



Appeal Decision

Site visit made on 14 December 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/B5480/W/21/3274016

The Bank Restaurant, 9 Elm Parade, St Nicholas Avenue, Hornchurch RM12 4RH

- 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 Mr William Eve against the decision of the Council of the London Borough of Havering.
 - The application Ref P1561.20, dated 24 October 2020, was refused by notice dated 6 January 2021.
 - The development proposed is installation of front canopy and formation of external seating area.
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Decision

1. The appeal is dismissed insofar as it relates to the proposed front canopy. The appeal is allowed and planning permission is granted for formation of external seating area, at The Bank Restaurant, 9 Elm Parade, St Nicholas Avenue, Hornchurch RM12 4RH, in accordance with the terms of the application Ref P1561.20, dated 24 October 2020, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The external seating area hereby permitted shall be carried out in accordance with the following approved plans: 09-PP-200; 09-PP-201; 09-PP-202; 09-PP-203; 09-PP-204; 09-PP-205; 09-PP-206; 09-PP-207; 09-PP-208; 09-PP-209.
 - 3) The external seating area hereby permitted shall not be used by patrons of the appeal premises after 10:30pm Monday through Sunday and all Bank/Public Holidays. All tables, chairs and means of enclosure shall be removed from the footway when the seating area is not in use and at no time shall they be in situ outside of the permitted hours.

Preliminary Matters

2. The Council adopted the new Havering Local Plan (2016 to 2031) (the HLP) on 17 November 2021, during the appeal process, replacing The Core Strategy and Development Control Policies DPD (2008) which has been withdrawn. I have therefore had regard only to the relevant policies of the HLP in determining the appeal. The main parties have been afforded the opportunity to comment on this material change to the policy context, and I have taken the replies received into consideration.
3. The Council's evidence refers to the Shopfront Design Supplementary Planning Guidance (SPD) (June 2013); however I am advised that this SPD has been

withdrawn following adoption of the HLP and thus no longer attracts weight as a material planning consideration. Thus, I have not had regard to this SPD.

4. For the reasons that follow, I find the proposed external seating area to be acceptable and clearly severable both physically and functionally from the proposed front canopy. Therefore, I intend to issue a split decision in this case and grant planning permission for the external seating area only.

Main Issue

5. The main issue is the effect of the proposed canopy on the character and appearance of the area.

Reasons

Front Canopy

6. The appeal site is located within commercial frontage forming part of the Elm Park Minor District Centre (EPMDC), centred on the nearby roundabout at the junction of Elm Park Avenue and St Nicholas Avenue/The Broadway, with retail and other commercial uses extending at ground floor level in all directions from the roundabout.
7. The parade of which the appeal site forms part comprises a long, three storey, red brick building containing ten ground floor units, each with a flat-fronted façade. The proposal seeks to install a solid canopy structure to the front of the building extending over the footway. There are no comparable examples of such a feature in the parade or elsewhere in the EPMDC. The canopy, at some 2.2 metres in depth, would form a highly prominent feature projecting out from the building that would be substantially larger than the modest projecting signs to other shopfronts that represent the only fixed projecting elements on the frontage. The canopy would therefore appear as an incongruous addition to the street scene that would draw the eye in views from all sides and harmfully disrupt the consistent frontage of the parade. It would also oversail and partially obscure the fascia signage of the premises.
8. There are several examples of blinds and awnings within the EPMDC; however, these are retractable types which can be concealed when not in use, and do not form permanent projections in front of the shopfront. Consequently, I do not regard these examples as comparable to, or justification for, the proposed fixed canopy which would be harmful for the reasons set out above.
9. Therefore, I conclude that the proposed canopy would be harmful to the character and appearance of the area. This would conflict with Policy 26 of the HLP, which requires development to achieve high quality design that, among other things, respects, reinforces and complements the local street scene and respects the visual integrity and established rhythm of building frontages.

External Seating Area

10. The Council did not refuse permission in respect of the proposed external seating area. Unlike the canopy, this would not be a permanent alteration to the shopfront as the tables and chairs could be removed when not in use. The Council refers to other examples of external seating though, perhaps not unexpectedly, I did not see other seating at my visit in winter. Nonetheless, external seating is an increasingly common feature of shopping parades, and

thus would not appear out of character with the commercial surroundings. I find that the proposal would accord with the design aims of Policy 26.

11. Objection was not raised by the local highway authority in terms of pedestrian safety. I saw the footway outside the site to be wide and whilst there is other street furniture such as trees, road signs, litter bins, cycle stands and parking meters, there would be sufficient room for pedestrians to pass safely. I am satisfied that the proposal would be acceptable in this respect and would accord with Policy 26 which requires that developments fully integrate with neighbouring developments, existing path and circulation networks and provide a high standard of inclusive access for all members of the public.
12. Objections have been raised by interested parties in respect of potential nuisance from use of the external area, given the late night opening of the premises and the presence of residential uses above. The premises is described as one of the only late night uses in the area, which would suggest that noise levels in the area are otherwise low in the evening. Extended use into the night could therefore give rise to noise and disturbance to the detriment of nearby residents. The Council has suggested a condition which would limit the use of the external seating area to no later than 10:30pm on any day. I consider this time limit reasonable in the circumstances, and if applied would provide sufficient safeguards for neighbouring residents' living conditions.

Other Material Considerations

13. The appellant advances that, in light of the Covid-19 pandemic, the proposal would deliver health benefits in terms of providing safe outdoor seating for people to socialise. I also note several letters of support in this respect. I accept that external seating, in the current circumstances, may offer a benefit in this regard. However, the scale of the proposal is modest, and therefore the benefits arising would be limited in scale. Moreover, these benefits would mainly be attributable to the seating area itself, with the canopy forming an ancillary feature to provide it with cover. However, it is not the only means by which cover for the seating area could be achieved, and therefore I afford very limited weight to the functional benefit of the canopy.

Conclusions

14. For the reasons set out, I conclude that the proposed canopy would result in conflict with the development plan, to which I afford significant weight. Material considerations advanced in this case would not outweigh this conflict so as to justify granting planning permission. Therefore, I conclude that this part of the appeal should be dismissed.
15. However, I find that the proposed external seating area would accord with the development plan, taken as a whole, and as it is physically and functional severable from the proposed canopy, I conclude that this part of the appeal should be allowed. I have imposed a condition requiring that the development is carried out in accordance with the approved plans, and only in relation to the part of the proposal permitted, in the interests of certainty. As set out above, a condition limiting the hours of use of the external seating area is also necessary to protect the living conditions of nearby residents.

K Savage INSPECTOR