



Appeal Decision

Site visit made on 27 August 2019

by David Cliff BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/T2215/W/19/3229944

Air and Breathe, 37 Essex Road, Dartford DA1 2AU

- 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 Eric May of The Deltic Group against the decision of Dartford Borough Council.
 - The application Ref DA/18/01315/FUL, dated 10 October 2018, was refused by notice dated 5 December 2018.
 - The development is fire exit gates and screening to existing smoking area.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. As set out in the appeal documentation and observed at my site visit, the fire exit gates and screening, the subject of this application, have been constructed at the site.

Main Issues

3. The main issues are the effects on (i) the character and appearance of the area, (ii) pedestrian safety and (iii) the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

Character and appearance

4. The fire exit gates and smoking area screening are prominently located adjoining the pavement on the building's frontage to Kent Road. The appeal site fronting Kent Road is adjoined by commercial premises to the north and residential properties to the south on the opposite side of Essex Road. A car park is located on the opposite side of Kent Road. I observed at my site visit that Kent Road is well used by both traffic and pedestrians within the town centre.
5. Although the canopy was already in existence, the appeal development forms a conspicuous enclosure along the front of the building. Consisting largely of dark meshing with vertical supports and entrance gates, it results in an unsightly, incongruous and uninviting addition that results in visual harm to the streetscene and surrounding area. Parts of the existing building are of similar colouring to the enclosure and gates and the appellant states that the existing

building has a semi-industrial character. Nevertheless, the enclosure and gates are utilitarian in appearance, detrimental to the overall appearance of the building and do not contribute positively to the street level frontage of this part of the streetscene. Although the streetscene has a mixed appearance, including residential, commercial and car parking uses, this is not such to provide justification for the harmful appearance resulting in this case on a well used road within the town centre.

6. Whilst I understand that temporary barriers have previously been in use, there is no evidence to suggest that these amounted to the visual harm arising from the enclosure now in existence.
7. The development is therefore contrary to policy DP2 of the Dartford Development Policies Plan July 2017 ('DDPP') which seeks to promote good design and the National Planning Policy Framework ('the Framework').

Highway and pedestrian safety

8. The enclosure will adjoin the pavement edge. The pavement itself is not particularly wide in this location. I consider it likely that considerable queues form in this location from customers waiting to enter the premises. There seems to be a reasonable likelihood that these queues are a regular occurrence for a town centre nightclub of this size. The doors of the enclosure would open directly onto the pavement, although I understand that these are fire exit gates and therefore are not used on a regular basis.
9. Whilst queuing would only occur at certain times during the evening/night-time, taking account of the limited width of the pavement it is likely to result in occurrences of pedestrians along this side of Kent Road needing to step into the highway in order to avoid people standing in the queue. This could lead to conflict with passing vehicles to the detriment of pedestrian safety. There is no evidence to suggest that pedestrian or vehicle movements during the opening times of the premises are such that pedestrian safety concerns can be discounted. I note in this respect that the pavement is used by both people walking to and from the town centre and to and from residential properties. The appellant states that the canopy was previously used to allow customers to smoke with the queue running parallel to it and that temporary fencing was previously used. Nevertheless, I consider that the erection of the permanent enclosure is likely to have had a more pronounced effect on forcing customers to queue on the pavement than would have previously been the case. There are no detailed and enforceable measures before me of how the conflict between queueing customers and pedestrians could be satisfactorily resolved.
10. I also acknowledge that the development removes the need to allow customers to leave the premises to smoke and then re-enter or the need for customers to smoke on the pavement. It also allows for closer supervision of those customers who wish to smoke. However, there is no clear indication of significant effects regularly arising from the previous arrangements. I do not consider that these benefits are such to provide justification for the unacceptable harm to pedestrians arising from the obstruction of the pavement as outlined above.
11. I have also taken account of paragraph 182 of the Framework. However, given the proximity of the site to the town centre and existing residential properties, the harm to pedestrians is of relevance now, notwithstanding the Council's

further regeneration aims. I also do not consider that the Council's requirement to provide for appropriate pedestrian movement on an existing pavement as in this case amounts to an unreasonable restriction being placed on the existing business.

12. The development therefore leads to an unacceptable impact on the safety of pedestrians contrary to aim of policies DP2, DP3 and DP4 of the DDPP to promote pedestrian movement and the safety of pedestrians. It is also contrary to policy CS2 of the Dartford Core Strategy 2011 which aims to create a safe and high-quality environment in all public areas and the highway safety provisions of Framework.

Living conditions

13. The use of the smoking shelter area undoubtably results in the likelihood of people gathering in this location during the opening hours of the nightclub. Given the size of the enclosed area, it is possible that numerous people could gather there at any one time, although I note that it has previously been used as a smoking area but without the enclosure. There are existing residential properties in the vicinity of the site including at the corner of Essex Road. The opening hours of the premises means that the use of the smoking area would take place late at night when noise levels are likely to be generally quieter around the site, notwithstanding its town centre location.
14. The Council also draws attention to noise complaints it has received from other dedicated smoking areas. Nevertheless, the smoking area is not located directly adjacent to any existing residential properties. There are no details before me of the existing night time noise environment. I also note that no representations have been made by local residents with regards to the planning application and appeal nor has any record being provided of any complaints being made since the smoking shelter commenced its use. Whilst, the location and size of the shelter will inevitable result in some noise and disturbance, from the evidence before me it is not clear that this is such to result in unacceptable harm upon the living conditions of local residents.
15. The Council also draws attention to the car park opposite the appeal site which is part of an identified development site for mixed use development. The Dartford Town Centre Framework Supplementary Planning Document July 2018 states that residential use at the site is anticipated to be a supporting use alongside community, retail and leisure uses. However, I am not aware of any planning application for this site or detailed proposals for how the site might be laid out. There is no certainty at this stage that residential uses would be included along the Kent Road frontage. I also note in this respect paragraph 182 of the Framework which states that where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation. Accordingly, I have only given limited weight to the prospect of new residential uses along Kent Road suffering from noise and disturbance effects.
16. I therefore find that no significant harm from noise or disturbance is likely to arise for existing or future residents. There is therefore no breach of the amenity aims of policy DP5 of the DDPP or the Framework in this respect.

Other matters

17. I acknowledge that the appellant has previously sought to use a smoking area at the rear of the premises but that this was voluntarily stopped due to the perceived noise disturbance to residential premises. I have also considered the comments and support of the of Kent Fire and Rescue Service and the operational benefits of the development as set out by the appellant. Such matters, including the provision of a satisfactory fire escape, are important considerations. Whilst an acceptable alternative solution has not been agreed by the Council and appellant, it does not appear to me that the possibility of preferable alternative arrangements has been exhausted. However, the further consideration of such alternatives is a matter between the parties rather than through this appeal. I also acknowledge the contribution of the existing premises to the night-time economy. However, given the harm I have found to arise, these other matters do not outweigh the significance of the harm I have found to arise in this case. Even in the absence of the Council's town centre revitalisation proposals, I find that the harm would outweigh the benefits.

Conclusion

18. Although I have found no harm to arise in respect of residential living conditions, I have concluded that harm results upon the character and appearance of the area and upon pedestrian safety. This harm is the overriding consideration.
19. The development conflicts with the development plan considered as a whole. I do not consider that there are material considerations of such weight that suggest that the decision should be taken otherwise than in accordance with the development plan. Therefore, having had regard to all other matters, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR