The Planning Inspectorate

Appeal Decisions

Site visit made on 19 September 2016

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

Decision date: 15 December 2016

Appeal Ref: APP/R4408/W/16/3141809

The Cross Inn, 7 Summer Lane, Royston, Barnsley S71 4SE

- 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 Admiral Taverns Limited against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2015/1162, dated 22 September 2015, was refused by notice dated 17 November 2015.
- The development proposed is the conversion of a rear car park into beer garden/patio area.

Appeal Ref: APP/R4408/C/16/3141817

The Cross Inn, 7 Summer Lane, Royston, Barnsley S71 4SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Admiral Taverns Limited against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The notice was issued on 11 December 2015.
- The breach of planning control as alleged in the notice is the erection of raised decking to facilitate a beer garden/patio to the former car parking area.
- The requirements of the notice are (i) Dismantle and remove the unauthorised raised decking which covers the car park area in its entirety including any associated fixtures and fittings used in its construction, and (ii) Remove any obstructions which prevent the car park being used by motor vehicles, ensuring the surface is made good in any areas which have been damaged or disturbed through the construction of the unauthorised decking.
- The period for compliance with the requirements is two months for the requirement specified in part (i).
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is corrected by the deletion of '(i) for the requirement specified in part 5(i) above –' in section 6 of the notice.

2. Subject to the correction the appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. The enforcement notice does not specify, in section 6, the compliance period for requirement (ii) of the notice. Neither the Council nor the Appellant has

commented on this omission. The works specified in the requirement are not onerous or time consuming and could be achieved within the time period specified for requirement (i). No injustice would be caused to the Appellant by correcting the omission. Section 6 of the notice has been corrected accordingly.

4. The Appellant has argued, with regard to the enforcement appeal, that the use of the parking area as a beer garden/patio does not constitute a material change of use because the change of use has occurred within a single planning unit. This is a matter for consideration under ground (c), but an appeal under this ground has not been made. There is a hidden ground (c) appeal in this case. No injustice will be caused to the Council so a ground (c) appeal will be considered.

Reasons

The ground (c) appeal

5. The Cross Inn has an east front elevation to Summer Lane and a south side elevation to Back Lane West. To the north of the public house is a vehicular access off Summer Lane leading to two garages and a shed, and to the west is a former car parking area, which was accessed off Back Lane West, that is now in use as a beer garden. The current and former external activities in the beer garden were and are intimately related to the principal use of the public house. The public house and the land associated with it is clearly a single planning unit. But, with regard to the Appellant's argument, a material change of use can occur within a planning unit if there has been a fundamental change in the character of the use.

6. Photographic evidence indicates that the area to the west of the public house was, apart from perimeter planting along the south and west boundaries, wholly tarmacked and, apart from a few picnic tables for outdoor seating purposes, was available for the parking of vehicles. The majority of the area has been fenced off from a bin store and yard area associated with the garages and shed and from a small 'yard area' off the pavement to Back Lane West. Within the fencing the area has either been laid with artificial grass or has been covered with raised decking along the south and west boundaries. The whole fenced area is now available for outdoor seating and there are no opportunities for off-street parking.

7. The circumstances of this case are different to those at the Falcon Public House that have been referred to by the Appellant's Agent. The changes that have been made on the site and within the planning unit are, as a matter of fact and degree, substantial and have altered the principal use of the area to the west of the public house. The area was formerly in use for parking with incidental seating and is now is use for seating purposes with parking wholly excluded within the fenced area. The character of the use of the area to the west of the public house has fundamentally changed and there has therefore been a material change of use of the planning unit. The hidden ground (c) appeal thus fails.

The ground (a) enforcement appeal and the planning appeal

8. The main issues are the effect of the conversion of the rear car park into a beer garden/patio area on; first, residential amenity; and second, highway safety.

The first issue – residential amenity

9. Adjoining the beer garden/patio at the appeal property to the west is a residential property, 2 Back Lane West, to the north, beyond the garages and shed, is a terrace of dwellings, 9-27 Summer Lane, and to the south, on the opposite

side of Back Lane West, are semi-detached dwellings. The appeal property is, in fact, surrounded by residential properties but the greatest concern is for residential amenity at 2 Back Lane West. Photographic and other evidence indicates that prior to the unauthorised development taking place the car park at The Cross Inn was partially used for seating purposes; photographs show three picnic tables along the road frontage to Back Lane West and two picnic tables close to the building itself.

