
2017/1196

Applicant: Admiral Taverns, C/o ID Planning

Description: Retention of beer garden and new car parking spaces to rear of public house (amended details to application 2015/1162)

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

3 letters of objection have been received from local residents. The three Ward Councillors have opposed the scheme, one of which has requested the application be determined by the Board.

Site Description

The application relates to the Cross Inn pub which fronts Summer Lane in Royston. The pub is located on a corner plot with Summer Lane to the East and Back Lane West to the South. It is located within a predominantly residential area with the Northern boundary shared with a terraced property and the Western boundary shared with a detached dwelling. There are also semi-detached properties opposite the adjacent highways.

Background

Work was undertaken to the rear of the pub within the car park area, without planning permission, to create a bear garden consisting of a raised deck area and a lower astro turf section. Following complaints it was brought to the pub landlords attention that planning permission was required and a retrospective application was subsequently submitted (Ref: 2015/1162). The application was refused for the following reasons;

In the opinion of the Local Planning Authority, the beer garden/patio area is materially detrimental to the amenities of the occupiers of the adjacent properties by reason of noise nuisance and general disturbance. The development is therefore contrary to UDP Policy ED4 'Economic Development and Residential Amenity', Core Strategy Policy 40 'Pollution Control and Protection' and the National Planning Policy Framework.

The development has resulted in the loss of all off street customer parking facilities, servicing of the property will have to take place on street for larger vehicles, and smaller vehicles will be forced to reverse to/from the public highway in close proximity to a road junction to the detriment of the free and safe flow of traffic on the highway. As such, the development is contrary to Core Strategy policy CSP 26 'New Development and Highway Improvement' and Supplementary Planning Document 'Parking'.

Following on from the refusal, the Council also issued an Enforcement Notice which required the applicant to;

1. 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.
2. Remove any obstructions which prevent the car park being used by motor vehicle, ensuring the surface is made good in areas which have been damaged or disturbed through the construction of the unauthorised decking.

The applicant appealed against the planning refusal and the Enforcement Notice to the Planning Inspectorate (Ref: APP/R4408/W/16/3141809 & APP/R4408/C/16/3141817). The appeals were dismissed with the Planning Inspector concluding '*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*'.

Following on from the appeal dismissals an injunction application was submitted to the court, this is currently adjourned due to the submission of this application.

At the time of writing the raised decking has been removed and the remaining seating area partially removed.

Further site History

2007/0738 – Erection of a covered smoking area – Refused 05/07/2007 for the following reasons;

In the opinion of the local Planning Authority, the proposed smoking shelter located on the site boundary adjacent to a residential property would be likely to result in noise nuisance, general disturbance and an unacceptable level of pollution from smoke. The proposals are therefore contrary to Policies H8B and ES1 of the Unitary Development Plan .

The proposed shelter would reduce the amount of off street parking available within the site, likely to result in on street parking close to a road junction, to the detriment of road safety and contrary to Policy T2 of the Unitary Development Plan.

2007/1311 – Erection of an awning to the rear of the public house – Approved 03/09/2007

Proposed Development

The applicant seeks to retain a small element of seating adjacent to the rear door serving the pub. The seating area would be enclosed by the existing 1.8m high timber hit and miss fence to the North, new 975mm high picket fencing to the West and South and the rear elevation of the pub to the East. The seating area would cover an area approximately 9m wide and 7.5m deep, equivalent to 67.5m².

The existing vehicular access point to the rear of the pub would also be reopened leading to 4no parking spaces adjacent to the Western boundary.

Policy Context

Planning decision should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making. The development plan consists of the Core Strategy and saved Unitary Development Plan policies. The Council has also adopted a series of Supplementary Planning Documents and Supplementary Planning Guidance Notes, which are other material considerations.

The Council has submitted our emerging Local Plan to the Secretary of State but we are at an early stage in the examination process. It establishes policies and proposals for the development and use of land up to the year 2033. The document is a material consideration and represents a further stage forward in the progression towards adoption of the Local Plan. As such increasing weight can be given to the policies contained within the document although, in accordance with paragraph 216 of the NPPF, the extent of this will depend on:

- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and;
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

Saved UDP Policies

ED4 – Proposals for economic development adjoining or close to housing will be assessed with particular regard to the likely impact on residential amenity.

