
Appeal Decision

Site visit made on 13 June 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/Z0116/C/17/3170691

318 Gloucester Road, Horfield, Bristol BS7 8TJ

- 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 Adil Bircan against an enforcement notice issued by Bristol City Council.
- The enforcement notice was issued on 27 January 2017.
- The breach of planning control as alleged in the notice is without the grant of planning permission the erection of a structure at the rear of the property used in association with the commercial ground floor unit.
- The requirement of the notice is to remove the structure in its entirety.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Main Issues

1. The main issues are:

- i) the effect of the development on the character and appearance of the area; and
- ii) the effect of the development on the living conditions of neighbouring residents having regard to noise and disturbance.

Character and appearance

2. The appeal property forms part of a shopping parade located on the Gloucester Road. The rear of the commercial properties along this stretch of the road border a number of rear residential gardens of properties in Oak Road.
3. The detached structure is large in scale and covers most of the rear external space of the host property. Whilst I accept that it is single storey and set in from each boundary, the structure dominates the host property to a harmful degree.
4. Although sited at the rear of the property and not visible from the road, the development can be clearly seen from a number of surrounding residential properties. Due to its size, scale and design the style and character of the structure appears at odds with that of the surrounding properties. Consequently, it does not make a positive contribution to the surrounding area.

5. I therefore conclude that the development is harmful to the character and appearance of the area. There is conflict with Policy BCS21 of the Bristol Development Framework Core Strategy (2011) (CS) and Policy DM30 of the Bristol City Council's Site Allocations and Development Management Policies, Local Plan (2014) (SADMP) which seek to ensure that new development in Bristol delivers high quality urban design which contributes positively to an area's character and identity, creating or reinforcing local distinctiveness. These policies are consistent with the National Planning Policy Framework (the Framework) insofar as they relate to the requirement for good design.
6. The appellant argues that a structure of this size could be built as permitted development if the property were in residential use. Be that as it may, this argument is purely theoretical because as the appellant rightly states the appeal property is not in residential use. I therefore give this matter little weight.

Living conditions

7. The premises operate as a Turkish breakfast and shisha lounge. The appellant contends that the use of the structure has a neutral noise impact when compared to the previous use of the courtyard area by customers. I accept that before the appeal structure was erected a degree of noise would have been generated by customers using the outside area. However, the structure with its seating, electrical power sockets and internal lighting provides the customers with an additional level of comfort, space and access to amenities when compared to the previous level of outdoor seating and temporary tent covering provided. The presence of the appeal structure has enabled customers to sit and spend a greater length of time in this area. Consequently, I consider that the use of the structure has resulted in an intensification of customer activity causing greater noise and disturbance as a result.
8. I note the comments made in support of the appeal regarding the impact on neighbouring residents being reduced because the appeal structure is of a more solid construction than the temporary 'tent' used previously. However, I consider the appeal structure with its retractable roof and opening side panels enables the structure to be opened up to such a degree that the noise emanating from inside is likely to be just as harmful, if not more so when taking into account the extent of customer seating and facilities now available.
9. I note the appellant's willingness to accept a condition restricting the hours of opening. However, given the number of residential properties in close proximity to the appeal property together with the size and seating capacity of the appeal structure I consider that a closing time of 2130 hours as suggested by the appellant would not overcome the identified harm caused to the living conditions of nearby residential properties.
10. I conclude that the development causes material harm to the living conditions of the occupiers of nearby properties in terms of noise and disturbance. The development conflicts with Policies BCS21 and BCS23 of the CS and Policies DM30 and DM33 of the SADMP which aim to safeguard the amenity of the host premises and neighbouring occupiers. The development also conflicts with one of the core principles of the Framework which seeks to ensure high quality design and a good standard of amenity for all occupants of land and buildings. The harm I have identified above does not achieve a good standard of living conditions for existing or future residents.

Other matters

11. The appellant has made comments regarding economic considerations and has drawn my attention to a number of policies in both the CS and the SADMP and also to paragraphs 19 – 21 of the Framework. I acknowledge that the appeal development has some economic benefit. However, I am mindful that the identified harm would be permanent and is not outweighed by the particular economic circumstances of the business.

Conclusion

12. For the above reasons, and with regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR