



Appeal Decision

Site visit made on 28 February 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Appeal Ref: APP/N4720/W/22/3312654

1 The Avenue Alwoodley, Leeds LS17 7BD

- 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 Mohammad Nikoobazoorad, Café Espresso against the decision of Leeds City Council.
 - The application Ref 22/02932/FU, dated 19 April 2022, was refused by notice dated 29 June 2022.
 - The development proposed is for an outdoor canopy structure for a cafe seating area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have not included reference in the banner heading to the development being a retrospective application because that is not in itself development. However, I was able to see the canopy had been constructed. I have therefore altered the description and determined the appeal accordingly.

Main Issues

3. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - the effect on the living conditions of nearby residents having regard to activity and disturbance; and
 - whether or not it has been demonstrated that the proposal would have an acceptable effect on highway safety, having regard to parking provision.

Reasons

Character and appearance

4. The appeal proposal is sited in a prominent location in front of a unit comprising the appeal business which is a café. The unit is part of a substantial brick building containing a commercial parade at ground floor and two further storeys of residential accommodation above. The building is located on the corner of King Lane and The Avenue. The building is set back from the road behind parking and grassed areas. Other nearby residential buildings on the same side of The Avenue are also similarly set back from the road. As a result, The Avenue is open and spacious, which positively contributes to the character of the area.

5. The canopy structure is detached from the café and sited close to the public footway. There is an access way separating the canopy and the café. Consequently, the canopy appears isolated from the main building. The canopy is also sited forward of the existing consistent building line on The Avenue. The development is readily visible in public views, and above residential hedge boundaries. Due to this and the separation it also infringes on views inwards and outwards from The Avenue. Combined with its position relevant to the adjacent public footway it also appears visually prominent detracting from the open character of the area.
6. The development is within an area of varied architectural character and a mixture of uses. The main part of the canopy is constructed from timber and features a corrugated roof. The lower part of the canopy structure is enclosed by panels showing images of food and drink. The canopy is not fully enclosed, as plastic sheeting is removable, nor is it a high structure. However, its appearance is not unified by these varied materials. Although not in a conservation area, and even when seen in the context of the 3-storey brick commercial and residential building, it appears as an incongruous structure within the context of the streetscene. It would not reinforce the wider existing character and appearance of the area or relate positively to the local environment.
7. My attention has been drawn to the existence of other examples of outdoor seating. The context of the nearby site differs in both overall appearance and relationship with the host building. That canopy is sited against that building and a higher existing residential fence boundary, which already blocks some views. Due to the open character of that structure, it also does not obscure the host building to the same extent, or that of the neighbouring premises as the appeal proposal does. I note the materials used in the opposing outdoor seating area are similar, but I also do not have any evidence before me that other outdoor seating area has been granted planning permission. This therefore limits the weight I can give to this example, and I have judged the appeal on its own merits.
8. I conclude that the appeal scheme unacceptably harms the character and appearance of the area in conflict with saved Policy GP5 of the Leeds Unitary Development Plan Review 2006 (UDP) and Policy P10 of the Leeds Local Plan Core Strategy as amended 2019 (Core Strategy), which seek to ensure that new development delivers high quality design. For similar reasons, the proposal would be contrary to Policy BE2 of the Alwoodley Neighbourhood Plan 2017 – 2028 (Neighbourhood Plan). The proposal also conflicts with the National Planning Policy Framework (the Framework), which seeks to ensure that developments will add to the overall quality of the area and are sympathetic to local character.

Living conditions

9. There is residential accommodation above the appeal café business, with windows facing towards the canopy. There is also residential accommodation on The Avenue, which is separated by another access. As noted above there is an uncovered footway separating the café and the canopy. Activity and disturbance associated with the use would be from the people arriving and leaving, sound from general chatter, raised voices, serving of food, and associated food odours.

10. The canopy would obscure most users when seated and overlooking of living accommodation would be difficult. However, the separation of the canopy from the host building would make the activity between the café and the canopy more apparent. In my view, the activity and disturbance referred to is likely to be noticeable given the proximity to residential properties.
11. To my mind, the opening and closing hours of between 9:30am and 4pm Monday to Saturday would mean that activity would not occur at unsociable hours, which could be conditioned. I am also mindful that outdoor seating may be able take place without the canopy available, and that there is an existing café use. However, the provision of the canopy would make this significantly more likely to occur frequently than without it.
12. I acknowledge the area is busy, and there is associated traffic. It is also within the gift of the appellant to provide such noise surveys and assessments. However, even during the above timeframe, in the absence of evidence in relation to existing background noise levels, I have insufficient information to be convinced that the permanent and more likely frequent use of the canopy would not result in harm to the living conditions of neighbouring occupiers having regard to activity and disturbance.
13. Consequently, the proposal conflicts with Core Strategy Policy P10, and GP5 of the UDP which combined and insofar as they are relevant to the appeal seek to protect the living conditions of neighbouring properties. The proposal would also conflict with Policy EB2 of the Neighbourhood Plan for similar reasons. Nor would it fulfil the requirements of the Framework in chapter 12 which seeks to promote well-being and a high standard of amenity for all.

Highway safety / parking provision

14. The Council's Core Strategy Policy T2, amongst seeking to ensure parking is adequate also requires compliance with current guidelines. Whilst I have not been provided with the Parking Supplementary Planning Document (SPD) the initial response by the Council's Transport Development Service identified a floor area of 37.5 sqm. This is stated as requiring four spaces based on a 1:10 ratio. The appellants consider the increase in area to be 25sqm, which to my mind would lessen the requirement. However, neither party has made it clear which areas of the proposal has been measured and I do not have extensive details about the additional capacity this proposal creates as the plans show an indicative seating plan only.
15. Notwithstanding the above, Policies GP5 of the UDP and BE3 of the Neighbourhood Plan, requires demonstration that on-site parking provision is adequate. The proposal has not reduced the existing level of parking. However, at the time of my site visit, during a weekday morning, the canopy was not being used. Parking spaces in front of the commercial premises were fully utilised. Cars were frequently leaving, and vacant spaces filled quickly.
16. I also observed visitors to other commercial premises in the same building using other nearby car parks. Although there are other car parks around the appeal site, and informal use may occur I have no information or agreements that other private off-street parking areas would be available for use in conjunction with the appeal business.

17. I noted there were no residential parking restrictions on The Avenue, and residential properties had driveways and off-street parking. Nonetheless parking was evident on the highway on The Avenue beyond the double yellow lines, which were in easy walking distance to the appeal site.
18. I do note that there may not have been any substantial parking complaints in the vicinity of the site. Although the appellant states the number of users is roughly the same as before the proposal, nonetheless, it has the potential to increase its capacity and whether customers choose to walk or take public transport cannot be controlled. Therefore, based on my observations and in the context of the busy and well used car parks, it could lead to additional customers and therefore additional on-street parking, albeit at a modest level. Whilst I appreciate my site visit is just a snapshot in time, no evidence been presented as to how customers travel to the café, or what the extent of the existing parking availability is.
19. I note the concerns raised by the Council's Transport Development Service, in relation to the additional parking on The Avenue and potential conflict with other vehicles on the highway. In this context and for the above reasons, it has not been demonstrated that the proposal would not harm highway safety, having regard to the adequacy of parking provision.
20. Consequently, the proposal would conflict with Policy GP5 of the UDP and Policy T2 of the Core Strategy. The proposal would also conflict with Policy BE3 of the Alwoodley Neighbourhood Plan. For the same reasons it would also be contrary to the aims of the Framework which seek to protect highway safety.

Other Matters

21. It has been indicated that aspects of the development could be amended to remove signs, paint the canopy, and use planters. There is insufficient information on the specific details of this to convince me that this would overcome the harm I have identified in relation to the character and appearance of the area.
22. The appellant states they were unaware of the need to apply for planning permission and refers to the Councils assessment, advice, and handling of the application. Whilst the latter element is a matter between the two main parties, neither are aspects which have any bearing on my consideration of the planning merits of this appeal.
23. Whilst the provision of a moveable structure may be permitted development, I find the appearance and nature of the example marquee to be different to that of the canopy. I am not convinced a marquee would fulfil the same function as the canopy or for the same duration. Nor can I be sure based on the evidence provided that such a marquee would fulfil the permitted development parameters particularly in relation to proximity to residential properties and overall floor area relevant to the café. As such this aspect has not been clearly defined. Consequently, I attach limited weight to this aspect.

Planning Balance and Conclusion

24. The appellant has advised that the provision of outdoor seating was a significant investment benefiting the business. The also advise the Coronavirus Pandemic has increased preference in eating outdoors, which adds vibrancy to the area, and is also supported by residents, which is evident from

correspondence and the petition, thus indicating a social benefit. However, the precise extent of these benefits, particularly how it relates to the survival of the business, have not been clearly explained. Therefore, these matters only attract limited weight which do not outweigh the harm I have identified.

25. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no other considerations, including the imposition of conditions that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it.

26. For the reasons given above, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR