
Appeal Decision

Site visit made on 2 June 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/V1260/W/20/3246263

Camel, 174 Old Christchurch Road, Bournemouth BH1 1NU

- 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 T Rehima against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 7-2019-1284-Q, dated 16 September 2019, was refused by notice dated 13 November 2019.
 - The development proposed is erection of fencing to create enclosed area.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site is subject of a second appeal, which I have dealt with separately in Decision reference APP/V1260/W/20/3246314 (the extension appeal). The two schemes are related insofar as, in the event that the building undergoes the development subject of the extension appeal, the proposed enclosure would be used as a temporary 'smoking area'. However, in view of the fact that I intend to dismiss the extension appeal, this eventuality will not arise. The proposed enclosure has in any case been primarily promoted to assist the management of queuing outside the premises. I have therefore considered the scheme on this basis.

Main Issues

3. The main issues are:
 - whether the scheme would preserve or enhance the character or appearance of Old Christchurch Road Conservation Area (the Conservation Area); and
 - the effect of the development on safe and efficient use of the footway and road.

Reasons

Character and appearance

4. The site lies within the Conservation Area. The Conservation Area is designated to include much of Old Christchurch Road and some connecting streets, which together cover a large part of the historic centre of Bournemouth. The historic street and building layout, and the good range of late nineteenth and early

twentieth century commercial and domestic buildings this contains, form important aspects of the significance of the Conservation Area.

5. No 174 lies within a long and visually striking terrace of nineteenth century date. This both directly fronts and helps to spatially define Old Christchurch Road, and the pavement flanking it. Notwithstanding the presence of modern shopfronts on the ground floor, the frontage of the terrace otherwise retains an architecturally unified appearance, which as a whole makes a strongly positive contribution to the character, appearance and significance of the Conservation Area.
6. The pavement immediately to the front of the terrace is of varying width but it is for the most part reasonably broad. With the exception of a single, very narrow, raised enclosure outside a business to the west, the lawfulness of which is unclear, no permanent additions have been made to the pavement other than street furniture. The introduction of the proposed enclosure would therefore be appreciably at odds with the established visual character of the terrace, that of the pavement to its front, and the established relationship between the two. This would be accentuated by the size of the enclosure, and would be most apparent at times when it was not in use. For these reasons, the enclosure would appear visually intrusive within the wider streetscene. The effect would not be mitigated in any way by the proposed materials.
7. The pavement outside the terrace was almost entirely empty at the time of my visit, and almost all the businesses were closed. I nonetheless appreciate that under normal circumstances items of signage or seating may be placed on the pavement during the day, and that cordons or similar may be erected to manage queuing in the evening. However, insofar as any such items are licenced or otherwise lawful, none are permanent installations. As their effects are therefore temporary, they differ from those which would arise from the proposed development.
8. My attention has been drawn to a number of sites in the wider area, and in Christchurch, where permanent enclosures on the street frontage exist, or have been permitted. As the Christchurch case involves development in another town, it has no direct relevance. Of the local examples, Turtle Bay is located on the opposite side of the road, but only partly included within the Conservation Area. It is a modern development in which the seating area to its front is an integrated aspect of the overall design, managing a change in levels. It has no bearing on the character or appearance of the terrace opposite, or similarity to the development proposed. The Dancing Moose meanwhile is located on a different street, in a different part of the town, currently outside the Conservation Area. Its character and setting again differs from that of the terrace of which the appeal site forms part. None of these examples therefore provide a basis upon which to consider the appeal scheme to be acceptable.
9. In view of the above I find that the development would not preserve or enhance the character or appearance of the Conservation Area, and that, with reference to paragraph 196 of the National Planning Policy Framework (the Framework), the development would cause less than substantial harm to its significance. Having regard to the considerable importance and weight to be given to the statutory objective of preserving or enhancing conservation areas, I attach considerable importance and weight to the harm that would arise. As the management of queuing does not necessitate the construction of a

permanent enclosure, I attach little weight to this otherwise limited benefit. Consequently, there is little to weigh against the harm that would be caused to the significance of the Conservation Area.

10. For the reasons outlined above I conclude that the development would fail to preserve or enhance the character or appearance of the Conservation Area. It would therefore conflict with saved Policy 4.4. of the Bournemouth District Wide Local Plan 2002, which states this requirement; and Policy CS39 of the Bournemouth Local Plan: Core Strategy 2012 (the CS), which seeks to protect designated heritage assets; each as informed by the emerging Old Christchurch Road Conservation Area Appraisal and Management Plan; and heritage policy set out within the Framework.

Highways

11. The enclosure would occupy a section of pavement immediately in front the building across which pedestrian access is currently unimpeded. The parties dispute how busy the pavement gets, and whilst I have been presented with no specific data, it is reasonable to assume that under normal circumstances some fluctuations exist throughout the day given the nature of the businesses present within the street. Either way the enclosure would represent a substantial permanent obstruction within the footway.
12. The pavement outside the terrace is broad but narrows beyond the site. As noted above, it is currently virtually free from permanent structures other than street furniture. Signage, seating and cordons are however likely to occur outside businesses at certain times of the day. In the absence of clear evidence, it is unclear what effects these have on pedestrian flow. They are however at least partly the subject of separate management through pavement licensing.
13. My attention has indeed been drawn to pavement licensing guidance issued by the Council. I have not however been provided with any indication that an application has been made for such a license, and it is not the purpose of this decision to determine whether one should be granted. The guidance itself makes clear that whether or not the conditions it sets out are met, there is no guarantee that permission for a license would be granted. Thus whilst I note that the amount of clear pavement space around the enclosure would correspond to that required for a 'licensed area' in the guidance, this does not form a basis to consider that the enclosure itself would be acceptable. Moreover, the guidance points out that a clear space should normally be maintained immediately outside the building frontage, which would not be achieved in this case.
14. Pedestrians could manoeuvre around the enclosure. This would not however alter the fact that it would represent an abrupt and permanent impediment to the free flow of pedestrian traffic across the front of the terrace, leading to the creation of a pinch point. This would be an inconvenience that would adversely affect the efficiency and ease with which the pavement could be used by pedestrians.
15. With reference to the Public Sector Equality Duty contained in the Equality Act 2010 (EA 2010), I have had due regard under Section 149 of the EA 2010 to the requirement to take steps to meet the needs of persons who share a protected characteristic. The EA 2010 defines disability as one such

characteristic. Here the greatest potential adverse effect of the development would be on members of the public subject of impaired sight, for whom the obstruction of the footway may represent a safety hazard. It is not clear how this could be satisfactorily mitigated within the context of the scheme proposed. In this regard the effects of the development would be unacceptable.

16. The appellant has again referenced the approved outdoor seating area at the Dancing Moose. I do not have the full details of considerations in this case, and the comparative effects are difficult to judge in the absence of data. It is however apparent that the shape, width and layout of the pavement in question differs from that at the appeal site, and that the two schemes are not otherwise directly comparable.
17. Though the decision notice references road users in addition to users of the footway, the road would be unaffected by the development.
18. For the reasons outlined above I conclude that the development would have an adverse effect on the safe and efficient use the footway. It would therefore conflict with Policy CS5 of the CS, which seeks to ensure the promotion of inclusive and accessible spaces; Policy CS6 of the CS, which amongst other things seeks to improve accessibility and permeability on foot; Policy CS41 of the CS, which amongst other things seeks to ensure development contributes positively to the public realm; Policy CS7 of the CS which requires development to maintain or enhance the function of the town centre, and to accord with policies in the Town Centre Area Action Plan (the AAP); Policy T2 of the AAP, which seeks to promote walking by providing a high quality continuous network of direct and attractive pedestrian routes; and Policies CS13 of the CS and T3 of the AAP which each seek to upgrade walking and pedestrian routes along the road.

Other Matters

19. The appellant has stated at appeal that the enclosure would enable the business to expand into daytime trading, allowing food to be served outside during the day. However, as elsewhere, use of the pavement in this way would presumably be subject to licensing. There is no certainty that such a license would be granted, and this would not in any case necessitate construction of a permanent enclosure. It is furthermore unclear whether the current use of the premises would in fact allow such diversification without a separate planning permission. Indeed, though the application form states that the class falls within Class A4, the premises is otherwise described by the Council as a 'club', labelled on the plans as a 'night club', and described as a Sui Generis use in the extension appeal. Night clubs do not fall within use Class A4, and do not therefore benefit from the permitted changes applicable to uses which do. In view of these points the potential business benefits of using the enclosure for outdoor dining do not attract weight in favour of the scheme.

Conclusion

20. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR