



Appeal Decision

Site visit made on 26 April 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/T0355/C/21/3284003

The Crown, High Street, Bray, Maidenhead SL6 2AH

- 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 James Lee against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 6 September 2021.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a marquee structure within the curtilage of a listed building, attached to outbuildings associated with the public house, with facilitating metal support poles, ground anchors and two timber structures used as entry/exit points.'
 - The requirements of the notice are:
 - a. Remove all the fixtures and fittings, including (but not limited to) bolts, wires and ropes from the outbuildings and then remove the marquee structure from the land, identified in the appended images marked EE1, EE2, and EE3.
 - b. Remove the fixed metal poles and ground anchors from the land, identified in the appended images marked EE4, EE5 and EE6.
 - c. Following compliance with step 1, repair any defects in the wall areas using workmanship and materials to match existing. Mortar repairs should be undertaken in a lime-based mortar to those areas of early soft red brickwork.
 - d. Demolish and remove from the land the two timber structures used as entry/exit points and identified in the appended images marked EE7.
 - The period for compliance with the requirements is two 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a marquee structure within the curtilage of a listed building, attached to outbuildings associated with the public house, with facilitating metal support poles, ground anchors and two timber structures used as entry/exit points on land at The Crown, High Street, Bray, Maidenhead SL6 2AH referred to in the notice, subject to the following conditions:
 - 1) The marquee with facilitating metal support poles, ground anchors and timber exit/entry structures hereby permitted shall be retained for a limited period being the period of 12 months from the date of this decision.

- 2) The marquee with facilitating metal support poles, ground anchors and timber exit/entry structures hereby permitted shall be removed from the land within 12 months of the date of this decision.
- 3) Any damage caused by the fixings of the marquee or their removal to the walls of the existing building following compliance with condition 2, shall be repaired in a mortar to match the material, texture and colour of that to the surrounding brickwork within 13 months of the date of this decision.

Appeal on ground (a)

Main issues

2. The site lies within the Metropolitan Green Belt and as such the main issues are
 - Whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan.
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade I (Jesus Hospital) and Grade II (The Crown) listed buildings and the extent to which it would preserve or enhance the character or appearance of Bray Village Conservation Area.
 - Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other considerations and , if so, whether there exist very special circumstances that justify the development.

Planning Policy

3. The development plan includes the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations Adopted in June 2003). The most relevant saved policies are GB1, GB2, CA2 and LB2.
4. Policy GB1 seeks to protect the Green Belt from inappropriate development. Policy GB2 resists new development or the redevelopment change of use or replacement of existing buildings with the Green Belt if it would have a greater impact on the openness of the Green Belt or the purposes of including land within it than an existing development on the site and if it would harm the character of the countryside.
5. Policy CA2 requires development in a conservation area to enhance or preserve the character of the area and to retain any building and the protection of views that contribute to the distinctive character of the conservation area. It requires proposals for new buildings and extension or alterations of existing buildings to be of a high design standard which is sympathetic in terms of siting, proportion, scale form height materials and detailing to adjacent buildings. It resists the use of inappropriate synthetic materials and require the use of traditional materials and to resist development of any site which forms an important open space within a conservation area.

6. Policy LB2 deals with proposals affecting listed buildings or their settings. Having special regard to the preservation of listed buildings and their settings. Any works or alterations to a listed building or buildings within their curtilage are required to make use of appropriate traditional materials and techniques and be of a high standard of design. Proposals must not adversely affect the grounds and/or setting of listed buildings.
7. Paragraph 219 of the Framework explains that due regard with should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan to the policies in the Framework the greater the weight that may be given. In the light of the lack of a balancing exercise I find that Policies CA2 and LB2 are not fully consistent with the Framework.
8. The emerging Borough Local Plan 2013-2033 Submission Document (2017) has not yet been found sound. As such the weight to be attached to its policies are limited. I have considered the appeal on this basis.

Reasons

9. The appeal site is located on Bray High Street within the Bray Village Conservation Area. The Crown is a grade II listed building in use as a public house. There are various outbuildings situated behind the public house beyond which is the marquee and garden area. There is also a large hard surfaced car park to the north and west. The site is within the Metropolitan Green Belt
10. There are a mix of residential, business and commercial uses within the High Street. To the north is a terrace of modern flats with integrated garages which abuts the site boundary with the rear wall bordering the car park. To the south lies the grade I listed Jesus Hospital building.
11. Planning permission was granted in 2017 for an open sided external kitchen, log cabin bar laying of paving and erection of fencing. The marquee extends over the kitchen area and the fencing/gateways are adjacent to the marquee.
12. The appellant is seeking planning permission, on a temporary basis of one year, for the retention of the marquee.

Whether the development is inappropriate development in the Green Belt

13. While the reasons for service of the Notice do not refer to whether or not the development is inappropriate the Council state, in its statement, that the development is inappropriate development in the Green Belt and it fails to preserve the visual and spatial openness of the Green Belt. The appellant considers that the marquee could be either an extension or alteration of a building as an extension to the garaging block or as limited infilling of previously developed land.
14. The Notice alleges operational development. The marquee is attached to the garage building and as such is an extension or alteration to that building. The marquee is tucked behind the existing garaging block and is subservient to the structures on the site. While I do not have details of the floor areas or volumes of the existing buildings on the appeal site, the marquee is of limited area and height, sitting behind the garage block, incorporating the previously consented kitchen area and includes the provision of seating/tables for customers. In my judgement, the marquee is not a disproportionate extension to the building to

which it is attached. I also note it is viewed within a wider collection of structures on the site. As such, I consider that it is not a disproportionate extension and is therefore not inappropriate development in the Green Belt.

15. Following the judgement in *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404, if a development is found to be not inappropriate it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt.
16. Impact on openness is not expressly stated as a determinative factor in gauging inappropriateness in relation to extensions to buildings under paragraph 149(c) and, as such, there is no requirement to assess the impact of development on the openness of the Green Belt.

Character and appearance

17. Bray is a village situated on the banks of the River Thames. The architecture is of varied style and proportion. The local vernacular includes use of traditional materials and building construction including black and white timber framed buildings. The village has grown from its medieval origins with later development towards the north and the river in the 20th century.
18. The grade I listed Jesus Hospital, constructed in 1627, dominates the southern entrance to the Conservation Area. It comprises a series of almshouses of red brick constructed to house the aged poor of Bray with a chaplain's house and chapel. The well maintained gardens of Jesus Hospital enhance the setting of the building and part of the garden separates it from The Crown.
19. The grade II listed The Crown has post-medieval origins and is located within the village core on a principal route into the village. It is one of a number of timber framed buildings in the area with black and white painted finishes and is an important part of the local vernacular. The late Victorian ancillary range is of limited architectural and low historic interest. The more modern garage block has no heritage significance.
20. The marquee is located within the garden area of the public house, beyond the modern garaging and part of the access drive. It is attached to the rear brick wall of the garaging block. The appellant states that the attachments can be removed, and the area made good with no loss of historic fabric. Most of the garden area remains open with the marquee being contained directly to the rear of the modern garaging. It is of similar height and scale to the ancillary buildings it is sited behind, and as a result appears subservient to the principal listed building, The Crown.
21. There are limited views of the top of the marquee along the entrance drive between the public house and housing which face the High Street. It is not legible as a marquee due to the location behind existing built structures. Within the site of The Crown, in views from the car park or garden area, the marquee is seen within views of The Crown. In this limited view, it does appear as a modern intrusion. Albeit it is not a dominant structure on the site.
22. Inevitably the marquee in both form and appearance does not reflect the other built structures on the site, appearing as a lightweight functional addition. The highest points of the marquee structure are also glimpsed from the public realm along the High Street between buildings. In this respect there is some

limited harm to the setting of The Crown. The form of the structure and materials are also contrary to Policies CA2 and LB2.

23. I viewed the Jesus Hospital grade I listed building from the public highway at my site visit. Photographs within the appellant's Heritage Appeal Statement show the Jesus Hospital grade I listed building and its setting. The northern garden of Jesus Hospital has a series of modern timber sheds lining the boundary to The Crown. There are views of the blank side elevation with plain rendered wall and two chimneys in a tile roof above. Glimpses of both the ancillary buildings and the tips of the marquee are also seen. However, in my view, the marquee, due to its separation and intervening timber sheds, has no adverse effect on this part of the setting of the Jesus Hospital. I conclude that the marquee does not have an adverse effect on the setting of the grade I listed Jesus Hospital from within the grounds and thus its setting in this context is preserved.
24. There are no long distance views of Jesus Hospital and the marquee in public views along the High Street due to the boundary wall and features of Jesus Hospital and the intervening buildings on the appeal site. However, I accept that there are occasional views of the top of the marquee in some gaps between buildings from the public realm. In my view, the marquee does not harm the wider public realm setting of Jesus Hospital. As such, I conclude that the setting, as a whole, of Jesus Hospital is preserved.
25. Due to the discreet siting of the marquee structure, it does not detract from the character or appearance of the Conservation Area, despite its functional appearance and non-traditional materials. The marquee would not be detrimental to the character or appearance of the Conservation area as it has such limited visibility from the public domain and only minimal views from the private domain. The significance of a Conservation Area is dependent upon how it is experienced. Under such circumstances it has been established that proposals must be judged according to their effect on a Conservation Area as a whole and must therefore have a moderate degree of prominence. Given the above I find the marquee is not detrimental to the Conservation Area and thus preserves its significance.
26. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification. Given the form and appearance, including the use of materials, of the marquee from within the site of The Crown, I find the harm to be less than substantial to the setting of The Crown, in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.

Public Benefits

27. The appellant sets out a clear case for the retention of the marquee for one year to support the recovery of the business following the pandemic restrictions. The Crown can currently take 32 covers internally and 72 covers externally in the marquee. Customers currently have a strong preference to

eat in the marquee where they can enjoy a more spacious environment. There are currently 62 full time and part time staff employed. The appellant states 48 jobs could be at risk through the scaling down of operations if the marquee cannot be retained for a temporary period of one year.

28. The appellant also states that inside dining has faced many restrictions over the pandemic and the business has only been able to keep going as a result of the garden marquee. In order to ensure the business remains viable in the short-medium term it is stated that the business needs to maintain its current levels of covers as a means to support economic growth, protect jobs and support the business needs of the pub. The Framework states the planning system should help build a strong, responsive and competitive economy and that account should be taken of putting heritage assets to viable uses consistent with their conservation.
29. The appellant has taken steps to ensure the ongoing success of the business and community asset and in order to futureproof the business he considers it is highly likely there will be a need for permanent changes to the way the business is run over the next few years. He wishes the marquee to be retained for a further period of one year to recover from the loss in trading at the start of the pandemic and allow for consumer behaviours to return to a more usual pattern. The temporary period would also allow a more permanent solution to the restricted dining space to be found including gaining consent and ensuring funds are raised for the project.
30. In my view, it is clear that the business had significant issues relating to the restrictions during the pandemic and that there is a demonstrated need for The Crown to recover from this difficult trading period to ensure a viable use is maintained in this grade II listed building. The appellant is seeking a 12 month period to seek to recover from the pandemic effects on the business and retain the employment provided by the business. As such, I consider that there are significant public benefits to the granting of a temporary consent. The success of the business would also allow The Crown to be retained in its original use as a public house.
31. Given the above I conclude that, on balance, the public benefits of the proposal in relation to employment, viability of the use and maintaining the public house use of The Crown which is consistent with its conservation, outweigh the less than substantial harm to its setting. This would satisfy the requirements of the Act, paragraph 197 of the Framework
32. While there would be conflict with LP Policies CA2 and LB2 in relation to being sympathetic in form, materials and detailing to adjacent buildings and requiring the use of traditional materials, the harm would also be outweighed by the public benefits set out above.
33. The appellant has sought consent for a temporary period of one year. The assessment of harm has been on the basis of this temporary period and I will therefore impose a condition to limit the developments retention for one year and impose conditions to ensure the building to which the marquee is attached is made good and that the facilitating metal support poles, ground anchors and timber structures used as entry/exit points are removed at the end of the temporary period.

Planning Balance

34. For the reasons set out above, the development is not inappropriate development in the Green Belt, that it would not harm the character or appearance of the area, it would preserve the setting of the grade I listed Jesus Hospital and preserve the character or appearance of Bray Village Conservation Area. In these respects, the development complies with Policies GB1, GB2, CA2 and LB2. While I have found less than substantial harm to the setting of the grade II listed The Crown, the public benefits of the development outweigh this harm. Furthermore, even though there is some minor conflict with Policies CA2 and LB2 in respect of development being required to be sympathetic in form, materials and detailing to adjacent buildings and requiring the use of traditional materials, material considerations nevertheless indicate planning permission should be granted.
35. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Hilda Higenbottam

Inspector