
Appeal Decision

Hearing held on 14 April 2015

Site visit made on 14 April 2015

by Mark Caine BSc (Hons) MTPL MRTPI

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

Decision date: 14 May 2015

Appeal Ref: APP/H0738/W/14/3001245

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 14/1579/COU, dated 11 June 2014, was refused by notice dated 5 September 2014.
 - The development proposed was originally described as the "change of use of part of the garden of No 6 High Church Wynd to provide a children's play area in association with the Keys, High Street, Yarm."
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been brought to my attention that a draft version of the Council's decision notice was temporarily placed on the Council's website. The Council confirmed at the Hearing that this was an oversight, and that the correct decision notice, which included a reason for refusal that related to the character of Yarm, was posted to the appellant. It is clear that the main body of the Council's planning application report included this issue and I am satisfied that it was a simple administrative error. The appellant raised no objections to the consideration of this issue at the Hearing and I am satisfied that all relevant parties would not be prejudiced. I have therefore taken account of the effect of the proposal on the character of Yarm in determining this appeal.
3. 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.

Main Issues

4. The main issues in this appeal are:

- (i) The effect of the proposal on the character of Yarm District Centre.
- (ii) The effect of the proposal on the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise privacy and overlooking.

Reasons

Character

5. The appeal relates to a roughly rectangular shaped piece of land this is utilised as a part of the back garden to 6 High Church Wynd. Due to the topography of the area the appeal site sits at a higher level than the garden areas of the surrounding neighbouring residential properties.
6. The appeal site is located in Yarm District Centre which predominantly comprises a mixture of commercial uses. However there are also a number of residential properties located nearby. Indeed, the appeal site is bounded by residential properties and an ornamental landscaped garden area that is intended to provide access to the proposal from the beer garden of the Cross Keys Public House.
7. The mix of dwellings with shops, offices and other uses are highlighted within Policy S9 of the Stockton-on-Tees Local Plan Alteration Number 1 to the Adopted Local Plan 2006 (LP) as once forming an essential part of the character of Yarm. LP Policy S9 identifies the importance of retaining the residential character of this area by protecting a number of residential properties within Yarm District centre. As a result, the change of use of Nos 4-12 High Church Wynd from residential development is not permitted.
8. I appreciate that the proposed children's play area would be linked to the commercial operations of the Cross Keys Public House however this part of the protected residential zone is characterised by predominantly two and three-storey dwellings that open directly onto the street, and have relatively modest and uniformed garden areas to the rear.
9. Nonetheless, No 6's back garden is of a substantial size, with the vast majority of it spanning across and directly behind the smaller rear garden areas of 8-12 High Church Wynd. This is uncharacteristically large and inconsistent with the tighter layout and pattern of the other rear garden areas along this side of High Church Wynd. Furthermore, the proposed play area would be enclosed and physically detached from No 6 and the adjoining properties in the terrace row. Although it would inevitably result in a smaller garden area for No 6 its size it would still be in excess of the majority of properties in the vicinity and would remain in residential use.
10. The Council argue that the proposal would not make a positive contribution to the local area, however for the reasons given above I do not consider the effects of the loss of this part of the garden area to be sufficiently harmful as to compromise or undermine the residential character of No 6, the group of houses at 4-12 High Church Wynd or Yarm District Centre as a whole.
11. As a result of these factors and the appeal site's close proximity to other commercial uses I conclude that the proposal would not have a materially harmful effect, and would thereby retain the character of Yarm District Centre. It would consequently not conflict with LP Policy S9, Policy CS3 (8) of the

Stockton-on-Tees Borough Council Core Strategy Development Plan Document 2010 (DPD) or Draft Policy TC6 of the Council's Regeneration and Environmental Local Plan (Publication Draft) (RELP). Amongst other matters these require features of local character to be protected, including the retention of a mixture of uses and residential character within Yarm District Centre.

12. Even though the Council's RELP is yet to be adopted and has no statutory force, the thrust of this policy is consistent with those in the adopted LP and DPD which the application was determined against. With the agreement of the parties, I have given the Draft Policy TC6 some weight as a material consideration.

Noise

13. Both main parties agreed at the Hearing that the appeal site is located in a relatively quiet environment. Nonetheless there is some dispute as to whether LAeq or LAm_{ax} noise levels should be used to assess potential disturbance. Essentially LAeq is an energy average of the varying sound level over time. The Council is concerned that this approach, as with any averaging process, has the effect of smoothing out peaks and troughs. In their view it would not be truly representative of the noise generated from sudden rises from children's voices, shouting, screaming and laughing, common sounds of children at play which have the potential to be high pitch and stand out rather than represent the 'average' sound level.
14. However, the appellant's updated noise impact assessment (NIA) now also includes predicted average LAeq noise levels generated by the play area, set against the existing lowest ambient noise level over a shorter 5 minute period. Changes in LA₁₀ values and a worst case scenario LAm_{ax} prediction, which compares the maximum noise level associated with the proposal to the average World Health Organisation Guidelines for Community Noise 1999 (WHO) external noise criteria, have also been provided.
15. The WHO Guidelines and BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings' provide guidance on outdoor sound levels. In essence they advise that to protect the majority of people from being moderately annoyed during the day time, it is desirable that the outdoor sound level from steady, continuous noise should not exceed 50 dB LAeq, with 55 dB LAeq being the upper limit beyond which most people would become seriously annoyed.
16. I appreciate that there are a number of variables to consider in the NIA, and that the Council are concerned that peak noise levels could increase by up to 8.6dB at any one time. However, there is no recognised standard or methodology for measuring children's noise from play areas. WHO and BS 8233:2014 guidelines for outdoor daytime noise both specifically refer to LAeq as the criteria to use, to assess the outdoor daytime noise levels. Whilst I recognise that these refer to the measurement of steady noise sources, due to the varied nature of sound, I consider that a relatively short assessment using LAeq is likely to show some bias towards higher noise events. Given the lack of LAm_{ax} criteria in relation to daytime periods I also consider it reasonable, in this instance, to compare the highest maximum noise level associated with children playing against the WHO daytime noise criteria.

17. To this end, the NIA shows that there would only be a difference of +1.3dB over a 5 minute period when compared to the lowest ambient noise level of 44.1dB, which is broadly reflective of the Council's ambient noise readings, and only a +1.0dB increase in LA10 noise level. Moreover, Table 4.5 of this document indicates that the L_{Amax} noise level when attenuated by the existing brick wall would fall below the upper criteria of 55dB given in the WHO Guidelines.
18. In light of the above and in the absence of any firm evidence to the contrary, I do not consider that the proposal would lead to such a significant increase in sound level as to be unduly intrusive.
19. I am aware that local residents have complained to the Council on a number of occasions in the past regarding disturbance from the Cross Keys' beer garden area and the first floor nightclub and I listened to a short recording of this at the Hearing. However the complaints relate mainly to noise at night time whereas the proposed children's play area is to operate between the hours of 10:00 and 18:00. I am also mindful that the NIA has taken account of the ambient noise levels, including those generated from the pub, during this day time period.
20. Although the Council has raised concerns regarding management controls, I am satisfied that the proposed hours of operation along with the restricted use of the area for children's play only can be controlled by the imposition of planning conditions. In addition to these the appellant has also expressed a willingness to accept a planning condition to restrict the number of children playing in this area at any one time to 15. I consider this to be reasonable, necessary and enforceable. These mitigation measures would therefore provide further control over the noise generated from the proposed play area.
21. My attention has also been drawn to a similar case that the Council's Environmental Health Section has dealt with regarding noise from the outside play area of a children's nursery. However no specific details of this have been provided so I cannot be certain that its circumstances are directly comparable to the appeal proposal. I have, in any case, determined this appeal based on its own merits.
22. I therefore consider that the noise associated with the proposal would not give rise to significant adverse impacts on the health and quality of life, or the living conditions of local residents. In this regard it would not conflict with Paragraph 17 of the National Planning Policy Framework (the Framework) which amongst other matters, seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Privacy and overlooking

23. The Council explained at the Hearing that its concerns regarding privacy and overlooking related to the residents of The Orchard, Arkwright House, Telford House and the properties along High Church Wynd. I saw on my site visit that the appeal site is in an elevated position in relation to the ground floor levels of all of these buildings. However, I consider there to be satisfactory intervening distances between the appeal site, Arkwright House and Telford House to ensure that no significant amount of overlooking would occur to the residents of these properties.

