



Appeal Decision

Site visit made on 29 November 2022

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/A2335/W/22/3302196

The Owls Nest, Bare Lane, Morecambe LA4 6DE

- 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 Andrew Barker of ALB Enterprises against the decision of Lancaster City Council.
 - The application Ref 21/00884/FUL, dated 9 July 2021, was refused by notice dated 6 January 2022.
 - The development is outdoor seating pods.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form is in the name of 'Barker', but it is confirmed on the appeal form that the appellant is Mr Andrew Barker.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the host building and the area; and
 - The effect of the pods on the living conditions of the residents of the two ground floor apartments of Elms Hall that adjoin the site.

Reasons

Character and appearance

4. The Owl's Nest is a single storey, stone building, which has been partially painted. It has two doorways with prominent stone pediments and a hipped, slate roof, with two distinctive stone chimney pots. The site is on a corner plot with the rear of the building facing Elms Drive and the side elevation facing Princes Crescent and Bare Lane.
5. The building, which is used as a public house, overlooks an extensive car park. This has been subdivided by wooden planters leaving an area used for parking adjacent to the vehicular access. The seating pods and a number of wooden picnic benches are sited the other side of the planters. Further picnic benches are located immediately in front of the public house in an area separated by a low stone wall.

6. The largest section of seating contains ten pods and is located to the front of the timber fence that separates the public house car park from 'The Elms', a three-storey apartment block to the rear. Separate to this is a smaller and higher pod or shelter, with no fixed seating, which has been referred to as 'the bandstand', as it has apparently been used for live music and bands.
7. Whilst timber is not a typical material in this location, the largest row of pods is sited against the backdrop of a high timber fence. The pods, which have a flat roof, are not considerably higher than the fence, therefore appear in proportion to their position within the car park. Each pod is only open at the front and has an inbuilt table and parallel benches, so that there is a consistency in the design of the structure. The proposal is also located in a former car park. This is a large open area, which with its wide access, appears oversized in relation to the adjoining, low built, public house. Therefore, the car park in itself does not enhance or contribute to the character of the host building or the area.
8. The single pod, 'the bandstand', is higher, not enclosed, and because it is side onto the adjoining road, is more visible than the larger pod. It appears as an obtrusive element in the area demarcated for the beer garden, particularly when set against the traditional stone boundary wall to its rear. This contrasts with the row of ten pods, which because of their lower height, their setting against the background of 'Elms Hall', and that they are built into the corner of the site, with some distance between them and the public house, they appear subservient to both 'Elms Hall' and to 'The Owl's Nest'.
9. The Council considers that the pods harm the character of the area. However, approaching the site from various locations along Elms Drive, Princes Crescent and Bare Lane, the structures are largely only visible when directly opposite the entrance to the site. Views from this location are also dominated by the three-storey building, 'Elms Hall'. Furthermore, the timber used in the largest pods has faded over time and so now blends in with the stonework of the surrounding walls and host building and has a recessive appearance within the site.
10. Therefore, for the reasons above I conclude that the ten seating pods do not harm the character and appearance of the area and the host building. However, also for the reasons above I conclude that the individual seating pod, the 'bandstand' causes harm to the character and appearance of the area. Therefore, the development does not accord with both Policy DM29 of the Lancaster District Local Plan (LP) 2011-2031, Part Two: Review of the Development Management DPD, and the Framework, which require development to contribute positively to the identity and character of an area through good design and appropriate siting.

Living conditions

11. 'Elms Hall' has two apartments located on the ground floor closest to the public house. The block is reputed to have been built in 2014 when the 'The Owl's Nest' was operating as a public house and there is no dispute that the timber fence, that separates the two properties, has changed in height or position since 'Elms Hall' was built. I noted, when I visited the site, the position of the windows on the side elevation of 'Elms Hall' and the difference in height of both the fence and the pod building. Both apartments have their kitchen window facing the fence, plus a side window which serves their living rooms. The living rooms also have both an additional window and a French door, located on the

'front' of their apartments, which are on either the front or rear of the apartment block.

12. The outlook for both these apartments has already been constrained by the position and distance of their windows from the existing fence. Whilst the largest of the timber pods has not improved this outlook, it is only slightly higher than the fence. Therefore, there is only a marginal difference in their outlook since this has been built.
13. The Council considers that the pods have led to a loss of light and are overbearing to the apartments. However, the fence would have already reduced light levels, and there is unlikely to be a further loss of light by the construction of this seating pod. Likewise, the only part of the structure that can be seen from the windows of the ground floor apartments is between the top of the fence and the top of the roof of the pods. As this is a minimal difference, the structure would not appear overbearing on the residents of these apartments.
14. The pods are located closer to the apartment block than other seating in the site. However, the enclosed nature of the pods, which have a roof, rear and side walls, separating each individual pod from each other, ensures that any noise levels are more contained, than that possibly coming from the various individual seats and tables located within the former car park. The position of the larger pod, sited adjacent to the boundary fence, also limits views of the structure from the adjoining apartment block.
15. Whilst the site has been subject to complaints regarding noise, the outcome of this is not known and the Council's Environmental Protection Team had no objection to the proposal, although recommended a condition relating to opening hours. Other legislation could also be used by the Council to regulate noise levels at the site. Although there may continue to be occasions when the use of the pods results in a nuisance to adjoining residents, the public house is an established business, and the car park could continue to be used as a beer garden ancillary to the use of the public house. Paragraph 187 of the Framework advises that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
16. Therefore, the pods, within the context of an existing beer garden is considered acceptable on the living conditions of the residents of the two ground floor apartments at 'Elms Hall' that adjoin the site. The proposal would accord with Policy DM29 of the LP which seeks to ensure that there is no significant detrimental impact to amenity, and the advice within the Framework.

Other Matters

17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for development affecting a listed building or its setting, that there must be special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

18. The Owl's Nest is sited close to two grade II listed buildings, The Parks, which is referred to as the Craig Convalescent Home for Children in the listing description, and The Lodge. Both buildings are reputed to date to c. 1840 and originally consisted of a large house with an attached lodge. These buildings have hipped slate roofs, like The Owl's Nest, and The Lodge also has imposing stone chimneys. Both these buildings are significant to the history and development of 'Bare' at the time of their construction. The position and architectural character of 'The Owl's Nest', located at the road junction, contributes to the overall setting of these buildings. However, the proposed pods which are sited within the public house car park, are relatively low in height, and largely hidden by the public house itself, do not affect the setting of these buildings. This is in part because the car park and the structures within it are seen against the backdrop of the three-storey building 'Elms Hall' which runs along the boundary, rather than any wider setting or viewpoint. Therefore, the proposal would not harm, but would sustain the setting and significance of the nearby listed buildings in accordance with the Act and chapter 16 of the NPPF.
19. Despite the concerns of neighbouring residents, the space between the rear of the pods and the fence was clear of any debris or material when I visited the site. Whilst concerns have been expressed from adjoining residents about the risk of fire and the effect on their insurance premium, there is no direct evidence that the location of the pods would increase the risk of fire both to the fence or to the flats.
20. Reference has been made to the access gate between the car park and Elm Hall which has now been blocked by the largest of the pods. However, no information has been provided as to whether this was intended for larger equipment or access by the Fire Brigade and what agreement there is between the appellant and 'Elms Hall' in relation to this access.
21. Although there is no plan showing proposed car parking, the Council considers that the reduction in parking is unlikely to create a severe highway impact as there is adequate off-street parking within the surrounding area. However, based on the current subdivision of the car park, there is still a large area of the car park retained, which if properly managed, could provide a number of dedicated car parking spaces.

Conclusion

22. There has been government support for the hospitality industry since the Covid pandemic including changes to permitted development rights allowing temporary structures within drinking establishments. A temporary moveable structure could be larger, higher, and allow more people within them than the existing pods and not provide any sound mitigation. However, whilst the seating pods would provide security for the future of the business, this does not alter my concerns in relation to their overall effect on the character and appearance of the area.
23. I consider for the reasons set out above that the development would not comply with the development plan as a whole. Whilst there are some matters which weigh in favour of the proposal, I do not consider that these are of sufficient weight to outweigh the conflict with the development plan.

24. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR