
Appeal Decision

Site visit made on 13 October 2020

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 October 2020

Appeal Ref: APP/V3310/W/20/3250205

Esplanade fish bar, 3 The Esplanade, Burnham-on-Sea, Somerset TA8 1BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Michael Bond against the decision of Sedgemoor District Council.
 - The application Ref 11/19/00110 STP, dated 22 October 2019, was refused by notice dated 14 February 2020.
 - The application sought planning permission for the erection of portable ice cream, confectionary and soft drinks kiosk to be sited between 1 March and 31 October each year, on land used as external seating area for existing restaurant without complying with a condition attached to planning permission Ref 11/15/00004 SJH, dated 23 March 2015.
 - The condition in dispute is No 3 which states that: The use of the land for the siting of the portable kiosk hereby permitted shall be limited to the period between the 1 March and 31 October (inclusive) each year and at no other times.
 - The reason given for the condition is: The application is justified on the basis of its contribution to the tourism season and the local Planning Authority does not wish to see the kiosk become a permanent all year round fixture.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not removal of the condition would preserve or enhance the character or appearance of the Burnham-on Sea conservation Area.

Reasons

3. The appeal site is within the Burnham-on-Sea Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
4. I have not been supplied with an appraisal of the CA but from my observations there are evidently vestiges of rendered Victorian buildings, constructed in a traditional way and generally of two or three storeys. The fish bar itself, notwithstanding the modern entrance way, has a pleasant and well-

- proportioned front elevation containing four semi-hexagonal bay windows. Similar features can be seen in other properties within the immediate area.
5. The kiosk, which was in place at the time of my visit, is a modern flat roofed fibreglass industrial container style structure sited to the front and side of the fish bar. It extends to within a very short distance of the back of the footway and is therefore prominent in the street scene.
 6. Whilst there are other modern structures and non-traditional materials in evidence in the area, the kiosk is particularly intrusive due to a combination of its positioning, materials and design. It is out of keeping with the fabric of the CA and cannot therefore be said to preserve or enhance the character or appearance of the CA. I am obliged to give considerable importance and weight to this harm.
 7. Policy D26 of the adopted version of the Sedgemoor District Council Local Plan 2011-2032 (LP) seeks to ensure that development proposals avoid harm to, sustain or enhance the significance of heritage assets. The retention of the kiosk would not do this and consequently conflict with this policy would exist. Policy D2 of the LP requires high quality design that responds positively to and reflects the particular characteristics of the site and the identity of the surrounding area. The retention of the kiosk would not do this and therefore conflict also exists with this policy.
 8. Given that the integrity of the CA has already to an extent been undermined by other more modern designs and materials I consider the identified harm in this case to be less than substantial. It is therefore necessary to balance this harm against any public benefit that would accrue from allowing the kiosk to remain.
 9. There would be some benefit in terms of service to the public, although this would be out of season when less holiday makers would be likely to be around. I note that the reason given for the application is that there would be a lack of damage to the kiosk as it would not have to be removed and re-erected. This does not however constitute a public benefit.
 10. Overall, I do not consider that the public benefits would outweigh the harm that has been identified. Consequently, the retention of the disputed condition is necessary to preserve the character and appearance of the CA.
 11. In arriving at this conclusion, I am aware that the Council have given permission for the kiosk to be in place for eight months of the year, and that the original decision was taken against policies within the current LP. However, that decision was taken as a balance between character and appearance and economic considerations, and such a balance is weighted differently away from the main tourist season.

Conclusion

12. In light of my above findings, and having regard to all other matters raised, including the lack of public objections to the scheme, I conclude that the appeal should be dismissed.

John Wilde

INSPECTOR