24. Nonetheless the relationships between the appeal site and The Orchard and Nos 10-12 High Church Wynd are considerably tighter. The appellant argues that the proposal has been designed around the play requirements of small children between the ages of 18 months to 6 years old, and that the majority of the equipment is at a low height. However it was uncontested at the Hearing that some items of the proposed play equipment, such as the skiddaw and team swing, have an age range of up to 14 years old. These also measure over 2 metres in height. This height, in combination with the degree of climbing involved, and their possible use by taller older children would have the potential to increase the impact upon the privacy levels of neighbouring residents.
25. Although some parents of older children may sit down and supervise them from nearby benches, it is also likely that younger children would require much closer supervision, particularly when climbing and using equipment such as the swings. This would inevitably result in parents standing for sustained periods of time in close proximity to the shared boundary wall (which varies in height from approximately 1.2 metres up to around 2 metres), and the windows and balcony area of these neighbouring buildings.
26. Whilst the Council accepted at the Hearing that the rear ground floor windows of the properties along High Church Wynd would not be affected I noted on my site visit that part of No 12 High Church Wynd's rear boundary wall is only around 1.5 metres in height and I could see directly into this garden area. Furthermore, the first floor windows at No 10 and first floor balcony area at The Orchards are only around 2 metres higher than the appeal site. Despite the presence of the boundary treatment and some landscaping I therefore do not consider the difference in levels and the distance between the appeal site and these properties to be so insignificant that it would effectively overcome a substantial loss of privacy occurring.
27. The appellant has argued that the activity would not be materially greater than what would be expected for the residential use of the garden and that the operating hours would reduce any harm. However I consider it to be unlikely that a residential garden would accommodate up to 15 children and their parents at any one time. As such this limits the weight that I can give to it as a fallback position.
28. I therefore conclude that the proposal would have a significantly harmful effect on the living conditions of the residents of neighbouring properties, with particular regard to loss of privacy. In this respect it would conflict with Paragraph 17 of the Framework which amongst other matters, seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

29. The appellant has referred to a number of other matters in support of their case. These include benefits to the viability of the existing business in developing its restaurant, improving facilities for existing customers and attracting new clientele. The provision of a friendly family environment and promoting healthy communities have also been put to me as favourable factors. Nevertheless, these do not negate or overcome my strong concerns about the effect of the proposed development on the privacy levels of neighbouring residents.

Conclusion

30. The proposed development would not conflict with the intentions of the LP and DPD concerning the character of Yarm District Centre or guidance in the Framework regarding noise. These factors, however, do not outweigh the significant harm that would be caused to the living conditions of the residents of neighbouring properties in respect of privacy. Therefore, my overall conclusion is that the appeal should be dismissed.

Mark Caine

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|-------------------|-----------------|
| Mr Stephen Barker | Prism Planning |
| Mr John Goodwin | REC Ltd |
| Mr Ian Briggs | Mistell Limited |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|------------------|----------------------------------|
| Miss Debra Moody | Stockton-on-Tees Borough Council |
| Mrs Fiona Bage | Stockton-on-Tees Borough Council |
| Mr Colin Snowdon | Stockton-on-Tees Borough Council |
| Mr Cirous Asadi | Stockton-on-Tees Borough Council |

INTERESTED PERSONS:

| | |
|-----------------|----------------|
| Mr Luke Harding | Local resident |
|-----------------|----------------|

DOCUMENTS AT THE HEARING

1. Local resident's photographs of his house and the appeal site.
2. Noise Impact Assessment REC Reference: 90624R1.
3. Site layout plan ref Scheme No:11743/NYO.