

Appeal Decision

Site visit made on 24 January 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 10 February 2017

Appeal Ref: APP/G1250/W/16/3163675

The Citrus Building, 24 Madeira Road, Bournemouth BH1 1AR

- 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 Ajith Jayawickrema, Turtle Bay Restaurants Ltd against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-4319-M, dated 18 March 2016, was refused by notice dated 2 September 2016.
 - The development proposed is enhanced seating area to be sited on the existing paved flooring, with 1 No fixed octagon gazebo with heating and festoon or twinkle lighting. New bench seating with upholstered seat and back pads and loose table and chairs. Floor fixed umbrella and floor fixed terrace barriers to contain area. All fire exists and main entrance of the restaurant remain as existing.
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Decision

1. The appeal is dismissed insofar as it relates to 1 No fixed octagon gazebo with heating and twinkle lighting. The appeal is allowed insofar as it relates to festoon lighting, new bench seating with upholstered seat and back pads and loose table and chairs, floor fixed umbrella and floor fixed terrace barriers to contain area and planning permission is granted for festoon lighting, new bench seating with upholstered seat and back pads and loose table and chairs, floor fixed umbrella and floor fixed terrace barriers to contain area at The Citrus Building, 24 Madeira Road, Bournemouth BH1 1AR in accordance with the terms of the application, Ref 7-2016-4319-M, dated 18 March 2016, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans so far as relevant to that part of the development hereby permitted: Location plan, 110/34_101, 110-34 / 700 D, 110-34 / 701_B.
 - 3) No equipment, materials or machinery shall be brought on site in connection with the development hereby permitted, and no works, undertaken until tree protection measures have been erected on site in accordance with details submitted to and approved in writing by the local planning authority and agreed in writing as complete by the local planning authority. The protection shall be retained until the development is complete and nothing shall be placed within the fencing,
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nor shall any ground levels be altered or excavations made without the prior written consent of the local planning authority.

- 4) No development shall take place until details of the colour and finish of the screens, bench seating, loose table and chairs, and floor fixed umbrella have been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved details.
- 5) The lighting scheme shall be static lighting only and shall not be implemented until details, including luminance levels, have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be implemented in accordance with the approved details.
- 6) No amplified music shall be played nor any public address system be used in the external seating area.

Procedural matters

2. Additional information was submitted to the Council during its consideration of the application relating to arboricultural matters, a seating plan and certain product information. The Council based its decision on this additional information and I have used it in my decision.
3. The Council refused the application under three grounds. Firstly, because it considered the proposals would adversely effect a protected tree, secondly that it would lead to adverse highway safety effects, and thirdly because it considered the plans lacked information about the proposals making them difficult to assess.
4. On this third ground the Council's appeal statement indicated "there are a number of elements missing from the plans" and also expressed concern that the plan did not show an accurate portrayal of the protected tree. Having visited the site I would concur that the shape of the tree is not as on the drawings, but the site visit allowed me to assess the effects of the proposed development upon it. The Council did not specify what other elements were missing information and in looking at the drawings and additional information I consider that there is sufficient information to allow consideration of all of the elements forming the proposal.

Main Issues

5. That being the case the main issues are the effect on:
 - the Old Christchurch Road Conservation Area (the OCRCA); and
 - highway safety.

Reasons

Conservation Area

6. The appeal site is an area in front of a recently constructed projecting lower ground floor restaurant beneath a five storey residential block. The appeal site consists of a raised patio area which is used for outside seating associated with the restaurant use. The appeal site lies within the OCRCA, but the remainder of the building lies outside.