10. The Appellant relies upon a report by an acoustic consultant and on observations by an Environmental Health Officer of the Council who concluded that the level of noise he witnessed did not amount to a statutory nuisance. The Officer visited the property only once and it is not known at what time of day the visit took place. Furthermore, whether the noise witnessed did or did not amount to a statutory nuisance at the time of the visit is not relevant to consideration of this issue which must consider the day to day effect of the use of the beer garden/patio on the amenities of nearby residents of the area.

11. The acoustic report is short and simply states that management of the public house are taking necessary measures to ensure that "…patrons using the beer garden respect the neighbours of the pub and in particular their noise amenity" and recommends that the beer garden is closed at 2200 hours "…with patrons requested to move into the public house at this time". Various signs have been placed around the beer garden/patio advising customers to be courteous to neighbours and to respect those neighbours when leaving the premises, and it is maintained that the beer garden will close at the aforementioned hour.

12. It is likely that staff of the public house will make every effort to prevent nuisance being caused to neighbours but it is unlikely, on a busy evening, that they could police activity in the beer garden/patio other than occasionally. Furthermore, and unlike before the unauthorised development was carried out, there are six picnic tables on a raised decking area immediately adjacent to the boundary, three other similar tables on the decking area next to the road frontage, and up to nine other tables on the artificial grass laid over the former parking area. The level of outdoor drinking opportunities far exceeds that formerly available to customers.

13. On the boundary to 2 Back Lane West is a timber panel fence about 1.8 metres high. However, given the proximity of the raised seating to the boundary and the overall extent of the outdoor seating area, the fence is not likely to prevent noise and disturbance being caused to the amenities of the residents of this property. This loss of amenity is only likely to occur during summer months but will occur when residents of the adjoining property, and of other nearby properties, are also likely to be seeking to enjoy their outdoor amenity spaces. Disturbance caused, even if it were only to occur up to 2200 hours, is likely to have a significant adverse effect on residential amenity at neighbouring properties.

14. The extent of the outdoor seating area that has been created at The Cross Inn is incompatible with the residential area that surrounds the public house. Given the proximity of residential properties, the noise generated and disturbance caused by use of the beer garden/patio area is likely to have a significant adverse effect on residential amenity in the area, which could not be controlled by imposition of conditions to require on-site management procedures. The unauthorised development thus conflicts with saved policy ED4 of the Barnsley Unitary Development Plan (UDP) and policy CSP 40 of the Council's Core Strategy.

15. The potential harm caused to residential amenity is a sufficient reason in itself to withhold planning permission for the unauthorised development.

The second issue – highway safety

16. The Appellant has submitted a Highway Statement prepared by a consultant. At paragraph 3.1.19 of the statement it is claimed that, prior to the unauthorised development being carried out, "It can be seen from the…photos…that only two parking spaces were available for use. These are the parking spaces occupied by the silver BMW estate and the green Vauxhall Astra". Notwithstanding the former siting of three picnic tables in the car park there is likely to have been space for the parking of more than two vehicles. The photos are a snapshot in time and do not indicate the former availability of off-street customer parking at the premises.

17. The highway consultant undertook a parking survey to inform his assessment and his conclusion is that there is ample on-street parking available within 50 metres of the public house to accommodate likely demand by customers. But the survey was only carried out on a Friday and Saturday in early February and is not therefore representative of the availability of on-street parking spaces at other times of the year, and especially during summer months when customers are likely to visit to use the outdoor seating opportunities available at the premises.

18. The Appellant claims that "As this is a community led public house the overwhelming majority of customers visit the premises on foot". He has not, however, submitted any evidence to support this claim. The Cross Inn does not now have any off-street parking for customers. Parking by customers will therefore occur on Back Lane West and on Summer Lane and probably as close as possible to the public house. Such parking will be outside nearby residential properties and the comings and goings of customers arriving and leaving by car is likely to add to the disturbance caused by use of the beer garden/patio area. More importantly, such parking will occur in close proximity to a cross-roads junction where visibility and the effective widths of the highways are already compromised to some degree by on-street resident parking.

19. Given the circumstances of unrestricted on-street parking in the vicinity of The Cross Inn additional parking by customers will reduce highway visibility and could have an adverse effect on highway safety. Whilst this adverse effect is not sufficient in itself to warrant dismissal of the appeal it does add to the significant adverse effect of the unauthorised development on residential amenity.

Conclusion in the ground (a) enforcement appeal and the planning appeal

20. The unauthorised development has the potential to undermine highway safety but, more importantly and compellingly, has the potential to have a significant adverse effect on residential amenity at dwellings adjacent and near to The Cross Inn. In these circumstances the appeals must fail and planning permission is withheld for the conversion of a rear car park into beer garden/patio area at The Cross Inn, 7 Summer Lane, Royston.

John Braithwaite

Inspector