



Appeal Decision

Site visit made on 18 and 19 October 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14/11/2022

Appeal Ref: APP/D5120/W/22/3296924

62 Avenue Road, Bexleyheath DA7 4EG

- 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 Hamad against the decision of the London Borough of Bexley Council.
 - The application Ref 21/01503/FUL, dated 30 April 2021, was refused by notice dated 15 February 2022.
 - The development proposed is outside seating area with retractable roof and sides.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The outside seating area and structure containing the retractable roof and sides has been erected. I am therefore considering the appeal on this basis.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the retail vitality of neighbouring units, specifically No.64 Avenue Road.

Reasons

Character and Appearance

4. The appeal site is located on Avenue Road and forms part of a neighbourhood centre. The centre is made up of retail units lining both sides of the southern part of Pickford Lane and northern part of Avenue Road. Along the northern part of Avenue Road, south of the railway bridge, where the appeal property is located, the retail units on both sides of the road are set back a similar distance to one another creating a strong degree of uniformity as well as a sense of spaciousness. Most of the space between the pavement and shop fronts is used for parking.
5. The appeal property is the end property in a short parade of shops and is in a prominent position on the corner of Avenue Road and Woodlands Road. It is currently used as a restaurant. The outside seating area is positioned in front of the restaurant. It includes a structure containing the retractable roof and sides referred to in the description of the development above, which has been

erected forward of the front elevation of the host building and parade. While I understand that the roof and sides of the structure are retractable and the use of the area is for open-air dining that met past covid restrictions, the structure reads as a permanent front extension to the restaurant.

6. The structure is proportionate to and integrates well with the appearance of the existing restaurant, reflecting the distinct features, style and materials used on its principal frontage. Nevertheless, its significant forward projection undermines the uniformity established by the other retail units within the area. The black frame of the structure is also much thicker than the other black window frames and glazing bars used on the restaurant. This makes the structure, despite it containing a lot of glass, its retractable roof and even if the panels were retracted, appear dominant and permanent. Therefore, while it may be well-designed in isolation, is not within a conservation area and does not extend beyond the sides of the original shopfront, it harms the character and appearance of the street-scene and wider area.
7. I acknowledge that prior to the structure being erected there was already an outside seating area to the front of the restaurant that was enclosed by panelling set above a brick plinth and included planters around the perimeter of the area, large umbrellas, and a retractable canopy. It may be that this area changed the character of the parade to a degree. However, whether or not it was fully permitted, while it provided some enclosure for customers, it also maintained a sense of openness. It did not have the same degree of permanency as the structure that is now in place. Many of the previous elements that made up the outside seating area, whether temporary or not, were removable and perceived in this way. Therefore, despite them being positioned in front of the restaurant, the principal frontage was retained and as such the uniformity of the front elevation of the parade. I also note that prior to the restaurant, the premises were used as a tyre and battery sales and fitting establishment, and the frontage occupied by vehicles of varying sizes. However, parking to the front of the retail units is more temporary in nature and in keeping with the parade and wider area.
8. The appellant has brought to my attention an example of a similar development, the Giggling Sausage restaurant at No.229 Broadway, Bexleyheath. However, the context of this development is different from the appeal before me. The Giggling Sausage, whether part of the primary shopping frontage or not, is located within Bexleyheath Town Centre, a larger retail area with a different character to the retail area of the appeal site. In Bexleyheath Town Centre there are also a greater number of outside eating areas set forward of the principal elevation, many with a degree of permanence, which vary in their size and appearance. The appellant has also referred to a number of other examples, although the context of these examples is similarly different. Cuore and Blend bar and grill are located within Bexleyheath Town Centre. Jugaad Kitchen and Happy Belly's are located within another larger retail area and along the section of Park View Road where they are located, there is not the same degree of uniformity in the set back of the properties from the carriageway. Therefore, while these examples demonstrate that structures similar to the appeal structure are not uncommon, they do not justify or address the harm I have identified to character and appearance above.

9. Accordingly, for the reasons above, the proposal conflicts with policies ENV39 of the London Borough of Bexley Unitary Development Plan (2004) (UDP), CS01 and CS02 of the Bexley Core Strategy, and D3 and D4 of the London Plan (2021). These seek to protect the quality of the built environment by ensuring development maintains and improves Bexley's suburban character and the local distinctiveness of the surrounding area. Although the Council does not allege a conflict with Policy SHO17 of the UDP, my attention has been drawn to the policy and its requirements for new or replacement frontages to respect the scale, character and design of the individual property or group of properties and area generally. On the basis of my findings above, I find that the proposal would also conflict with this policy.

Retail Vitality

10. When approaching the parade along Avenue Road from the south, the structure obscures the frontages of the other businesses, particularly the neighbouring takeaway at No.64 Avenue Road. Despite the structure containing a lot of transparent glass and retractable roof and sides, I saw on my visit that the thick frame and, when opened, the canopy obstruct any clear view through it. I also recognise that when the seating area is in use the presence of people would further obstruct these views.
11. Therefore, pedestrians and drivers when travelling from the south towards the parade are only aware of the other businesses once they have passed the appeal property and are positioned directly in front of them. Even if vehicles are travelling at slow speeds, drivers have a limited time and distance to identify the shops and services on offer. Given this, even in the absence of any evidence relating to the viability of the neighbouring businesses, the structure is affecting the visibility of them and subsequently their ability to attract customers, particularly the neighbouring takeaway at No.64. I acknowledge that some of the businesses, including No.64, have projecting signs and that the projecting sign for No.64 can be seen above the structure. However, even if illuminated, these do not attract customers to the same degree as a full fascia sign. I also recognise that the outside seating area preceding the current structure restricted views of the neighbouring businesses, although this was to a far more limited degree and the fascia signs were visible.
12. For the reasons above, the structure harms the retail vitality of neighbouring units, specifically No.64 Avenue Road. It, therefore, conflicts with policy CS01 of the Core Strategy, and SD6 and E9 of the London Plan (2021). These seek to enhance the vitality and viability of town centres, and more specifically the role and contribution of local neighbourhood centres.
13. I appreciate that the structure supports the business trading from the appeal property, which in itself accords with these policies, and that the development may serve to draw the attention of passers-by to the restaurant and the parade as a whole. However, this is at the expense of the vitality of other retail units in the parade and does not outweigh this harm or justify conflict with the development plan in that regard.
14. Policy CS02 does not address the effect of development on retail vitality. However, the absence of any conflict with this policy in this regard is a neutral factor in this case.

Other Matters

15. It has been put to me by the appellant that the development is the result of the extraordinary economic circumstances that arose during the Coronavirus pandemic and that they did not receive support from the Council prior to the installation of the structure. I have a lot of sympathy for the appellants situation and for the many businesses that were affected by the Coronavirus precautions that were put in place and I can appreciate that businesses needed to adapt. However, whether or not the Council provided support and notwithstanding the positive comments of the Council's Head of Economic Development, I must consider the appeal before me. I have concluded that the structure causes harm to the character and appearance of the area and vitality of neighbouring businesses. These matters do not outweigh that harm.
16. Third parties have raised other concerns, including the structures effect on highway safety. However, given that I am dismissing the appeal on the main issues I have not considered these matters further as they could not lead me to a different decision.

Conclusion

17. The proposal conflicts with the development plan, read as a whole. It has not been demonstrated that there are any material considerations of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR