeit at an angle. Properties to the west of the appeal site may be able to see the outdoor seating area, however, this would be over a considerable distance and across an area of dense intervening vegetation. Given the orientation and angles of vision and the distances involved, including the presence of the rear extensions to the café, users of the outdoor seating area would not be able to see into neighbouring windows. To the south of the appeal site is an outbuilding with a pitched roof and a further service yard area beyond. This provides a significant barrier to the properties to the south and prevents any intervisibility with the appeal site.
7. For the above reasons, the proposal would not have an unacceptable effect on the living conditions of neighbouring properties with regards to privacy and therefore complies with Policy SD8 of the Stockton on Tees Local Plan (2019) (the Local Plan) and Paragraph 130 of the National Planning Policy Framework (the Framework), which, in summary, seek to secure a good standard of amenity for existing and future occupants.

Noise and disturbance

8. To the west and south of the appeal site, the significant distance to neighbouring properties and the presence of intervening buildings and dense vegetation would ensure that the proposal would not cause an unacceptable degree of noise disturbance. The neighbouring dwelling and garden to the north is separated from the appeal site by a high brick wall which would offer

some noise attenuation. I note that the Council's Environmental Health Unit have considered the relationship with nearby residential uses and have raised no objections to the proposal.

9. At the time of my site visit, which was mid-morning, there was a large amount of background noise from the nearby school yard. I also noted that there is existing noise on the northern boundary generated by an extraction unit from the café. The proposed 24 covers would be within a large garden area and there would be some noise associated with the proposal. The installation of self-closing rear access doors would reduce noise emanating from inside the café and can be required by way of a planning condition. Similarly, conditions to restrict the playing of music and limit the opening hours of the outdoor area would ensure that any noise would not be late at night. Consequently, with the suggested conditions, the proposal would not give rise to a level of general noise and disturbance at an intensity that would be disruptive, and consequently would not harm the living conditions of neighbouring dwellings.
10. The proposal would not have an unacceptable effect on the living conditions of neighbouring properties with regards to noise and disturbance and therefore complies with the amenity protection aims of Policy SD8 of the Local Plan and the Framework.

Other Matters

11. I have had regard to the objections raised in relation to the proposal. Concerns have been raised in relation to the clearing of trees and vegetation which has already taken place and the impact on local wildlife. The Council are clear that there has been no breach of planning control on this matter and the site does not have any specialist nature conservation designation, therefore, there would be no significant impacts on wildlife habitat.
12. I note that the Council's highways team do not anticipate a significant increase in demand for on street parking as a result of the proposal and have made no objections. The High Street is accessible by public transport, walking or cycling and the proposal would not generate an unacceptable impact on traffic levels or demand for car parking. Whilst there are concerns about the restriction of access for emergency vehicles, there is no evidence to demonstrate how this would be the case as a result of the proposal.
13. Local residents have expressed a wide range of concerns over the impact of the proposal, including anti-social behaviour, safeguarding issues, increases in litter, vermin, smells, blocked drains, and a lack of toilet facilities. Whilst such apprehension is perhaps understandable, no detailed evidence is presented to suggest that the proposed use would give rise to such issues that could not reasonably be controlled and maintained within established regulatory tolerances. I also appreciate the concern as to future uses of the appeal site such as an increase in the number of covers or the granting of an alcohol licence. These issues are not before me at this time and would be subject to additional consent. Whilst I can understand the apprehension of local residents, their concerns are not supported by any substantive evidence that could justify the dismissal of the appeal on these grounds.
14. My attention has been drawn to other planning applications in the locality. I have limited information on these cases and from the evidence before me it

appears that the circumstances are not directly comparable with the appeal proposal. I have considered the appeal on its own merits.

15. The appeal property is located within the Norton Conservation Area (CA). I note that the Council did not express substantive concerns regarding the effect of the proposal on the character of the conservation area. Due to the limited scale of the proposal and lack of visibility in the wider area I find no harm to the character and appearance of the CA. This therefore does not translate to harm to the CA and therefore the character and appearance of the CA would be preserved.

Conditions

16. I have considered the Council's suggested conditions in light of the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity. I agree that a plans condition is necessary and reasonable in the interests of certainty. The Council's statement includes a condition relating to the agreement of final details of the outdoor seating area. I have not been provided with sufficient evidence as to why it would be necessary or reasonable to seek to control the detailed layout of the outdoor seating within the site.
17. To protect the living conditions of occupiers of neighbouring properties it is necessary to include conditions in respect of the hours of operation; the playing of music; external lighting and to restrict the number of covers to 24. The Council's statement includes a condition relating to the creation of an acoustic lobby at the rear access doors, however, both the Council's and appellant's statements go on to conclude that it is not possible to structurally alter the premises to develop an acoustic lobby and suggest self-closing doors as an alternative. I have included a condition in this regard to protect the living conditions of occupiers of neighbouring properties.

Conclusion

18. For the reasons given I conclude that the appeal should succeed.

C Megginson

INSPECTOR