Core Strategy

CSP 26 ‘New Development and Highway Improvement’ – New development will be expected to be designed and built to provide safe, secure and convenient access for all road users.

CSP 29 ‘Design’ - sets out the overarching design principles for the borough to ensure that development is appropriate to its context. The policy is to be applied to new development and to the extension and conversion of existing buildings.

CSP 40 - ‘Pollution Control and Protection’ - Development will be expected to demonstrate that it is not likely to result, directly or indirectly, in an increase in air, surface water and groundwater, noise, smell, dust, vibration, light or other pollution which would unacceptably affect or cause a nuisance to the natural and built environment or to people.

SPD

SPD ‘Parking’ provides parking requirements for all types of development.

NPPF

The National Planning Policy Framework sets out the Government’s planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

In respect of this application, these policies above are considered to reflect the 4th Core Principle in the NPPF, which relates to high quality design and good standard of amenity for all existing and future occupants of land and buildings.

Consultations

Highways DC – No objections

Regulatory Services – No objections subject to management plan

Ward Councillors – all three ward Councillors have objected to the scheme. The main points of concern are;

- Noise and disturbance
- Exacerbate existing parking problems
- Area should revert to previous use

Representations

3 letters of objection received. The main points of concern are;

- Loss of parking
- Reduced highway safety
- Parking spaces would be used for functions, not parking
- Increased noise and disturbance
- Management plan currently does not work

Assessment

Principle of Development

Small scale non residential uses such as pubs are acceptable in Housing Policy Area's where visual and residential amenity are maintained to a reasonable degree and where highway safety would not be compromised. Given the history of refusals on the site, as well as the dismissed appeals, the current application would need to address and overcome the previous reasons for refusal as well as the concerns raised by the Planning Inspector.

Residential Amenity

The refused seating area covered the majority of the area to the rear of the pub, resulting in an area that was approximately 220m² in size. It also had raised decking areas to the South and immediately adjacent to number 2 Back Lane West to the West. This resulted in unreasonable noise and disturbance immediately adjacent to residential properties and their associated amenity space, as well as an element of overlooking.

The seating area subject to this application has been significantly reduced and measures approximately 67.5m², which is equivalent to a 70% reduction in the area allocated for seating. The seating area would also be positioned immediately adjacent to the rear of the pub some 11m from the boundary shared with number 2 Back Lane West and over 5m from the rear elevations of the terraced properties immediately to the North. The seating area would also be separated from the terraced housing by 2 runs of boundary treatments which enclose the pub's rear yard area.

It is acknowledged that the seating area will still generate noise and disturbance, especially during the summer months, but this will be significantly reduced compared to the previous proposal. Furthermore, it is acknowledged that a modest canopy has previously been approved in the proposed seating area for use by smokers, therefore, activity already took place in that area of the car park. There were also a small number of tables/chairs within that area prior to the unauthorized works.

Furthermore, the pub is a long established use within the predominantly residential area, as such, a level noise and disturbance has been generated from the site for a long time. There is always likely to be some conflict between the two land uses, however the pub is also likely to be seen as an asset to the wider community. The previously proposal resulted in a significant increase in noise and disturbance and was therefore refused. This current proposal is much reduced and would unlikely cause additional nuisance above previous levels.

Consideration has to be given to the fact that a small number of tables and chairs to the rear of the pub to form a modest beer garden would not require a change of use application, where they would not result in a fundamental change in the character of the use. This is because a small patio area would be ancillary to the main pub and be intimately related to the principle use of the public house, as well as clearly within a single planning unit. The current proposal does not extend considerably beyond this and arguably would not result in a significantly different impact on residential amenity.

Regulatory Services objected to the previous application on residential amenity grounds but have not objected to this reduced scheme. The applicant has suggested a Management Plan could be introduced for the seating and car parking area which would set out the proposed uses, hours of operation etc. The Regulatory Services Officer has suggested that a condition be imposed for the Management Plan to be submitted to, and approved by, the Council prior to the seating area coming into use. The Agreed Management plan would then need to be adhered to, if that was not the case, there would be Enforcement Powers relating to the breach of the condition.

It is acknowledged that the proposed parking spaces would be adjacent to the boundary shared with number 2 Back Lane West which would result in some noise and disturbance. However, that area was previously a car park prior to the unauthorized works and the proposed situation would not be significantly different to the previous one.

As a result of the comments above, the proposal to significantly reduce and relocate the seating area would address reason for refusal 1 on application 2015/1162 and the Planning Inspectors comments in the appeal report.

Visual Amenity

The works within the beer garden would not be highly prominent or visible from the streetscene given the position of adjacent buildings and the boundary treatments around the site.

Neither the planning application nor the appeal were refused/dismissed on visual amenity grounds.

Highway Safety

The previous application was partially refused on highways safety grounds. The Planning Inspector also cited concerns with regards to highway safety, especially on street parking within close proximity the junction between Summer Lane and Back Lane West. However, it should be acknowledged that the Inspector concluded that 'this adverse effect is not sufficient in itself to warrant dismissal of the appeal'.

However, the previous application provided no off street parking as the seating area covered the majority of the former car park. The former car park was not marked out, as such; it is difficult to determine how many parking spaces were previously available. The applicant stated there were only 2 spaces, however, there were clearly more than that given the size of the area. The current proposal incorporates 4 spaces, including 1no. disabled space. There is also adequate turning and maneuvering areas to allow vehicles to enter and exit in a forward gear.

It is acknowledged that the 4 spaces would fall short of the guidelines set out in SPD 'Parking', however, the previous situation prior to the unauthorized works also fell short. Furthermore, the SPD provides maximum parking numbers, not minimum parking numbers. As mentioned above, given that the pub and land to the rear form a single planning unit, it would be possible to accommodate a seating area in a similar position where it did not materially affect the function of the car park.

There are no existing conditions relating to the retention of the car park, therefore, it could be reduced in size or closed. As part of this application a condition would be recommended for the car parking shown on the plan to be retained at all times and provide an element of future security.

For the reasons outlined above, it is considered that the second reason for refusal on the previous application has been addressed and highway safety would be retained to a reasonable degree, in accordance with CSP 26.

Conclusion

As outlined above the seating area would be vastly reduced compared to the previous scheme and addresses the previous reason for refusal relating to residential amenity. It is acknowledged that there will still be an element of noise and disturbance. However, this is inevitable given the existing pub use and the predominantly residential area surrounding it. As part of the application a condition will be recommended to provide a management plan for the external area prior to it being brought into use. Subject to this it is considered that residential amenity would be maintained to a reasonable degree, in accordance with policy ED4 and the NPPF.

The previously refused development resulted in the loss of all off street customer parking facilities and servicing areas, this application proposes to re-introduce the parking and retain the majority of the original parking area. The parking areas can be conditioned to be retained at all times which is an improvement on the current situation, where there are no conditions requiring retention. It is considered that the previous highway safety concerns have been addressed and a recommendation for refusal on highways grounds could not be warranted. As such, the application is in accordance with policy CSP 26 and the NPPF.

The overall position therefore is that the new proposals which would reduce the size of the outdoor seating area by approximately 70% compared with previously refused application 2015/1162, alongside the retention of 4 parking spaces, is sufficient to justify a recommendation to grant planning permission on this occasion.

Recommendation

Grant planning permission subject to conditions

- 1 The approved development shall be completed in full in accordance with the details shown on plan MM/1269/30-100 rev C within 3 months of the date of this permission.
Reason: In the interests of the visual amenities of the locality and highway safety in accordance with LDF Core Strategy Policies CSP26, New Development and Highway Safety and CSP 29, Design.

- 2 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.

Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.

- 3 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.

