



Appeal Decision

Site visit made on 7 December 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2021

Appeal Ref: APP/J1535/C/20/3255272

**Land at Foresters Arms Public House, 9 The Street, High Ongar, Essex
CM5 9NH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Robert Collins against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 28 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission: The formation of a new smoking shelter on the Land, to the front of the public house.
 - The requirements of the notice are:
 - i Remove from the Land the smoking shelter and fixing brackets.
 - ii Remove all resulting debris from the Land, following compliance with step i.
 - The period for compliance with the requirements is within one month after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. During my site visit I saw that signage gives the name of the premises as 'The Forresters Arms'. Nevertheless, I have taken the address from the enforcement notice and refer to it as such hereon in.

Main Issue

3. The main issue of the appeal is the effect of the smoking shelter on the living conditions of the occupants of the adjacent property, having particular regard to noise and disturbance.

Reasons

4. The appeal site comprises the Foresters Arms Public House, a Grade II Listed Building within the High Ongar Conservation Area (HOCA). To the front of the building is an area with outdoor seating comprising a number of wooden benches. Attached to the property is Holmleigh, a residential property which also fronts onto the highway. A wooden structure, hereon in referred to as the 'smoking shelter', has been erected to the front of the building, at the boundary with Holmleigh, which provides shelter above one of the wooden benches. Although I visited at a time when the venue appeared closed, a used

- ashtray present on the table suggests that the structure is used by patrons for its intended purpose.
5. The smoking shelter replaced a previous shelter that extended over seating to the left of the main entrance, away from the adjacent residential property. The current smoking shelter is smaller than the previous and, it is asserted, is intended to improve the setting of the listed building and keep smokers away from other non-smoking customers.
 6. Policies DBE9 and RP5A of the Epping Forest District Council Combined Local Plan (1998) & Local Plan Alterations (2006)¹ (CLP) both seek to protect the amenity of neighbouring occupants, having regard to noise amongst other things. Although the emerging Epping Forest Local Plan (EFLP) is yet to be adopted, its preparation is at an advanced stage. With respect to protecting amenity, policies DM9 and DM21 of the EFLP have similar aims to policies DBE9 and RP5A and can therefore be afforded moderate weight in my consideration of this appeal.
 7. There are shrubs between the appeal site and the neighbouring property. However, whilst this provides some visual screening, it is unlikely to significantly limit noise or disturbance from the use of the smoking shelter. Whilst smoking is likely to have been carried out to the front of the property since the smoking ban, given the location of the previous shelter, patrons would have been more likely to sit away from Holmleigh, limiting the likelihood of disturbance to its occupants.
 8. Although the seating to the front could be used by both smokers and non-smokers, non-smokers are less likely to use the seating outside daylight hours or during inclement weather. The location of the smoking shelter is likely to encourage patrons to use the outdoor area directly adjacent to Holmleigh into the evening when noise from other sources is likely to be less, increasing the potential for noise and disturbance. In this regard, and in the absence of evidence to the contrary, I afford significant weight to the concerns raised by an interested party regarding noise.
 9. The appellant suggests that less than 10% of customers smoke and that customers will only use the shelter occasionally when it is raining. As such, its use will be minimal. However, I have no substantive evidence to support this assertion. During my visit the only table with an ashtray was the one beneath the shelter, which contained numerous cigarette ends, suggesting it is well used. Rain is not an uncommon occurrence in England and so I consider it likely that the shelter would be well used.
 10. Although occupants of Holmleigh are likely to experience some noise and disturbance due to its proximity to the Foresters Arms, the location of the smoking shelter is likely to exacerbate this significantly due to its close proximity to the property. This is harmful to the living conditions of the occupants of Holmleigh, contrary to Policies DBE9 and RP5A of the CLP and DM9 and DM21 of the EFLP, the requirements of which are set out above.

Other matters

11. In determining this appeal, I have a statutory duty, under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the

¹ Published February 2008

impact of the proposal on the special architectural and historic interest of the listed building affected, and its setting. Section 72(1) of the Act² requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the HOCA. Furthermore, paragraph 193 of the National Planning Policy Framework (2019) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

12. The appeal property is a substantial brick built building with sash windows, detailed cornicing and a red brick pedimented door surround with pilasters and foliated tympanum. In my view, the significance of the HOCA and the listed building within is derived from the attractive and traditional architectural detailing. The smoking shelter replaces a larger structure which was previously located to the front of the building of similar design. Although the appeal structure is smaller in size, given its similar design and position to the front of the building, I consider there has been a neutral effect on the listed building and HOCA. This has preserved, not enhanced, the character or appearance of the HOCA and the Grade II listed building and does therefore not outweigh the harm I have identified above.
13. Whilst I recognise the appeal site is community asset, I have no substantive evidence that the removal of the shelter would significantly affect its viability, nor am I persuaded the appeal scheme is the only means of providing shelter for smokers.
14. Although the Essex Fire and Rescue Service did not object to the smoking shelter, this is a neutral factor in my consideration of the appeal.
15. Whilst the appellant advises he is willing to move the shelter 6 inches if necessary, this would not address the concerns I have raised above.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR

² Planning (Listed Buildings and Conservation Areas) Act 1990