7. The OCRCA is mainly located to the south and west of the appeal site. Immediately to the west of the appeal site, and within the OCRCA, is Horseshoe Common which is an open sloping grassed area with a number of trees used as a public park which adds beneficially to the character and appearance of the OCRCA. The area is lit by street lighting and forms part of the town centre and I saw a number of food and drink and entertainment establishments in the area as well as shops.
8. Towards the front of the patio lies a London Plane tree planted in a tree pit surrounded by a circular tree grille. It is protected both by a condition on the planning permission for the building and by being within the OCRCA.
9. The application was accompanied by an Arboricultural Impact Assessment & Tree Protection Plan (the AIATPP) which notes that the tree is approximately 9.5 m tall. The tree has been categorised in accordance with British Standard 5837:2012 "Trees in relation to design, demolition and construction – Recommendations" as B1, that is as being a tree of moderate quality with an estimated remaining life expectancy of at least 20 years with this categorisation being mainly from its arboricultural qualities. The application was also accompanied by an Arboricultural Method Statement.
10. The tree has a slight, but not pronounced, lean towards the building. Approximately 2 m from the ground there are six main branches, being the first horizontal growth. At present the tree has a symmetrical form. Although the tree was bare when I saw it at the site visit I have seen a photograph of the tree in leaf and consider that currently adds positively to the appearance of this part of the OCRCA softening the appearance of the building behind and visually linking with the trees on Horseshoe Common. It has the potential to continue to provide this function for many years.
11. The AIATPP indicates that to allow the octagonal canopy to be installed as part of the overall development the lowest two branches on the restaurant side of the tree would need to be removed. This is seen as being a standard procedure for young trees and that the tree will tolerate the works. However, removing one-third of the main branches at this level would significantly unbalance the tree and result in an asymmetric shape for the overall tree, meaning that, particularly when in leaf, it would reduce its positive contribution to the OCRCA. Undertaking unnecessary pruning would also adversely affect the health and longevity of the tree.
12. The proposed octagonal canopy requires unnecessary works to the protected tree and therefore it would be harmful to the character and appearance of the OCRCA and would not display a high standard of design as the proposal fails to take appropriate account of the constraint of trees.
13. The Council is also concerned that wrapping lighting around and within the canopy of the tree could lead to the cabling digging into the tree's structure. However, while the tree is a relatively young tree and has the potential for considerable growth, any lighting would need to be maintained as bulbs need replacing and would be loosened if necessary. It is also unlikely that any cabling would break in the wind, but if it did so, normal electrical safety features would ensure that it did not create a hazard.
14. Therefore the proposed octagonal canopy would be harmful to the character and appearance of the OCRCA. Given the special attention that has to be paid

to the desirability of preserving or enhancing the character or appearance of the Conservation Area as set out in legislation¹, this harm weighs substantially against this element of the proposal, although in the terms of the Framework this would represent less than substantial harm to the significance of the OCRCA.

15. Notwithstanding this conclusion, I am satisfied that the remaining parts of the proposal, that is the lighting in the tree itself, the bench seating and loose table and chairs, which would be affixed to the patio, along with the proposed floor fixed umbrella, which would be located to the eastern side of the patio area away from the tree, and floor fixed terrace barriers would all add interest to the area, would not adversely affect the protected tree and would enhance the character and appearance of the OCRCA.
16. Paragraph 134 of the National Planning Policy Framework (the Framework) indicates that where a development proposal will lead to less than substantial harm this harm should be weighed against the public benefits. No additional public benefits have been put forward in support of the canopy element of the appeal which would be lost by the dismissal of that part of appeal.
17. With the exception of the octagonal canopy the proposal would therefore comply with Policies CS6, CS39 and CS41 of the Bournemouth Local Plan: Core Strategy (the BCS) in that it would enhance the features that contribute to heritage, character and local distinctiveness, would not adversely affect the significance of the OCRCA as a designated heritage asset, and would be well designed and respect its surroundings. These elements of the proposal would also comply with Policies 4.4 and 4.25 of the Bournemouth District Wide Local Plan which seek that development in conservation areas should preserve or enhance the character or appearance of the area and ensure sufficient land for planting. They would also comply with Policy D4 of the Bournemouth Town Centre Area Action Plan which indicates development should be of a high quality design respecting the site and its setting. These elements of the proposal would also comply with paragraph 131 of the Framework which emphasizes the desirability of sustaining and enhancing the significance of heritage assets.
18. In respect of the octagonal canopy the proposal would be harmful to the character and appearance of the OCRCA and would not comply with these policies.

Highways safety

19. The application description set out in the heading indicates that the lighting garlanded around the tree would be festoon or twinkle lighting. The appeal site is set at the junction Madeira Road with Old Christchurch Road, with another complex junction a short way to the west. In this location pedestrians and motorists need to take care. The area is lit by street lights. The introduction of flashing lighting would cause a distraction harmful to highway safety.
20. However, in the grounds of appeal the appellants indicate that flashing lighting is no longer proposed. I am satisfied that subject to an appropriate condition to ensure this and an appropriate level of illumination that such lighting would not cause harm to highway safety.

¹ Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

21. As such the proposal would ensure highway safety. It would therefore comply with that element of Policy CS6 of the BCS which seeks to provide for a safe network of streets and roads.

Conditions

22. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
23. I have also imposed a condition requiring details of tree protection measures during construction operations to ensure the health and longevity of the tree. In addition details of the level of illumination need to be submitted to and approved by the local planning authority, and that the lighting should be static in order to protect highway safety and the character and appearance of the OCRCA. To ensure that the living conditions of occupiers of adjoining dwellings are not adversely affected by noise a condition preventing amplified music or a public address system is necessary. Although there is sufficient information to allow the appeal to be determined, in order to protect the character and appearance of the OCRCA precise details of the various approved elements need to be submitted and approved.
24. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

RJ Jackson

INSPECTOR