



Appeal Decision

Site visit made on 13 October 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/N1920/W/20/3245894

112 Shenley Road, Borehamwood, Hertfordshire WD6 1EB

- 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 Chris Christoforou against the decision of Hertsmere Borough Council.
 - The application Ref 19/1617/FUL, dated 8 October 2019, was refused by notice dated 11 December 2019.
 - The development proposed is an outside seating area and replacement of side window with sliding folding doors and installation of awning in connection with permitted A3 use (planning approval 19/0089/FUL).
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Decision

1. The appeal is allowed and planning permission is granted for an outside seating area and replacement of side window with sliding folding doors and installation of awning in connection with permitted A3 use at 112 Shenley Road, Borehamwood, Hertfordshire WD6 1EB in accordance with the terms of the application, Ref 19/1617/FUL, dated 8 October 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan; drawing 217A3 L1.0 revision A; drawing 217A3 A2.2; drawing 217A3 A2.3 revision A; and drawing 217A3 A2.4.
 - 2) The use of the outdoor area hereby permitted shall only take place between the hours of 09.00 and 22.30 Monday to Saturday and between 10:00 and 22:30 on Sundays and public holidays.
 - 3) The sliding folding doors shall be black powder coated to match the existing front window/door.

Main Issue

2. The main issue is the effect of the development on the living conditions of the occupiers of nearby residential properties with particular regard to noise and odour disturbance.

Reasons

3. The appeal site is located on the corner of Shenley Road and Cardinal Avenue and relates to the ground floor commercial unit and a small area of land to the

side. There is residential accommodation on the upper floors of the appeal building, including the recently constructed additional units which have also resulted in a new enclosed stair tower immediately to the rear of the proposed outdoor seating area. There are also residential properties on the upper floors of the building on the opposite corner of the road junction and also along Cardinal Avenue which is a residential street.

4. The appeal plans show that there would be a total of 12 covers in this small area with some low-level planting and a low-level planting strip to both street frontages. There would also be an awning to provide a cover to this al fresco dining area.
5. The Council has not raised any concern over the physical alterations such as the folding doors or the awnings per se. Given the nature of the works proposed, I also consider that the physical works are acceptable. It is clear that the Council's concern relates to the use of the outdoor area.
6. Given the commercial nature of Shenley Road and the existence of several food and drink establishments, including takeaways, it is evident that one would expect a degree of activity in such an area. This is particularly given the case where there are takeaway establishments where frequent comings and goings can create noise and disturbance.
7. In contrast to that type of activity, the appeal proposal is for an external dining area associated with a restaurant where the level of activity would be of a significantly lower level. Any noise associated with such an area would be largely restricted to conversations whilst eating and drinking.
8. In my experience a small external dining area, such as that proposed here, is unlikely to result in a level of noise or activity which is likely to create undue disturbance to the occupiers of the nearby residential properties over and above the existing situation.
9. Turning to potential odour disturbance, the development does not involve any additional kitchen facilities or equipment. The Council's concern appears to relate to the smell of food when it is on the table being consumed, and from odour associated with smoking.
10. However, neither of these factors would present a significant issue in my opinion particularly given the limited size of the outdoor area and its juxtaposition with the existing building. Any limited odours would easily dissipate through the open areas to the front and side of the outdoor seating area into the street and would not result in any significant effect on the living conditions of any of the surrounding residential properties.
11. For the above reasons the proposal would not harm the living conditions of the occupiers of nearby residential properties and would be in accordance with Policies SP1, SP2, CS16 and CS22 of the Hertsmere Local Plan Development Plan Document Core Strategy (2013) and Policies SADM20 and SADM30 of the Site Allocations and Development Management Policies Plan (2015) which amongst other matters seek to ensure that proposals are sustainable development and achieve a high quality design and which should not adversely affect the amenity of neighbouring residential properties. It would also accord with the overarching aims of the National Planning Policy Framework.

Other matters

12. Although not contained within the Councils reason for refusal, concern has been raised regarding customers 'spilling out' onto the street from the outdoor seating area. In my view, it would clearly be beneficial to have some form of barrier, which could be in the form of planters and/or low-level glazed panels and neither of these features are likely to require planning permission providing the structures are less than 1 metre in height. That said, the proposal includes a low-level planting strip to both highway boundaries, together with a further planting area adjacent to the stairwell to the flats. The Appellant has also detailed that the existing timber posts along the boundary of the external area will be furnished with catenary chain to complete the enclosure thus ensuring the area should only be readily accessible via the building. With the above in mind, any concern in this respect is not a barrier to the granting of planning permission.
13. I have also had regard to the comments made in the representations in relation to the number of food outlets in the area, additional rubbish, vermin and parking issues. However, given the nature of the proposal, I consider that none of these concerns amount to a reason to withhold planning permission for the development before me.

Conditions

14. The Council has suggested a list of conditions that it considers would be appropriate and I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
15. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. In the interests of the character and appearance of the area, a condition is necessary in respect of the materials of the sliding folding doors.
16. The Council have suggested a condition which would restrict the use of the outdoor area to between 18:00 and 22:30 hours each day. Whilst I consider that it is necessary to restrict the time in which the use of the area should cease in the interest of the living conditions of the occupiers of nearby residential properties, there is little justification as to why the area should not be used during the daytime. To that end, I consider it would reasonable to allow the use of this area from 09:00 hours on Monday to Saturdays and from 10:00 hours on Sundays and Bank Holidays.

Conclusion

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

Chris Forrett

INSPECTOR