



Appeal Decision

Site visit made on 20 January 2020 by Ben Phillips Bsc Msc

Decision by R C Kirby BA(Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/F0114/W/19/3239213

6 Lower Borough Walls, City Centre, Bath, BA1 1QR

- 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 Bonnici against the decision of Bath and North East Somerset Council.
 - The application Ref 19/00762/FUL, dated 22 February 2019, was refused by notice dated 30 April 2019.
 - The development proposed is described as the use of public highway for the siting of tables with accompanying chairs to the front of the property.
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Decision

1. The appeal is allowed, and planning permission is granted for the use of public highway for the siting of tables with accompanying chairs to the front of the property at 6 Lower Borough Walls, City Centre, Bath, BA1 1QR in accordance with the terms of the application, Ref 19/00762/FUL, dated 22 February 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 001 B.
 - 2) The three tables and six chairs hereby permitted shall not be used other than for purposes in association with the use of No 6 Borough Walls.
 - 3) The tables and chairs hereby approved shall only be placed outside of the premises between 10.00 and 18.00 hours daily, and at no time outside of these hours.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. During the course of the planning application the proposal was amended from 4 tables and 8 chairs to 3 tables and 6 chairs. The Council determined the application on this basis, and I have considered the appeal accordingly.
4. The site visit confirmed that the tables and chairs are in place.

Main Issue

5. The main issue in this case is the effect of the development on highway safety.

Reasons for Recommendation

6. The appeal relates to land in front of No 6 Lower Borough Walls, a grade II listed building located in a conservation area (CA) and the World Heritage Site (WHS) of Bath. The property is an end of terrace, sited next to Pigeon Park, and is currently occupied on the ground floor by Sweet Little Things Tea Room and Bakery. The highway within the vicinity of the site is not open to vehicular traffic between 10am and 6pm.
7. The Council has set out that Lower Borough Walls was recently subject to a highway enhancement scheme and included the introduction of a shared footway / cycleway along Lower Borough Walls. This scheme allows for a minimum shared surface width of 3 metres.
8. The siting of the tables and chairs reduces the width of the shared surface by approximately a metre, albeit I acknowledge that customer's shopping bags could reduce this width further at times. I acknowledge that when the road was open to vehicular traffic that cyclists would be more likely to cycle along the shared footway/cycleway in front of the appeal premises, particularly if vehicles were travelling at slow speed or causing an obstruction within the carriageway and that the reduction in the width of the shared surface may reduce user comfort and safety.
9. However, it is the appellant's intention only to use the area to the front of the café for tables and chairs when the road is closed to vehicular traffic. During this time there is a high probability that cyclists would cycle in the carriageway as opposed to on the footway/cycleway which is likely to be free of vehicular traffic and obstruction. The automatic bollard which prevents vehicles using the road would allow cyclists to pass this point within the carriageway. The likelihood of conflict between pedestrians and cyclists within the vicinity of the appeal site as a result of the footway/cycleway being narrowed by the siting of the tables and chairs is therefore likely to be low. The area between the respective buildings fronting Lower Borough Walls remains accessible for both pedestrians and cyclists allowing each to travel comfortably and safely along this part of the road.
10. In light of my findings, and subject to a planning condition controlling the hours whereby the tables and chairs can be sited outside of the premises which corresponds with the current restrictions in place for vehicular traffic, I conclude that the proposal is not harmful to highway safety. There is no conflict with the aims of Policy ST7 of the Bath & North East Somerset Local Plan 2011-2029 Core Strategy and Placemaking Plan (CSPP) which requires development to ensure that highway safety is not prejudiced. Moreover, there is no conflict with paragraph 106 of the National Planning Policy Framework (Framework) which requires measures to be taken to promote accessibility for pedestrians and cyclists, or with paragraph 110 which requires that applications for development give priority first to pedestrians and cycle movements and create places that are safe.
11. Whilst not referenced in the Council's delegated report nor reason for refusal, the Council reference parts of the CSPP in their appeal statement and Local Transport Note 1/12 (LNT). I have not received a copy of the relevant part of the CSPP or the LNT, so have been unable to assess the proposal against these matters.

Other Matters

12. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require special regard to be paid to the desirability of preserving a listed building or its setting, and of preserving or enhancing the character or appearance of a conservation area. The appeal property is grade II listed, like its attached neighbour, No 5 Lower Borough Walls.
13. The new tables and chairs are located within the setting of these listed buildings and within the conservation area and WHS. Given the town centre location and that the furniture is not permanent, I find that the setting of the listed buildings is preserved, as is the vibrant commercial and retail character and appearance of this part of the conservation area and WHS. The significance of these heritage assets are preserved by the siting of the table and chairs. It is noteworthy that the Council found similarly in this regard.
14. The Bath Heritage Watchdog make reference to previous schemes and enforcement action. Whilst I appreciate that there is some planning history associated with the appeal site, I have determined the appeal before me on its merits. Reference is also made to a table management plan, which was not considered necessary by the Council when it determined the planning application. I have no reason to disagree with the Council in this regard.

Conditions

15. The Council has suggested a number of conditions that it would wish to see imposed in the event that the appeal is allowed. The first of which is the standard time limit condition. However, given the retrospective nature of this application, this condition is unnecessary. A condition relating to the approved is necessary in the interest of clarity, as is a condition tying the use of the table and chairs to the appeal property. A further condition setting out that the tables and chairs can only be in place for certain hours of the day (as suggested by the appellant) is also necessary to ensure that the area within the vicinity of the site is safe to use for all, including pedestrians, cyclists and other highway users.

Recommendation

16. For the reasons given above and having regard to all other matters raised, I recommend that the appeal should be allowed.

B Phillips

APPEALS PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

RC Kirby

INSPECTOR