



Appeal Decision

Site visit made on 5 January 2022

by **E Griffin**

an Inspector appointed by the Secretary of State

Decision date: 20th January 2022

Appeal Ref: APP/Z3445/C/21/3281878

The Winning Post, Argyle Street, Glascote, Tamworth B77 3EW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Julian Caulder of Hawthorn The Community Pub Co against an enforcement notice issued by Tamworth Borough Council.
- The notice was issued on 9 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a raised platform (decking) with canopy overhead and associated infrastructure.
- The requirements of the notice are to
 1. Remove the unauthorised raised platform (decking) and overhanging canopy in its entirety with any associated supporting infrastructure.
 2. Repair any damage created and remove from the land all building materials and waste arising from compliance with step 1 above.
- The period for compliance with the requirement is by the 1st October 2021.
- 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 (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the wording for the period for compliance be deleted in full and be substituted with "The period for compliance with the notice is 3 months."
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The period for compliance with the notice is usually expressed as a period of time rather than a specific date which is superseded if a notice is appealed. The Council has however subsequently confirmed that they consider 3 weeks to be an appropriate timescale for compliance and their reasons for that timescale. The appellant was then given an opportunity to comment and I do consider in the circumstances that it appropriate to exercise my powers to consider whether the time for compliance is reasonable under ground (g).
4. The reasons for the issue of the notice do specifically refer to the character and appearance of the area and poor design. Paragraph 134 of the National Planning Policy Framework (the Framework) and the adopted Design: Supplementary Planning Document both relate to design. The reasons state

that “the development also fails to mitigate environmental impacts for the benefit of existing and prospective occupants of neighbouring land.” Although Policy EN5 of the Tamworth Local Plan 2006-2031 does refer to loss of light, privacy or unacceptable noise, pollution, flooding or sense of enclosure, as well as design, the reasons for the notice do not specify clearly which of those matters is being alleged.

5. Case law¹ has established that the recipient of a notice should understand from the four corners of the notice what the breach is and what he is required to do under the notice. In the absence of any further explanation or clarification in the notice of what specific environmental impacts are alleged, I consider the main issue to be limited to character and appearance.

The appeal under ground (a) and the Deemed Planning Application

Main Issue

6. The main issue is therefore the effect of the development on the character and appearance of the surrounding area.

Reasons

7. The Winning Post Public House is situated between Kenilworth Road and Wesley Way with a frontage onto Argyle Street. The surrounding area is largely residential although there is a garage repair business opposite the junction of Wesley Way and Argyle Street. The Public House is set back from the road frontages and had on-site parking on three sides of the building prior to the development taking place.
8. The public house is a two storey building with a single storey ground floor wraparound extension. The development is located between the side of the public house and the pavement on Kenilworth Road with access to the front of the development facing Argyle Street. It consists of a raised wooden decking area with outdoor seating and railings with access at the front together with a substantial canopy. The canopy is an unusual shape with a number of peaks within its design which adds height. The canopy is noticeably higher than the ground floor extension at the front of the building but is lower to the side and rear. It is secured to the ground by a number of ropes with concrete pegs to the front and rear of the development and the side facing Kenilworth Road.
9. On site, I also observed a number of traffic cones in place to highlight the location of the pegs and white tape wrapped around the rope at the base of a number of pegs. Photographs supplied also show the nature of that arrangement. One side of the canopy is attached to the side of the public house building itself with ropes. Although the appellant refers to the use of untreated timber having the appearance of natural materials with a muted colour, the light colour of the development is bright and does stand out compared to the nearest dwellings which are a mix of traditional brick and white render.
10. The purpose of the development is to provide an element of covered outside seating for customers of the public house which the appellant states was needed to provide more outdoor seating during the Covid 19 pandemic. Whilst supporters refer to the benefits of being able to sit outside during this period,

¹ Miller Mead v MHLG{1963} 1All ER 459

the development is intended to be a permanent structure to serve both the restaurant and public house elements irrespective of the Covid situation.

11. The appearance of the raised platform with the canopy is unusual and the overall scale and mass in terms of size and design and the use of light wood creates an incongruous structure. The development is out of place occupying part of the public house car park in a primarily residential area. It is particularly prominent in relation to Kenilworth Road due to the proximity of the development to the pavement, the height of both the raised platform with railings and the canopy compared to the modest scale of the bungalows. I do not share the appellant's view that the development adds interest rather than being in stark contrast to the surrounding buildings.
12. The appellant relies upon an appeal decision dated the 21 May 1992 which relates to a fibreglass shark in the roof of a house in Oxford. In that appeal decision, it was considered that the shark did not cause such demonstrable harm to visual amenity as to justify refusing consent for its retention. The facts and location of the shark sculpture are however not comparable to the development before me and each case has to be assessed on its own merits. Similarly, the visual appearance of the car repair business on the opposite side of Argyle Street with the junction of Wesley Way is not comparable with the development in terms of design, location or relationship with surrounding development.
13. In terms of benefits, there is no evidence before me to show that the public house would no longer be economically viable or that jobs would be lost if the development was removed. The public house is described as a community pub with a number of teams and groups using it and there is no evidence to show that would not continue to be the case in the future. The easing of the Covid 19 pandemic restrictions means that the need for extensive permanent outdoor areas at public houses is likely to reduce, particularly in inclement weather. Even if the Covid situation altered, the development is a permanent structure rather than a temporary outdoor solution to the pandemic.
14. In terms of the development providing surveillance and lowering fear of crime, the use of the car park prior to the development would have provided an element of natural surveillance in any event. The presence of other nearby dwellings also limits the need for active surveillance of the street by patrons of the development. Although the appellant has referred to screening to deal with any potential noise issues, adding a fence or a PVC screen is not likely to improve the overall appearance of the development. I agree that there is limited availability to add landscaping due to the nature of the site and the car park location where access is required. Whilst the appellant refers to the Council not alleging other issues including highway safety, risk of flooding and no impact on heritage assets, the matters raised do not either individually or collectively outweigh the visual harm arising from the development.
15. For the reasons given, I do consider that the development does cause demonstrable harm and adversely affects the character and appearance of the surrounding area. The development is therefore contrary to Policy EN5 of the Tamworth Borough Council Local Plan 2006-2031 Adopted February 2016 which, amongst other things, refers to design that fails to take the opportunities available to improve the character of the area will be refused. It is also contrary to the adopted Design; Supplementary Planning Document

which refers to the layout of non-residential development addressing the street in a considerate manner. It is also contrary to Paragraph 134 of the National Planning Policy Framework which states that development that is not well designed should be refused.

Other Matters

16. There are third party comments made up of both objectors and supporters of the development. Objectors do refer to a number of matters apart from appearance including light pollution, noise, overlooking and loss of on-site parking. However, as I am dismissing the appeal on the main issue, those are not matters that I need to consider in reaching my decision.
17. Whilst there are supporters of the development who use the public house and the development, that support does not overcome the visual harm that I have identified or justify the grant of planning permission. The appeal under ground (a) is refused.

An appeal under ground (g)

18. An appeal under ground (g) relates to the time allowed for compliance with the notice. The Council considers 3 weeks to be appropriate as that was the time it took to construct the development. However, the appellant has stated that advanced planning was required prior to the actual construction with the need for electricians and carpenters to be brought together. The appellant has also referred to weather conditions such as rain and snow potentially affecting timescales for demolition.
19. A proportionate balance has to be taken between the need for compliance in the public interest and the appellant's arguments. Whilst I accept that demolition and removal will need to be planned in advance and contractors found, the process of removal of the development itself is going to take less time than construction. However, a period of 3 months appears to be a reasonable period to allow for the organising of the removal, appointing contractors and to provide for any stoppages due to adverse weather such as snow or significant, persistent rain falls. An appeal under ground (g) therefore succeeds to that extent and I will vary the notice accordingly.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR