



Appeal Decision

Site visit made on 8 February 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2022

Appeal Ref: APP/B1605/W/21/3283565

Clarence Court Hotel, 45 Clarence Square, Cheltenham GL50 4JR

- 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 Ms Elaine Cross of Clarence Court Hotel against the decision of Cheltenham Borough Council.
 - The application Ref: 21/00583/FUL, dated 11 March 2021, was refused by notice dated 19 August 2021.
 - The development proposed is construction of a pergola (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. Whilst I observed that the pergola was in situ at the time of my site visit, the concise description of the proposal, taken from the Council's decision notice, is relevant insofar as it refers to the act of development, not its retrospective nature.
3. The Council has also confirmed that no elevation plans were submitted with the appeal application due to the fact that the pergola was already in place. From the submitted photographs, it appears that the structure I saw was that originally constructed.
4. The Council refused permission, in part, on the basis that the proposal would be harmful to the significance of the Grade II listed building under Section 16(2) of the Listed Building and Conservation Areas Act (LBCAA) 1990. However, the proposal is one for which planning permission is sought, not listed building consent, and does not involve any attachment or alteration to the listed building itself. As such, the proposal has been assessed against section 66(1) which requires special regard be given to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. Given the site's location within the Central Conservation Area, the proposal has also been assessed under Section 72(1) of the LBCCA, which requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Main Issues

5. The main issues are:
 - whether the proposal has preserved the setting of the Grade II listed building known as 'Lisle House and Wellesley Court Hotel';

- whether it has conserved or enhanced the Central Conservation Area (CA); and
- whether the proposal is harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

The listed building

6. The Grade II listed building, 'Lisle House and Wellesley Court Hotel' (now Clarence Court Hotel) were originally two houses and are listed together as one building. The listing description refers to the building as having been built in 1837-8 and comprising of 3 storeys with basement, 4 bays, with service range to rear. The buildings are stucco over brick with concealed roof and stucco end and ridge stacks. The stucco detailing on the building includes horizontal rustication drawn into voussoirs over windows to ground-floor outer bays; first-floor banding surmounted by fluted Ionic pilasters through ground and first floors, architrave, frieze and dentil cornice; above which are pilasters with frieze and cornice and blocking course. There are sash windows throughout the building. The entrances are set to the side elevations, with Ionic columned porches, and similar window surround detailing on the sides.
7. The listing description also notes that the building was constructed as part of the development of this area undertaken for Joseph Pitt in 1825-42. In this historic context, the listed building marks the prosperity of the area and how housing to accommodate the professional classes was deliberately planned. The building retains stylistic and fabric evidence important to its significance.

The Central Conservation Area (CA)

8. The CA includes the whole of Cheltenham town centre and most of the Victorian, Edwardian and later 20th century suburbs. The appeal site lies within the 'Pittville' sub-area of the CA which encompasses the early 19th century estate planned by Joseph Pitt, which whilst principally residential in nature also includes the large, formal Pittville Park with the landmark Grade I listed Pittville Pump Room building. Pittville Park largely establishes Pittville's character and appearance and is a quintessential component of the area. The surrounding large areas of planned Regency development and early Victorian housing formally laid within spacious tree-lined streets give the area its distinctiveness. There are extensive areas of open space, Victorian terraced housing predominating to the south of the area with some interspersed villas, but generally larger detached buildings and villas to the north of the Pittville character area. Narrow service lanes are also contrasting features to the spacious streets and squares.
9. The built form of the streets and spaces, and the individual buildings, all combine to contribute to the character, appearance and distinctive identity of the Pittville sub-area of the CA. Its significance is therefore the way in which the buildings, spaces and streets combine to create a deliberately-planned, grand, coherent, high-class speculative development.

The Development

10. The appeal scheme involves the retention of the pergola structure which has been constructed in the back corner of the site. The structure is single storey in

height, has timber supports through the sides and middle which hold up its flat, trellised roof, also made from timber. The floor beneath it is covered with loose chippings and large paving slabs. The pergola sits to the rear and right-hand side as you face the host building, with a row of cars often parked along the side boundary wall in front of it. As the site is open on the right-hand side to enable servicing and parking, the structure is visible from the street.

Effect on the Listed Building

11. The significance of the listed building derives from its elegant form, proportions and detailing, which are key characteristics of Georgian properties of this type.
12. The pergola has a utilitarian design. This, combined with the use of unrefined materials and the proportions of the structure are at odds with the elegant design of the listed building. Moreover, the structure is sizeable and visually strident in an open area to the side of the listed building and appears rudimentary and visually jarring in contrast with the building's finer detailing. Its siting in such close proximity and its functional design detract from the setting of the listed building, and so harms its significance.
13. In view of the above, the proposal fails to preserve the setting of the Grade II listed building known as 'Lisle House and Wellesley Court Hotel', contrary to the expectations of the Act. However, the harm does not amount to substantial harm under the terms of the Framework. I must therefore consider this harm in the context of the public benefits, which I will do below.

Effect on the Conservation Area

14. Due to its basic form, unrefined materials and absence of finesse or detailing, the pergola appears rustic and inelegant. It does not reflect the grandiose qualities of buildings or features within this part of the CA, nor appear as if it were designed with regard to such.
15. Though the pergola affects a relatively small part of the CA within a functional space and is often partially obscured from public view by cars, I do not regard this as sufficient justification to overlook the significant mismatch between the quality of the structure and that of the host building and surrounding, high quality environment. The suggestion that the space was previously overgrown and unkempt is not reflected in the evidence and of itself does not justify this harmful structure in any event.
16. I therefore conclude that the proposed development has neither preserved nor enhanced the character or appearance of the Central Conservation Area, contrary to the expectations of the Act. For these reasons, the proposal also conflicts with Policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS).
17. As with the listed building, under the terms of the Framework the harm to the significance of this heritage asset is 'less than substantial'. Paragraph 202 of the Framework sets out that less than substantial harm should be weighed against the public benefits of the proposal. I return to this below in my planning balance.

Living Conditions

18. The pergola is situated towards a back corner of the site, enclosed by high, brick boundary walls and is not visible from ground level from the adjoining lane, though neighbouring dwellings have views from first floor level over it.
19. Whilst the pergola inevitably increases the amount of people and activity within the relevant part of the site, given the built-up nature of the area, I do not consider that any harmful overlooking occurs.
20. The pergola and the moveable furniture placed within it provides an increased capacity to offer al fresco drinking and dining, with an ability to accommodate around 24 seated guests. Whilst it is within the grounds of a licenced premises which has outdoor space for drinking and eating, the area previously available for such was limited to a small area in front of the building. The pergola is much larger, is in a different location and is capable of being made more comfortable during inclement weather through the use of patio heaters and foliage or covering for the roof. This could lead to an increase of its use during the later evening hours, creating harmful noise and disturbance.
21. Whilst I note the suggestion that a condition could prevent the use of the pergola beyond 2100 hours, in reality, this would be onerous on the premises to manage and, should anyone raise complaints about its misuse, even more difficult for the Council to enforce.
22. In view of the above, the development harms the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It therefore conflicts with Policy SL1 of the Cheltenham Plan (2020) and Policy SD14 of the JCS which together seek to ensure that developments do not harm the living conditions of neighbouring residents.

Other Matters

23. I have considered the prospect of conditions being used to mitigate the harmful effects of the proposal. The suggested conditions of the Council include a plans condition, though in the absence of any elevation plans, there would be insufficient certainty that what has been constructed would remain without further alteration. Furthermore, notwithstanding that six Cypress trees appear to have been planted against the rear boundary wall, I do not have confidence that any other landscaping, including the hanging and trailing plants proposed, would mitigate the harm from the development to the appearance of the area, particularly given the likely seasonality of such.
24. I note the reference to a lapsed permission for an additional bedroom wing building on the site of the pergola. Though I have limited details on which to base my findings, the appeal proposal is very different in nature to a substantially constructed bedroom wing and, consequently, any such permission that may have existed does not lead me to an alternative conclusion in this case.

Planning Balance and Conclusion

25. The proposal harms the living conditions of neighbouring occupiers and is incrementally harmful to the significance of both the listed building and the CA. In these regards, the proposal conflicts with the development plan when

considered as a whole. Whilst these harms are less than substantial, they are nevertheless of considerable importance and weight.

26. The appellant refers to the impacts of the COVID-19 Pandemic on the hospitality trade and the need to provide outdoor spaces for guests as a measure of business sustainability and safety for patrons. The appellant also refers to significant public benefits, through additional employment or likely additional guest expenditure as a result of the proposal, but I have limited evidence about how such effects have been forecast or their value. I am also not satisfied that the appeal proposal is the only means to secure such outcomes. The public benefits of the proposal are therefore minimal, and do not outweigh the identified harms.
27. In view of the above, and having regard to all other matters raised, including by supportive interested individuals, the proposal does not accord with the expectations of sections 66(1) or 72(1) of the LBCAA, the development plan or the Framework. The anticipated benefits do not lead me to a conclusion that a decision should be taken other than in accordance therewith.
28. Consequently, the appeal is dismissed.

Hollie Nicholls

INSPECTOR