



Appeal Decisions

Site visit made on 11 January 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2023

Appeal Ref: APP/H1515/W/21/3289441

The Mesken Bar & Grill, 570 Rayleigh Road, Hutton CM13 1SG

- 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 The Mesken Bar and Grill against the decision of Brentwood Borough Council.
 - The application Ref 21/00786/FUL, dated 29 April 2021, was refused by notice dated 13 August 2021.
 - The development proposed is single storey side extension, kitchen ventilation system and glazed screens added to rear veranda.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Brentwood Local Plan 2016-2033 (2022) ("BLP") was adopted on 23 March 2022. Policies of the new plan replace those of the Brentwood Replacement Local Plan (2005).
3. The development proposed has already been carried out. An additional kitchen ventilation system had also been installed by the time of my site visit but, as that addition is not part of the proposal before me, I have not considered it further.
4. Separate proposals for refurbishment of the rear beer garden to include a timber screen, six dining pods and a waiters' station linked by timber boardwalks are also being considered in a separate appeal (ref: APP/H1515/W/21/3289594).
5. I have considered the appeal on this basis.

Main Issues

6. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the openness of the Green Belt;
 - the effect of the proposed development on the character and appearance of the building and the area, with particular regard to the effect of the kitchen ventilation system;

- the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to odour; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

7. The appeal site is a bar and restaurant on the A129 Rayleigh Road, Hutton which runs between Brentwood and Billericay. It accommodates an irregular plot on the northern side of the road, with car parking to the front and west, and a large area described by the appellant as a 'beer garden' to the rear. The building is a hipped roofed building which has been substantially extended from its original form at the front, rear and both sides. The appeal site, and all land in its vicinity, is in the Metropolitan Green Belt.
8. Policy MG02 of the BLP broadly conforms to the general thrust of national Green Belt policy set out in the Framework.
9. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to exceptions as set out in paragraph 149. One such exception relates to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Another exception relates to limited infilling or the partial or complete redevelopment of previously developed land (PDL), subject to certain limitations.
10. As the building has already been significantly extended, the cumulative effect of the development subject to this appeal and previous extensions to the building amount to disproportionate additions over and above the size of the original building. The exception relating to the extension or alteration of the building is therefore not applicable.
11. The Framework does not provide a definition of 'limited infilling or the partial or complete redevelopment of PDL', and it is therefore a matter of planning judgement. The Framework confirms that PDL in this context includes land in a continuing use. However, all elements of the development clearly relate to the extension or alteration of the building, and I am not convinced that any or all of them could be described as limited infilling, partial or complete redevelopment of the land. In any case, even if I had found the development to be limited infilling, partial or complete redevelopment of PDL, in relation to openness I find below that the development has a greater impact on the openness of the Green Belt than the existing development. This exception therefore does not apply to the development.
12. As a consequence, the proposal is inappropriate development in the Green Belt, which is by definition harmful, and substantial weight should be given to any harm to the Green Belt.

Openness

13. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and their permanence.
14. Although it may be relatively small in relation to the overall size of the extended building, the flat roofed single storey side extension is nearly 10 square metres in area, and 3 metres in height. It therefore adds additional bulk to the building and reduces the space between the building and the neighbouring property. While the glazed screens enclosing the rear veranda themselves may not generate significant additional mass, the enclosure of the veranda significantly increases the volume of the enclosed area of the building. Spatially, there is therefore a reduction in openness as a result of the development.
15. Visually, despite the timber fencing, the side extension is 3 metres in height, and is seen from the street, and the neighbouring property. Although it is only a small part of the overall front elevation of the building, it extends its width across the plot towards the neighbouring dwelling. The dwelling and its garden are at a lower level, and the height of the building exceeds the boundary fence. From that location, the extension is therefore seen as a relatively tall structure, closer to the boundary than the remainder of the building. The appellant advises that the glazed screens on the veranda can slide, to provide semi-open-air dining in good weather. Nevertheless, from the rear 'beer garden' their enclosure of the veranda at other times mean it reads as part of the internal area of the building, thereby notably increasing its apparent size. The development therefore visually reduces the openness of the Green Belt.
16. Overall, the development does not preserve the openness of the Green Belt. Unless very special circumstances are found to justify the development, it therefore conflicts with BLP Policy MG02 and Chapter 13 of the Framework, which together seek to protect Green Belt land.

Character and appearance

17. The Council's objection in relation to this issue relates to the kitchen ventilation system. It is a large steel structure with various component parts, which runs along the rear flat roof of the building, and stands a significant vertical height above it. The upper parts of the ventilation system are seen from the road, the car park, 'beer garden', and the neighbouring garden of the dwelling to the east. The hipped roof of the original building affords prominence to its chimneys, and also to the ventilation system.
18. It is a prominent and industrial feature in many views and detracts from the character of the building and the area. It is particularly obtrusive as seen from the neighbouring garden, where its full height and parts of the horizontal components are also seen. From the rear the full length of the horizontal elements of the system are also visible as a steel structure against more traditional building materials, and its vertical element is sited in front of part of a rear dormer window, further increasing its discordant appearance.
19. I agree with the appellant and the Council that a restaurant requires a kitchen extraction system of some form. I also agree that the need for discharge at height means there would be some visibility from the public realm. However, given its form and extent, and prominence on the roof, I am not convinced that

the development is designed and located to have the minimum impact on the public realm. Neither would painting its surface in a dark matt colour be sufficient to mitigate the resulting harm to the character and appearance of the building and the area.

20. The development would therefore conflict with BLP Policy BE14, which requires developments to meet high design standards and deliver safe, inclusive, attractive and accessible places. It would also conflict with Chapter 12 of the Framework which seeks to achieve well-designed places.

Living conditions

21. Interested parties have raised concerns relating to odour and its effects on residents in the locality.
22. The appellants provided a specification of the kitchen ventilation system by Kobane Metal Ltd, and advises it is provided to a high standard. They have also advised that the additional installation (which is not part of this appeal) is a backup system of the same design, and not a modification of the original system.
23. The Council advises that their Environmental Health ("EH") service considered inadequate details of the extraction deodourising system had been provided. The EH response also suggested that the installed system did not appear to be particularly effective at preventing odour from the cooking, and appeared to be causing problems, referencing the nature of the open grill cooking on charcoal undertaken at the premises. Their most recent comments, of 31st May 2022, state that it, "does not appear to have resolved any of the issues relating to odour from the system."
24. As the appellant suggests, the enclosure of the veranda with sliding glazed screens serves as a flexible space. It would provide resilience to the business in the event that highly ventilated spaces are required again, as they were at times as a result of the COVID-19 pandemic. However, it is also a large area, and provides all weather accommodation which could be used for additional internal dining, and was arranged accordingly at the time of my visit.
25. With the information before me, it is therefore likely that the effects of odour on nearby residents would be increased as a result of the additional enclosed space which could be used for additional dining. The Council's EH service advise of outstanding odour issues and the development relates to both the enclosure of the veranda and the kitchen ventilation system installed. The development would therefore not meet the requirements of paragraph 185 of the Framework, which requires decisions to ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health and living conditions.
26. In conclusion, with the information before me the development is harmful to the living conditions of neighbouring occupiers, with particular regard to odour. As a consequence, the development conflicts with paragraph 185 of the Framework, which is described above.

Other considerations

27. The appellant advises that the business has suffered a loss of income in recent years as a result of measures taken in response to the COVID-19 pandemic, and that the development is part of its recovery programme. It also advises that the side extension facilitates greater use of the garden for food and drink, improves staff facilities, provides flexible space as described above, and reduces noise spillage from the veranda towards neighbouring properties.
28. However, the bar and restaurant is a large facility, and from the evidence before me it appears to be a popular venue. I have not seen compelling viability, or other, evidence which would support a particular need for these measures. I therefore attribute a limited degree of weight in favour of the development.

Conclusion

29. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
30. The development is inappropriate development in the Green Belt, and harms openness, to which I must attribute substantial weight against the development. I attribute additional weight against the development arising from the harm to its character and appearance, and living conditions, and the consequential conflict with development plan policies and policies of the Framework. The harm to the Green Belt is therefore not clearly outweighed by the other considerations, and the very special circumstances required to justify a grant of planning permission have not been demonstrated.
31. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that require a decision to be made other than in accordance with the development plan, and the appeal should therefore be dismissed.

Peter White

INSPECTOR