The Planning Inspectorate

Appeal Decision

Site visit made on 14 February 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 3 March 2017

Appeal Ref: APP/Z5630/C/16/3152260
69 Surbiton Road, Kingston upon Thames, Surrey KT1 2HG

- 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 Mr Chris Price against an enforcement notice issued by the Royal Borough of Kingston upon Thames (the LPA).
- The enforcement notice was issued on 17 May 2016.
- The breach of planning control as alleged in the notice is: the erection of a timber decking/structure to the front of the Land.
- The requirements of the notice are as follows:
  5.1 Remove the erected timber decking/structure from the Land.
  5.2 Remove the resulting debris/materials arising from 5.1 and restore the land to its condition prior to the breach taking place.
- The period for compliance with the requirements is 2 calendar months.
- The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal succeeds to a limited degree on ground (g). Otherwise the appeal is dismissed (see formal decision below).

Background information

2. The appeal decking/structure has been erected on part of the pavement area in front of the restaurant at No 69 Surbiton Road on its eastern side. This part of the road has a terraced parade of shops, cafes, restaurants and other commercial premises on both sides at ground floor level, with mainly residential uses on the upper floors. The area is designated as a Local Shopping Area in the Local Development Framework Core Strategy 2012 (CS). The walkways/forecourts to the shops are generally just over 2m wide (on both sides of the road) but, between Nos 65 and 75 which includes the appeal premises, they widen to around 4m. This clearly provides a forecourt area as well as the pavement adjacent to the road.

3. The unit had previously been a car showroom and photographs indicate that cars projected forward of the frontage and on to part of the courtyard. In 2011 a change of use and associated operational development was granted planning permission, for an A3 (Restaurant Café) use, together with ventilation ducting to the rear. The decking was then erected and, in 2012 an application was made (12/12718/FUL) for its retention to the front of the restaurant to provide a seating area and the erection of metal poles related to pvc/canvas panels. However, the Council indicates that the application was not proceeded with in November 2012. It would appear that, although the Appellant had been informed that a Design and Access Statement (DAS) was not required, this was not the case and the application was not validated. A previous enforcement notice, which had been

issued on 13 May 2013, was withdrawn due to an inaccuracy on the plan attached to the notice. The notice, the subject of this appeal was then issued.

4. The LPA issued the notice because, in their view, it detracted from the character and appearance of the land and the surrounding area, as well as not providing acceptable access arrangements for all users. It is considered to be contrary to various policies of the CS as well as Policy 7.2 of the London Plan (LP) and the LPA's Supplementary Planning Document: Shopfront and Shopsign Design Guide (2005) (SSDG).

The appeal on ground (a)

5. The main issues are firstly, the effect of the decking/structure on the character and appearance of this part of the Local Shopping Area and, secondly, the effect of the works in relation to access to the premises.

6. In support of the appeal the Appellant refers to the planning history and contends that the appearance of the timber structure provides a welcome contrast on the parade from vehicular parking and numerous advertising boards. It is considered to provide a safe and relaxing alfresco dining area for the patrons of the restaurant, which include many local residents. The DAS for the change of use application of 2011 is referred to and, in particular, that the previous showroom use was not suitable and detracted from the character and appearance of the area and the street scene in general.

7. It is stressed that the LPA had agreed with the 2011 DAS submission and it is argued that if the decking is removed it would encourage car parking on the forecourt. The arrangement at the nearby Wagon and Horses public house is referred to in support of the retention of the decking and photographs of other examples of similar developments on private courtyards are also submitted.

The effect on the character and appearance

8. Having seen the decking (and the timber end panels/fencing) from near and distant viewpoints, I share the Council's concerns about the effect of the works on the character and appearance of the area. I consider that the works are poorly designed and are seen as an obtrusive and ungainly projection into the forecourt area. The detailing is, in my opinion, crude and clumsy and when seen together with the seating and tabling results in a cluttered and most untidy and visually harmful arrangement within the street scene.

9. I consider that the principle of extending the restaurant use on to the forecourt could be acceptable but I find this particular scheme to be contrary to Policy C8 of the CS. This seeks to protect the character of the Borough and to ensure that all new development recognises distinctive local features and character and helps to enhance local urban design quality. The CS policies are up to date and accord with those set out in the National Planning Policy Framework (NPPF). In section 7 of the NPPF at paragraph 64 it states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

10. In conclusion on this first issue, and for the reasons set out above, I can find no justification in granting planning permission for this inappropriate decking/structure on the forecourt at No 69. The appeal, therefore fails on ground (a) due to its detrimental effect on the character and appearance of this part of the Local Shopping Area.

The access to the premises

11. Policy DM10 (o) seeks to ensure that new developments are socially inclusive and accessible to all users. It is evident that with the narrow, centrally-positioned, two step and no-handrail entrance on to the deck, it is far from accessible to all users. I acknowledge that this is recognised by the Appellant. However, in its present form, I consider that it is dangerous for normal users and clearly impossible to use for those in a wheelchair. It is contrary to the above policy and again, there can be no justification in granting planning permission for its retention as built. Again the decking/structure does not accord with the relevant local plan policies and is also contrary to policies within the NPPF which aims to achieve high quality and inclusive design for all development. The appeal, therefore, also fails on ground (a) in relation to the second issue.

The appeal on ground (f)

12. An appeal on this ground needs to be made on the basis that the requirements of the notice are excessive and that lesser requirements would overcome the objections. However, although the Appellant has stated that he understands the current legislation regarding access, no such details have been submitted. It may well be that a design is possible which provides socially inclusive and safe access for all users but that is not a matter for me to consider.

13. In this case, I consider that the requirements as set out are appropriate and necessary in order remedy the injury to amenity which has been caused by the breach. I have found that the decking/structure is both harmful to the character and appearance of this part of the Borough and that it is contrary to Policy DM10 (o) and the NPPF. The carrying out of the requirements would remedy the harm caused. The appeal also fails, therefore, on ground (f).

The appeal on ground (g)

14. The compliance period is 2 months and the LPA considers that this is an adequate period for the Appellant to comply with the notice. The Appellant on the other hand refers to the business need; that the outside eating area has been an important part of the seating arrangements for the restaurant and that it still forms part of the restaurant owner's business plan. It is argued that a period of 12 months would allow time for adjustment and redesign of the frontage.

15. Having considered all of the submissions I do not consider that a period of 12 months would be required and, in any case the decking has remained in place during the appeal process. However, in the overall circumstances, I do consider that just 2 months now falls short of what should reasonably be required.

16. The Appellant has made it clear that the inappropriate access needs to be resolved and must also be clear that what is in place is not acceptable. If the principle of the forecourt use for dining is agreed by the Council, then it will be necessary for the Appellant to produce a scheme that is acceptable in terms of design and appearance, as well as with regard to providing inclusive access for all. In my view, therefore, I consider that a compliance period of 6 months would be reasonable and appropriate.

17. The appeal succeeds; therefore, to this limited degree on ground (g) and the notice will be varied accordingly

Other Matters

18. In reaching my conclusions, I have taken into account all of the other matters raised by the Council and by the Appellant. These include the initial

grounds of appeal and facts; the respective statements and the final comments. However, none of these factors alters any of my conclusions on the grounds of appeal and nor is any other matter of such significance so as to change my decision.

Formal Decision

19. The appeal is allowed to a limited degree on ground (g) only and I direct that the enforcement notice be varied by deleting the number *'2'* in Part 6 (TIME FOR COMPLIANCE) and by substituting therefor the number *'6'.*

20. Otherwise, the appeal is dismissed and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Anthony J Wharton

Inspector