



Appeal Decision

Site visit made on 11 August 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal A Ref: APP/M5450/C/21/3270715

Land at The Case is Altered Public House, Old Redding, Harrow HA3 6SE

- 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 Sanjay Gandecha of TCIA Ltd against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 4 February 2021.
The breach of planning control as alleged in the notice is: Without planning permission: the unauthorised construction of decked seating area at rear (the Unauthorised Development) as shown hatched in red on Plan 2
- The requirements of the notice are
 1. Demolish the Unauthorised Development as shown hatched in red on Plan 2
 2. Remove from the Land all material and debris arising from compliance with the requirements of the notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decision.

Appeal B Ref: APP/M5450/W/21/3270191

Land at The Case is Altered Public House, Old Redding, Harrow HA3 6SE

- 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 Sanjay Gandecha against the decision of the Council of the London Borough of Harrow.
- The application Ref P/3029/20 dated 24 August 2020 was refused by notice dated 5 November 2020.
- The development was described as retrospective application for an external decked area for outdoor seating and dining

Summary of Decision: The appeal is dismissed

Procedural Matters

1. The new London Plan (the London Plan 2021) was adopted on the 2 March 2021, after the issue of the notice and supersedes the policies of the London Plan 2016 referred to in the notice. However, details of replacement policies were also provided in the notice and have been addressed in the evidence by the appellant.
2. Retrospective planning permission was refused for the decked seating area on the 5 November 2020 prior to the service of the enforcement notice. Both

appeals therefore relate to the same development and can be dealt with in the same Decision Letter.

The appeal on ground (a) and the Deemed Planning Application and the Section 78 appeal

Main Issues

3. The main issues are

- (i) Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies
- (ii) Whether the development fails to preserve or enhance the character or appearance of the Brookshill Drive and Grimsdyke Estate Conservation Area (the CA)
- (iii) Whether the harm by reasons of inappropriateness, and any other harm, would be clearly outweighed by other considerations so, as to amount to the very special circumstances required to justify the development.

Reasons

Whether the development is inappropriate development within the Green Belt

- 4. The Case Is Altered Public House is a locally listed building which is within the CA and the Green Belt. It is situated close to the road frontage on Old Redding. The building dates back to the early 19th century although the rear of the building has a more modern appearance than the front as the result of later extensions. The character of the area is rural with Old Redding being largely lined with trees with some limited development along its length.
- 5. There is a large garden area to the rear of the public house which slopes down away from the building and levels off towards the bottom of the garden. The garden area is enclosed by dense planting and mature trees on all three sides although there are some views beyond the trees at the end of the garden from the rear of the building. There is a modest area of decking immediately outside the rear of the public house which is not part of the notice.
- 6. Situated beyond the original decking, the development consists of three new levels of decking which is extensive both in terms of its width and depth as it extends across the whole of the rear of the public house and dominates the garden area. The development includes a staircase to both sides as well as a central staircase to allow access to the decking levels and the garden beyond. The decking levels are separated from each other by horizontal wooden panels behind the seating areas.
- 7. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Both Policy G2 of the London Plan 2021 and Policy DM16D of the Development Management Policies Local Plan (2013) reflect the general thrust of the Framework in protecting the Green Belt from inappropriate development other than where very special circumstances exist.
- 8. Paragraph 149 of the Framework states that the construction of new buildings is inappropriate in the Green Belt subject to listed exceptions. The appellant does not consider that the development is a building. The construction of the

decking took place over a period of 2 months and has supporting posts dug into the ground. The decking has been present on site since July 2019 and is a substantial permanent structure. The term "building" is defined in Section 336 of the 1990 Act and includes "any structure or erection, and any part of a building" I am satisfied that the wooden structure is "a building" for the purposes of Paragraph 149 of the Framework.

9. The Council has assessed the decking under Paragraph 149 c) which refers to the "extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building". The original building is defined in the Glossary to the Framework as a building as it existed on 1 July 1948 or if constructed after 1st July 1948 as it was originally built."
10. However, even using the existing public house together with the original decking to the rear as a comparison rather than the original building, the development has roughly the same footprint. Due to its bulk and scale, the development appears disproportionate particularly when looking back towards the public house. The development does result in disproportionate additions over and above the size of the original building and does not fall within the exception set out in Paragraph 149 c).
11. The appellant instead seeks to rely upon Paragraph 149 b) which refers to the "provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation.....: as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it". Outdoor recreation more usually comprises an activity of some kind rather than sitting outside as a customer of a public house. Although the appellant refers to parents being able to watch over children in the play area from the development, it is not clear why the tables and chairs which are closest to the play area at the bottom of the garden and which remain are not appropriate facilities for that purpose or how the scale of development in addition to the existing table and chairs is considered to be an appropriate facility. However, even if the development met that first element of the test, the development would still need to preserve the openness of the Green Belt which I will address separately.

Openness

12. Paragraph 137 of the Framework states that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open: the essential characteristics of Green Belt are their openness and their permanence. Openness has both spatial and visual dimensions and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt.
13. Prior to the development taking place, the garden area was largely undeveloped apart from the presence of sporadic tables and chairs. With the slope of the garden and the extent, mass and bulk of the development does erode the openness of the garden compared to what existed previously. The appellant emphasises the lack of public views of the decking but openness has a spatial as well as a visual aspect and the decking is in any event viewed by the public who come to use the public house. The development is a material addition to the amount of built development on site which does have a harmful effect on the openness of the Green Belt which means that openness is not

preserved and the development cannot therefore fall within the exception set out in Paragraph 149 b). The development is therefore inappropriate development as it does not fall within any of the exceptions set out in Paragraph 149 of the Framework.

Conservation Area

14. Conservation Areas are designated heritage assets as defined in the Framework and great weight is to be given to the desirability of preserving or enhancing the character and appearance of a conservation area. As required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have special regard to preserving or enhancing the character or appearance of a conservation area.
15. The appeal site dates back to the early 19th century. The CA Appraisal and Management Strategy (the CA Appraisal) at paragraph 1.5 refers to *"the special interest of the CA relating to its high architectural quality and historic interest in a rural setting with the low density of development and plentiful surrounding landscaping and greenery"*. The public house was added to the Council's list of locally listed buildings in March 2013 and was originally used by the rural population and City Brick Workers but is now used by day-trippers and walkers who visit the area. Paragraph 3.19 of Policy DM7 of the London Plan states that within conservation areas, local listing indicates that the building is of some significance to the character and appearance of the area.
16. There is a car park to the west of the appeal site which was closed for improvement works at the time of my site visit which is normally used by walkers and users of the public house to access footpaths and to enjoy long distance views across Harrow and other London Boroughs. I note that the local listing of the building made in 2013 refers to the historic heritage value as well as a social value to the community which is enhanced by its location next to the car park and footpaths for walkers. However, as the development is to the rear of the building which has had a number of extensions, the Conservation Area designation with its statutory regime is more relevant particularly when the Council has not sought to distinguish between effects upon the CA and the local listing in its evidence.
17. The CA Appraisal also identifies the appeal site with its extensive garden as being only one of three early 19th century buildings within the designation. The appeal site does therefore make a positive contribution to the CA.
18. In comparison, the development results in a marked change to this part of the CA and the previously largely undeveloped garden setting. The bulk and excessive scale of the development is incongruous and dominates views of the public house from the rear. Lack of visibility from any wider area does not overcome the harm that I found and applying such a test could result in changes to the detriment of the overall character of the CA. The development does not therefore preserve or enhance the character or appearance of the Conservation Area as required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
19. Reference is made to conditions overcoming any findings of harm namely landscaping and staining of the decking. An illustrative artists impression of the landscaping scheme shows the bulk of the proposed planting in front of the lowest level of decking. The planting scheme states that plants will eventually

grow up to cover the wood façade of the first decked level. However, such a level would take some time to achieve and would have a limited impact on the bulky appearance of the overall development which is made up of three levels as well as side and central steps. Any perceived benefit of landscaping is restricted by the need to allow free passage for customers both around the seating areas and the central and side steps.

20. Whilst the appellant indicates that the scheme is indicative, and a scheme could be submitted for consultation, on the limited information before me, I cannot be satisfied that the harm that I have identified can be overcome with a landscaping condition either based upon the illustrative scheme or with details to be submitted.
21. The appellant intends to stain the timber of the decking and the balustrading so that it better blends with the surroundings and proposed planting. However, staining would not in my view either by itself or in conjunction with planting overcome the identified harm namely the bulk and mass of the development.
22. I do however find that the harm caused to the significance of the CA is less than substantial and therefore the harm that I have identified should be weighed against any public benefits of the development.

Public Benefits

23. Reference is made to the community benefit of the public house and that the removal of the decking would lead to the loss of the public house within 3 months. A number of policies referred to by the appellant seek to resist the loss of an existing community facility. The viability report provided indicates that the public house will not survive based upon the inside seating capacity which is limited to 60 covers. Although forecasts are provided, there is no evidence of income prior to the development taking place or why reverting to the capacity that existed prior to it taking place would mean that the business is unviable.
24. The public house would not in any event be solely reliant on inside seating capacity but would revert to previous capacity which includes use of outdoor space for seating namely the original decking and the remainder of the garden. It is not clear why income is constant every month but would reduce by half every month if the development is removed particularly when there will be seasonal variations for outside use. I do not consider that removing the development is therefore likely to result in the closure of the public house based on the evidence before me. I therefore attach limited weight to this matter.
25. The appellant has referred to the unsuitability of the original staircase which was steep and narrow and did not allow two way traffic for customers and staff. However, in seeking to address any issues with the original modest staircase, the appellant has constructed substantial decking over three levels which extends across the width of the appeal building. Whilst two way access through the garden may be of benefit to the customers, there is no evidence before me to show why the extent, nature, and scale of the development with three separate staircases was needed. I therefore attach limited weight to this benefit.

26. I do not find the public benefits arising from the development outweigh the harm that I have identified and to which I attach considerable importance and weight in accordance with Paragraph 199 of the Framework.
27. The development due to its bulk and scale is an incongruous addition which does not preserve or enhance the character of the appearance of the CA. It is therefore in conflict with Policy DM7 of the Harrow Development Management Policies Local Plan (2013)(the Local Plan) which amongst other things refers to the approval of proposals which secure the preservation of enhancement of a heritage asset and its setting with conservation of heritage assets. The policy also states that when assessing proposals affecting heritage assets priority over other policies in the Local Plan will be afforded to the conservation of the assets affected. Policy HC1 of the London Plan 2021 states that development affecting heritage assets and their settings should conserve the significance by being sympathetic to the assets significance and appreciation within their surroundings. Policy CS1D of the Harrow Core Strategy (2012) refers to resisting proposals that would harm the significance of heritage assets. I find Policy CS1B of the Harrow Core Strategy (2012), the Supplementary Planning Document Residential Design Guide (2010) and Policy DM1 of the Local to be less relevant than the other policies which refer specifically to preservation of heritage assets.

Other Considerations

28. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
29. The appellant considers the viability issue to be a very special circumstance as well as a public benefit. I have referred previously to the reasons why I consider that on the information before me, that it is unlikely that the removal of the decking will result in the closure of the public house. I therefore attach limited weight to this matter.
30. The Council has referred to injury to amenity to neighbouring residents in the reasons for issuing the notice and in the planning refusal but has provided limited information. There are no dwellings adjacent to the appeal site. There appear to have been some historical issues with regard to licensing matters but licensing matters are outside the remit of this appeal and subject to different legislation. However, the absence of harm to living conditions to neighbouring occupants based upon the evidence before me is a matter of neutral weight.
31. The extent of customer preference to dine outside as a result of the Covid 19 pandemic is not a matter that can easily predicted as although restrictions have been lifted, the impact of future variants is currently unknown although restrictions have been lifted. Outdoor seating will still be available even if the development is removed. Social distancing measures and eating outside are matters of personal preference rather than public policy and I attach limited weight to this matter.

Other matters

32. The appellant has suggested a personal condition that would require the decking be removed once the appellant no longer has any involvement with the management of the public house or the running of it. However, personal

conditions are only appropriate in exceptional circumstances and tend to relate to the personal circumstances of an individual or their family which is not the case here and could potentially leave the development in place for several years which is not acceptable.

33. I note that there are both objections and supporters of the development and their comments have been considered where relevant to the issue of planning merits. The appeal site does have a play area and a lighting column but the impact of those pre-existing developments upon the Conservation Area are not comparable in terms of scale, size, or location with the development. Whether or not applications are taken to Planning Committee or dealt with under delegated powers is a matter of internal procedures for the Council

Planning balance and conclusion on ground (a)

34. Inappropriate development should not be approved other than in very special circumstances which will not exist unless the harm to the Green Belt to which I must give substantial weight, by reason of inappropriateness and any other harm is clearly outweighed by other considerations. As well as harm to the Green Belt, I have also found that the development does not enhance or preserve the CA.
35. On the other side of the balance, I have taken into account the other considerations put forward in favour of retaining the development which are listed in "Other Considerations" of this Decision. However, I do not find that the other considerations either individually or collectively outweigh the substantial weight to the harm caused to the Green Belt. As a result, the very special circumstances that are required to permit the development do not exist.
36. In conclusion the development is inappropriate development and leads to a loss of openness. The development does not enhance or preserve the CA. These issues are not outweighed by the considerations advanced by the appellant and I find that the other considerations advanced in this cases do not clearly outweigh the harm that I have identified.
37. The development is in conflict with both Policy G2 of the London Plan 2020 and Policy DM16D of the Development Management Policies Local Plan (2013) which refer to not permitting inappropriate development other than where very special circumstances exist. Policy CS1.F of the Harrow Core Strategy is less relevant as it relates to open space, sport, and recreation. The appeal under ground (a) should therefore not succeed and planning permission will be refused.

The appeal under ground (g)

38. An appeal under ground (g) is that the time allowed for compliance is too short. The time for compliance is 3 months and the appellant is seeking a period of 2 years. The appellant refers to customer preference to eat or drink outside for at least another 12 to 24 months in view of the Covid -19 pandemic. However, customer preference does not justify extending the compliance period to effectively grant a temporary planning permission of between 12 and 24 months.
39. No justification is put forward as to why a requirement to demolish would take up to 2 years. Although appointing a contractor and removing the decking may take longer than 3 months, no indication is given as to how much longer than

that the process will take. Nevertheless, I do accept that it may take time to appoint a contractor to carry out the work and remove the materials so I consider a period of 5 months is an appropriate and reasonable balance and to that limited extent the appeal under ground (g) succeeds and I will vary the notice accordingly.

Conclusion

40. For the reasons given, subject to the variation to the time for compliance, I shall uphold the enforcement notice with the variation and refuse to grant planning permission on the deemed planning application and the planning appeal.

Formal Decision

41. It is directed that the enforcement notice is varied by deleting "*3 months*" from the period of compliance and replacing it with "*5 months*."
42. Subject to this variation, both Appeal A and Appeal B are dismissed and the enforcement notice is upheld. Planning permission is also refused on the application deemed to have been made under Section 177(5) of the Act.

E. Griffin

INSPECTOR