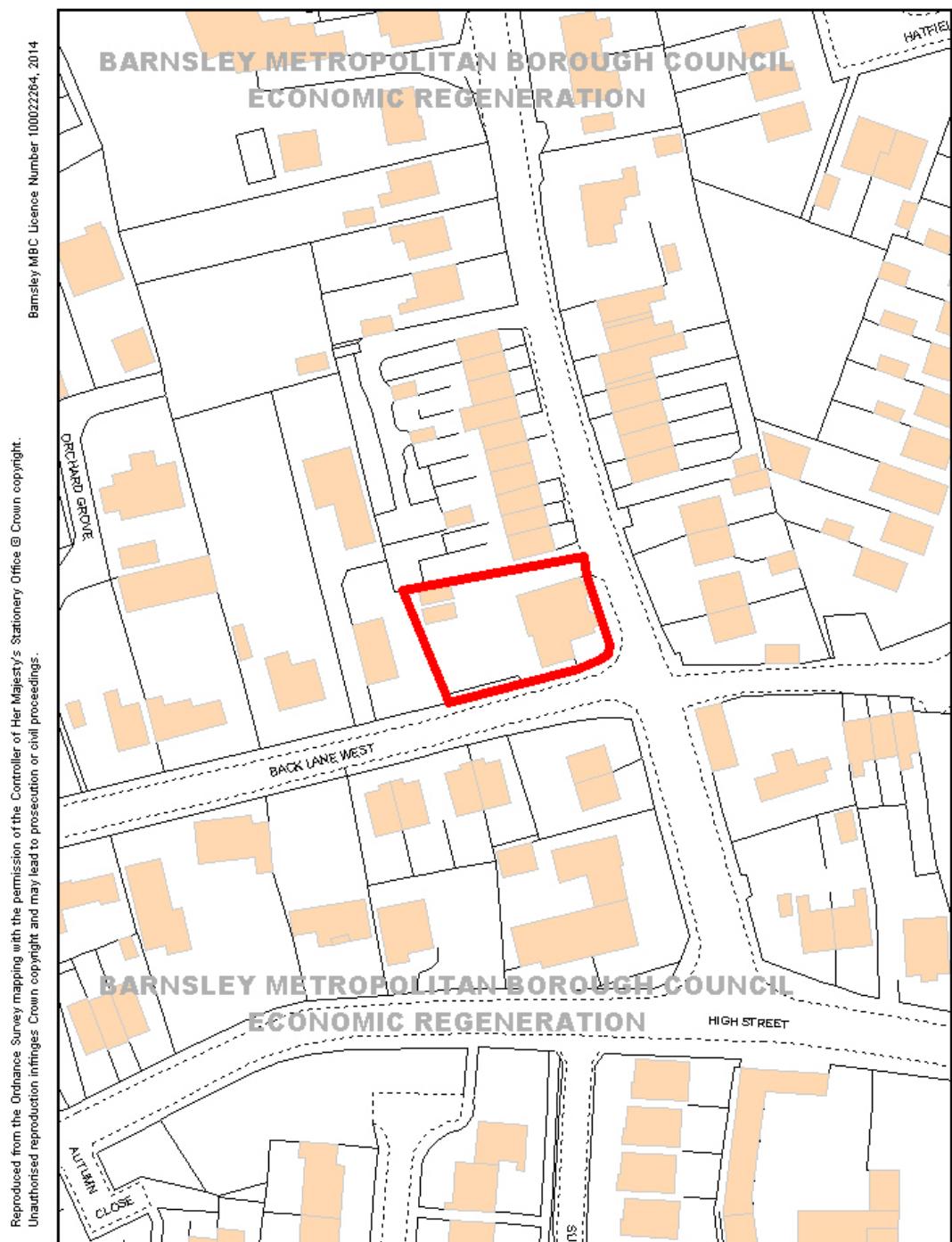
Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

- 4 Prior to the seating area being brought into use, a management plan shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter the use of the seating area shall be carried out in strict accordance with the approved management plan for the lifetime of the development.

Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40.

PA reference :-

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