



Appeal Decisions

Site visit made on 24 January 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal A Ref: APP/Z5060/C/21/3285032

Land and premises at Bull Public House, 2-4 North Street, Barking, IG11 8ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Okechukwu Nnadi against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The notice was issued on 23 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a timber canopy structure to facilitate outdoor dining/drinking.
 - The requirements of the notice are to:
 - Remove the unauthorised timber canopy structure.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is three 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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Appeal B Ref: APP/Z5060/W/21/3285030

The Bull (former), 2-4 North Street, Barking IG11 8ET

- 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 Okechukwu Nnadi against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 21/01000/FULL, dated 27 May 2021, was refused by notice dated 2 August 2021.
 - The development proposed is described as 'temporary retention of timber canopy structure to facilitate outdoor dining/ drinking (3-year consent)'.
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Decisions

1. Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.

Preliminary Matters

3. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the considerations in Appeal A are the same as for Appeal B, I have considered the appeals together.
4. The Council stated that the canopy will operate for longer hours than the pub, whereas the appellant stated that the land is used as additional customer space, ancillary to the use of the property. Since the notice does not allege a

material change of use, I have considered the appeals on this basis. Similarly, whilst the Council referred to previous unauthorised developments, those matters are not before me.

5. My attention has been drawn to several policies from the Council's draft Local Plan¹. However, since no explanation has been given regarding their status, including the extent of any unresolved objections to them, I give those policies limited weight in decision making terms.

Appeal A on ground (a) and the deemed planning application and Appeal B

6. The main issues are:

- (i) The effect of the development on the locally listed building and whether the development preserves or enhances the character or appearance of the Abbey and Barking Town Centre Conservation Area.
- (ii) The effect of the development on the setting of the Grade II* listed Curfew Tower and Abbey Ruins, a Scheduled Ancient Monument (SAM).
- (iii) The effect of the development on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance, smoke, and odour, light and waste.

Reasons

Conservation Area and setting of designated heritage assets

7. The appeal site occupies a prominent corner position at the junction between East Street and North Street opposite Curfew Tower and the ruins of Barking Abbey, within the Abbey and Barking Town Centre Conservation Area (ABTCCA). The special interest of the ABTCCA is derived from the town's historic development in relation to Barking Abbey and subsequent evolution into a market town with a thriving fishing industry.
8. The overarching character of the town centre is Victorian and Edwardian with some buildings of the interwar and post-war period. Although there appears to have been some loss of historic features many buildings retain their historic character, including the appeal property, which is a locally listed building. According to the appellant, The Bull dates to the 14th century when it was a guest house attached to the abbey next to St Margaret's Church. Consequently, the appeal property makes a positive contribution to the significance of the Conservation Area.
9. Whilst there appears to be no in principle policy objection to extending the property, the canopy relates neither in terms of scale, form, or design to the property. It is a utilitarian construction which pays no meaningful regard to the architectural form and external materials of the host property or typical traditional buildings in the surrounding area and does not represent high quality design. Consequently, the canopy adversely affects the traditional integrity of the appeal property and does not preserve or enhance the character or appearance of the Conservation Area.

¹ London Borough of Barking and Dagenham Draft Local Plan 2037 Second Revised Regulation 19 Consultation Version (Autumn 2021)

10. Whilst the canopy is not prominent in wider public views, it will be visible from the upper floors of neighbouring properties. In such views, the canopy will appear as a significantly discordant feature. Moreover, I am mindful that the statutory requirement relating to the desirability of preserving or enhancing the character or appearance of conservation areas is not dependent on public views of relevant changes.
11. The town centre and appeal property have a historic association with Barking Abbey and associated buildings. However, in the absence of substantive explanation from the Council, it seems that the setting of Curfew Tower and Abbey Ruins consists of the substantial grounds, Abbey Green, within which they sit. Even if I am wrong, the canopy is located to the rear of the property and is not itself viewed in context with Curfew Tower and the SAM, therefore I consider that it has a neutral impact on their setting.
12. Whilst I do not consider there is specific harm to the setting of those designated heritage assets, I have found harm to the locally listed building and Conservation Area, of which these buildings form a part.
13. Given the scale of the development within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that the National Planning Policy Framework (the Framework) says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
14. Where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits.
15. The appellant contended that the land was previously used for car parking and had a cluttered appearance, and that since the development was completed, the area has become a more vibrant environment that facilitates better engagement with the public realm.
16. There are no details of the previous condition of the land. The development may have added to the vibrancy of the area and be of economic benefit to the business. However, since it has not been demonstrated that the appeal scheme is the only means by which such benefits could be provided, these can only be afforded limited weight.
17. Consequently, the public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation. The development is therefore contrary to Policy HC1 of The London Plan (2021), Policies CP2 and CP3 of the Core Strategy², Policies BP2 and BP11 of the Borough Wide DPD³ and Policies BTC16 and BTC19 of the Barking Town Centre Area Action Plan Adopted February 2011. Together, these policies require high quality design, attractive high-quality architecture, and that development proposals affecting heritage assets conserve their significance. There is also conflict with the heritage protection aims of the Framework.

² London Borough of Barking and Dagenham Planning for the future of Barking and Dagenham Core Strategy Adopted July 2010

³ London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document Adopted March 2011

Living conditions

18. Given the open elements of the canopy and the lack of insulation, its use by potentially large numbers of customers is likely to result in the occupiers of neighbouring dwellings, particularly those broadly east of the site, being exposed to an unacceptable level of noise from people socialising and from coming and going into and out of the main building. Given the operating times, such noise and disturbance extends late into the night when most occupiers should expect some relative peace and quiet.
19. Whilst the land could be used as an external customer drinking area, ancillary to the main operation, with non-fixed covers, the canopy encourages and enables frequent, year-round use.
20. Indeed, the appellant's Acoustic Technical Note (ATN) confirmed that the development has been the subject of noise complaints, and the Council's Environmental Protection Officer considers it would not be suitable to use the space after 2100 as noise and the voices of customers, could give rise to nuisance.
21. The ATN also acknowledged that when the side door to the lounge is opened sound can escape, a concern raised by the Council's Environmental Protection Officer. Additionally, the ATN recognised that noise associated with opening and closing the door is a further source of annoyance for residents.
22. The ATN sets out proposed attenuation measures which include constructing a more substantial wall from the existing timber construction; installing a lightweight 'tunnel' between the pub access door and canopy; installing absorbent panels on the canopy ceiling; and mounting loudspeakers on standalone supports.
23. However, it is acknowledged in the ATN that whilst the proposed measures represent the 'best practicable means' to reduce noise disturbance to residents, it is not possible to predict for sure if these measures would be sufficient to prevent further noise complaints.
24. In any case, even if such measures could be secured by condition, they would not overcome the identified harm to the character and appearance of the property or Conservation Area.
25. Whilst the roof of the canopy has some openings, there is no substantive evidence to suggest that there is a materially harmful effect on the living conditions of neighbouring occupiers in respect of smoke and odour from the use of this area.
26. Light will be largely blocked to neighbouring residential windows by the canopy roof and boundary fence, such that I find no material harm because of light pollution. Further, whilst I note comments about waste, there is no substantive evidence that there has been, since the development was completed, harm from waste.
27. Notwithstanding my findings regarding smoke and odours, light and waste, I conclude that the development has an adverse effect on the living conditions of the occupiers of neighbouring dwellings with regard to noise and disturbance. The development is therefore contrary to Policy D14 of the London Plan (2021) and Policy BP8 of the Borough Wide DPD, which together require development

to avoid significant adverse noise impacts and that existing and future occupiers are not exposed to unacceptable levels of noise from development. It also conflicts with the Framework which seeks a high standard of amenity for existing and future users.

Other Matters

28. Whilst I note comments regarding licensing, since licensing operates under a separate legislative regime this has no bearing on the planning merits of the development.
29. The Council referred to Policies D1, D4, D8, GG1 and GG3 of The London Plan 2021 and Policies SP2 and SP4 of the draft Local Plan, the largely strategic aims of which have no relevance to the detailed considerations in this case. They also referred to Policy DMD6 of the draft Local Plan which relates to householder extensions and alterations and is not relevant to the appeal development.

Conclusion on Appeal A on ground (a) and Appeal B

30. For the reasons given above, the appeal under ground (a) is dismissed and the deemed planning application is refused. Appeal B is dismissed.

Appeal A on ground (g)

31. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant's case on this ground essentially relates to the effects of the COVID-19 pandemic.
32. Undoubtedly the availability of additional space will have aided the business during the exceptional circumstances associated with the pandemic and will be of continuing economic benefit to the business. However, since there is no longer any requirement for social distancing and as it has not been demonstrated that the appeal scheme is the only means by which additional seating could be provided, these matters can only be afforded limited weight.
33. The time period given for compliance within the enforcement notice is to allow for the physical works associated with the notice to be removed. Given the relatively straightforward nature of the construction, I consider the period of three months for the demolition of the canopy and removal of waste materials from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred.
34. The appeal on ground (g) fails.

Conclusion

35. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR