

Appeal Decision

Site visit made on 17 February 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2023

Appeal Ref: APP/Z1510/W/22/3301064

The Pheasant PH, Audley End, Gestingthorpe, Essex CO9 3AU

- 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 Diana Donoghue (The Pheasant PH) against the decision of Braintree District Council.
 - The application Ref 22/00356/FUL, dated 8 February 2022, was refused by notice dated 26 May 2022.
 - The development proposed is new sheltered outdoor seating area attached to existing pub building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The outdoor seating area is in place and, therefore, I have dealt with the appeal on the basis that it involves an application for retrospective permission.
3. The draft Section 2 Local Plan referred to in the decision notice, subsequently was adopted in July 2022. The new plan supersedes the Local Plan Review (2005) and the Core Strategy (2011). Accordingly, I have had regard only to relevant policies from the adopted development plan, which now comprises the Braintree District Local Plan 2013-2033, Section 1 (2021) and Section 2 (2022). I note also that the numbering of the relevant policies has altered from the draft version.

Main Issues

4. The main issues are the effect of the outdoor seating area on the character and appearance of the host building and the street scene; and the effect on the living conditions of nearby residents, with regard to noise and disturbance.

Reasons

Character and Appearance

5. The Pheasant is a two storey detached building in a village setting with residential properties to either side. The opposite side of the road includes a smaller number of dwellings to the north of The Pheasant's position, while an
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open field opposite the public house serves as an additional parking area for it. The surrounding area is open countryside and agricultural land.

6. Church Street includes predominantly detached dwellings of varied age, size and appearance. The dwellings neighbouring and opposite The Pheasant - Beverley House, Rose Cottages and Audley Field - are all relatively modern properties, while the street also includes a number of much older cottages, some of which have Grade II listed status. As such, the character and appearance of the street scene is varied. This is reflected by the appeal property itself, which appears largely to have retained its original two storey built form, but also has more recent alterations in the form of prominent double-glazed windows and modern roof tiles.
7. The seating area is positioned to the side of the building on part of the car park. While prominent within the street scene, it is of limited height and does not extend significantly into the open parking area. As such, it appears subordinate and a proportionate addition to the original building. The flagstone floor and solid wooden construction result in it appearing as a permanent rather temporary or poorly-constructed structure. While the materials used contrast with those of the host building, the structure's overall size and appearance within the varied street scene are not so incongruous or uncharacteristic, particularly given the use of the building as a public house, to result in material harm.
8. Accordingly, for the above reasons, I conclude that the outdoor seating area does not have a harmful effect on the character and appearance of the host building and the street scene. Consequently, there is no conflict with Policy SP7 of the Local Plan Section 1 or with Policies LPP47 and LPP52 of the Local Plan Section 2, all of which require a high standard of design in all new development, including responding positively to local character and context. There is also no conflict with section 12 of the National Planning Policy Framework (the Framework) concerning good design.

Living Conditions

9. Due to the seating area's position, the nearest properties to the north are those with the greatest potential to be affected by its use. The appellant refers to an outside seating area that had previously been in place for many years and I noted at the inspection that there is some seating to the front and side of the building outside the covered area. It is likely that without the current seating area in place, additional outdoor seating would be provided to replace it, as was previously the case. Consequently, an important consideration is whether noise associated with the covered area is likely to be materially different to that generated by use of alternative seating also provided to the northern side of the building.
10. I have had regard in considering this issue to the representations made by interested neighbours. I note in particular that residents of four of the nearest properties to the seated area have raised concerns about noise and disturbance arising from patrons sitting outside the main building. A number indicate that there has been greater noise levels and disturbance since the erection of the seating area. In addition, the Council indicates that complaints from nearby

residents were made to Environmental Health throughout 2021 and 2022 about noise from the outdoor seating area.

11. Noise associated with any outdoor seating is likely to have greatest effect in summer when residents will have windows open and use their gardens for sitting out. Therefore, during the warmer months it might be expected that there would be little difference between noise arising from the existing area or from alternative outdoor seating arrangements. However, the seating area is covered, providing a good degree of comfort, including an outdoor heater, and is a self-contained area where a substantive number of people can congregate. As such, the covered area is likely to be used for longer periods throughout the year than other, unprotected outdoor seating. Moreover, its self-contained form without solid walls or a door, enabling patrons to congregate in a concentrated area, is likely to generate greater levels of noise than might otherwise be the case from other forms of seating. I note that the public house closes at midnight and, therefore, these effects could be apparent to neighbouring residents up to this point relatively late at night.
12. Therefore, taking these findings as a whole, the position and form of the seating area will result in material harm both in its own right and in comparison to an alternative type of uncovered seating, which would be less likely to have the same intensity and duration of use.
13. I acknowledge that the Council's Environmental Health Officer has not objected formally to the appeal proposal and that public houses situated in residential areas are likely to generate some noise that will be experienced by the nearest residents. However, I must consider the appeal on the basis of the specific circumstances and all the evidence from written submissions and the site inspection. In this case, for the reasons given, these matters do not overcome the above findings. Similarly, the fact that any future complaints could be made to the Council's Environmental Health department is not a reasonable basis to set aside findings of material harm.
14. Therefore, for these reasons, I conclude that the outdoor seating area has an unacceptably harmful effect on the living conditions of nearby residents, with regard to noise and disturbance. As such, it is contrary to Policy LPP52 of the Local Plan Section 2 concerning the layout and design of development, which includes the requirement that there shall be no unacceptable impact on the amenity of any nearby properties. It is also contrary to the Framework, which requires development to reflect a high standard of amenity.

Other Matters

15. I have had regard to the representations made by interested parties in support of the seating area and other matters raised by those opposing it. I acknowledge that national and local policies reflect the need to promote and support the rural economy and businesses. I note in this regard that the seating area was originally put in place in response to the Covid-19 pandemic, but there is no further evidence or information with regard to the current viability of the business.
16. I appreciate also that the public house is a long-standing and well-used local facility. However, its proposed permanent expansion in the form of the outdoor seating area must be balanced with the long-term effects in the

particular context. I have no substantive evidence to suggest that the seating area has a harmful effect on parking or highway safety.

Conclusion

17. I have found in the appellant's favour with regard to one main issue, concerning the effect on character and appearance. However, this is not sufficient to outweigh the harm that has been found with regard to the effect on living conditions and the conflict with the development plan. There are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR