



Appeal Decision

Site visit made on 21 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref: APP/P3610/W/19/3239160
43-47 High Street, Ewell, Surrey KT17 1RX

- 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 Fernando Andrade against the decision of Epsom & Ewell Borough Council.
 - The application Ref 19/00817/FUL, dated 1 July 2019, was refused by notice dated 13 September 2019.
 - The development proposed is erection of boundary fence measuring 1.33m tall with bottom 1m frosted panels and upper 0.33m translucent panels.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address in the banner heading above is that given on the application form. This does not include the name 'Il Capriccio' which is additionally stated on the Council's decision notice and used within the appellant's evidence, and which I saw reflects the name shown on the awning to the front of the building.
3. The application form indicates that the development applied for had not already started. I saw on my visit that frosted panels were present to the boundary of the site, but I have determined the appeal on the basis of the development as shown on the submitted plans which indicate that the upper sections of the panels would be translucent.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the Ewell Village Conservation Area (EVCA), including with regard to the effect of the proposal on the significance of the host building, a locally listed building.

Reasons

5. The appeal site is located within the EVCA and is part of an area of mixed residential and commercial uses. Many of the buildings nearby are of vernacular design and materials, and a number are listed or locally listed buildings as a result of their heritage interest. Although some shopfronts include large areas of glazing, signage to frontages tends to be more discreet in terms of its scale. The generally modest scale of the buildings and their close relationship with the street frontages reflects their location as part of the main

village centre, and these factors together contribute positively to the character and appearance of the area and the significance of the EVCA as a designated heritage asset.

6. The appeal property is currently in use as a restaurant and is identified by the Council as a locally listed building. It is part of a two-storey building which has a pitched roof form with prominent chimneys to the front roofslope. To the front of the appeal site is an external seating area. At the time of my visit, this was enclosed by black-framed frosted panels including decorative details and logos set behind lower black metal railings.
7. The proposed development would alter the existing boundary to include translucent sections to the top of the frosted panels. The resulting frosted and translucent panel boundary would be clearly contemporary in appearance, and would be out of keeping with the traditional materials which are characteristic within this part of the EVCA. Notwithstanding the inclusion of translucent upper sections, the proposed panels would also introduce an uncharacteristic degree of enclosure to the frontage of the site. Moreover, the height of the panels projecting above the surrounding railings would be jarring visually. This would emphasise the discordant nature of the development, and the boundary would be an unwelcome addition to the overall composition of the front of the building as viewed from the street.
8. The unsympathetic nature of the development would also be intrusive in the street scene and detrimental to the character and appearance of the wider area. This harm would be exacerbated by the prominence of the development resulting from the position of the appeal site frontage within the street and the mainly open views towards it which are not obscured to any significant degree by the decorative white railings around the frontage of 49 High Street adjacent.
9. I accept that there are enclosed external seating areas to the front of other buildings nearby. Nevertheless, I saw that the materials used to their boundaries are generally simple railings or timber which provide for a high degree of visual openness and are more in keeping with the traditional materials typical of the EVCA. For these reasons, these sites do not offer a reason to allow the proposed development. I have also been referred to permission for an external seating area in Epsom. However, this is within a different conservation area, and the distance from the appeal site and limited details presented mean I can draw little comparison with the proposal before me.
10. I have not been directed to any specific guidance on boundary treatments within the EVCA. However, for the above reasons, I find that the proposal would cause harm to the character and appearance of the locally listed host building. As a consequence, there would be harm to its significance as a non-designated heritage asset. There would also be harm to the significance of the EVCA through the adverse effect of the development on its character and appearance, although in the terms of the National Planning Policy Framework (the Framework), the harm to the significance of this designated asset would be less than substantial.
11. Having reached this view, the Framework outlines that the less than substantial harm to the significance of the designated heritage asset (the EVCA) should be weighed against the public benefits of the proposal. It also states that a

balanced judgement is required having regard to the scale of harm to the significance of the non-designated heritage asset (the locally listed building).

12. The appellant suggests that the seating area to the front of the building is vital to secure the optimum viable use of the site as a restaurant and to allow for increased vitality to this section of the high street, enhancing the character of the EVCA. However, there is no compelling evidence before me of any assessment undertaken of the optimum viable use of the site, to indicate that there would be harm to the viability of the existing restaurant without the proposal, or which demonstrates a specific need for the boundary as proposed
13. Moreover, paragraph 193 of the Framework makes clear that great weight should be given to the conservation of a designated heritage asset. The harm that the development would cause to the EVCA would be less than substantial, but I give this harm considerable importance and weight. Additionally, there would be harm to the locally listed building, a non-designated heritage asset. In this context, I find that the public benefits of the proposal would not outweigh the harm to the significance of these heritage assets.
14. I therefore conclude that the proposal would cause harm to the character, appearance and significance of the EVCA and to the host building as a locally listed building. The development would therefore conflict with Policy CS5 of the Core Strategy 2007 and Policies DM8, DM9 and DM10 of the Development Management Policies Document 2015 which together broadly seek to conserve and enhance local distinctiveness and the Borough's heritage assets. There would also be conflict with the aims of the Framework as the development would cause harm to the significance of EVCA and the public benefits would not outweigh the harm. Finally, there would be conflict with the duty to give special regard to the desirability of preserving or enhancing the character or appearance of the EVCA as required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and this carries considerable weight and importance in my decision.

Other Matters

15. It is not clear from the information before me whether or not permitted development rights which could allow erection of a boundary fence of up to 1m in height without planning permission as referred to by the appellant exist at the appeal site. Nevertheless, this would be of lesser height than the proposal before me and so I am not persuaded that the impact on the character and appearance of the appeal site and area would be comparable.
16. The appellant has suggested that a condition could require submission of appropriate materials for the boundary. However, this would modify the development in such a way as to make it substantially different from that set out in the application, and I note advice within the Planning Practice Guidance advises that such conditions should not be used.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR