



Appeal Decision

Site visit made on 28 March 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 APRIL 2023

Appeal Ref: APP/G5180/W/22/3304723

86-90, High Street, Beckenham BR3 1ED

- 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 Pierluigis Restaurant against the decision of the London Borough of Bromley.
 - The application Ref DC/21/05861/FULL1, dated 17 December 2021, was refused by notice dated 14 February 2022.
 - The development proposed is Planning application for the retention of the existing outdoor seating terrace on the southern elevation of the building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From my visit and on the basis of the evidence before me, the covered outdoor seating area is already in place and therefore the development is retrospective.
3. The appellant submitted an Acoustic Technical Note dated 24 February 2023, which provides details of the installation of a noise limiting device, as part of their final comments on the Council's representations. The Planning Inspectorate's (PINS) Procedural Guide: Planning appeals – England (2022) is clear that all available evidence should be sent to PINS by the appellant with their full statement of case when they make their appeal. Any new information or evidence should only be accepted where it is evident that it would not have been possible to submit it within the prescribed time limits set out in the appeal timetable. In this instance there is no compelling reason why the Acoustic Technical Note could not have been provided with the appellant's full statement of case. Due to its late submission, the Council and interested parties have not had an opportunity to provide comments related to the additional evidence. Consequently, I have not included the Acoustic Technical Note in my consideration of the appeal.
4. As the proposal is in a conservation area (CA), I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

5. The main issues are:

- The effect of the proposal on the character and appearance of the area, with due regard to the location of the site in the Beckenham Town Centre CA; and
- The effect of the proposal on the living conditions of occupiers of neighbouring properties, with particular reference to noise.

Reasons

Character and appearance

6. The appeal relates to a restaurant unit within the ground floor of a three storey building on Beckenham High Street. The application relates to the seating terrace structure that has been built on the southern elevation of the building on an area of existing hardstanding which was previously used for informal car parking and bin storage. The seating area is located within an alley which leads to blocks of residential apartments, known as Rokewood Apartments, located to the rear of the site.
7. Beckenham Town Centre Conservation Area Statement (2020) identifies the CA as the historic core of Beckenham which provides various commercial uses on the High Street, within a mix of building styles dating from the 19th and 20th centuries. The character of this part of the CA and its significance stems from, amongst other aspects, the narrow urban plots with grand terraced developments which are predominantly 3 storeys in height, providing commercial uses on the lower levels and often residential uses on the upper floors.
8. The Conservation Area Statement also identifies that the numerous alleys, yards and slips within the area are representative of historic plot patterns and thoroughfares and provide important views. The alley which the proposal sits within, as well as the other alleys between buildings on this stretch of the High Street, help reveal historic plot patterns within the CA. Consequently, the appeal site positively contributes to the significance of the CA.
9. I understand that the structure was erected under the provision of permitted development rights introduced during the Covid-19 pandemic to enable restaurants to provide outdoor seating areas for customers. As such it is seen as a temporary solution to enable the business to continue functioning viably during extremely difficult times for the hospitality industry.
10. The proposal is visible in a range of views from the High Street, as well as views from the crossroads with Manor Road. Whilst the proposal spans the depth of the building, given its modest height and width it appears as subservient to the host building and does not have a significant visual impact within the streetscene.
11. However, the proposal is constructed using a variety of materials which are not characteristic of the CA. The materials are described by the appellant as a pergola structure with a Perspex roof. I also observed that the sides of the structure used polythene sheeting, and a number of other materials including fencing were evident within the structure. I acknowledge that the structure will be regularly maintained and that its sides will be largely open during the summer. However, the variety of textures and finishes, combined with its temporary and somewhat ramshackle appearance, results in a structure which

- is incongruous within the wider CA and does not visually relate to the host proposal.
12. During my site visit I noted other areas of outdoor seating associated with local businesses. However these did not have large covered structures of a similar design to the proposal. Consequently, the other seating areas are not directly relevant to the appeal proposal.
 13. For the above reasons, I conclude that the proposal, due to its design and incongruous materials harms the character and appearance of the surrounding area and fails to preserve the character and appearance of the CA as a whole. I therefore find that it conflicts with Policies 37 and 41 of the Bromley Local Plan (2019) (BLP) and Policies D3 and HC1 of the London Plan (2021). Amongst other things, these policies seek to ensure that the historic environment is safeguarded from harm, the value and significance of conservation areas are maintained and new development is of a high standard of design which respects local character.
 14. In failing to preserve the character and appearance of the CA, I find that the proposed development, in the words of the National Planning Policy Framework (the Framework), results in less than substantial harm to the significance of a designated heritage asset. In such circumstances, less than substantial harm should be weighed against the public benefits.
 15. It has been put to me that the proposal is integral to the viability of the restaurant, and contributes to the vitality and viability of Beckenham town centre and the day and night-time economy for the High Street. It is popular with customers, providing them with confidence during the Covid-19 pandemic. The principle of outdoor seating in this location is also supported by the Council. Be that as it may, the modest scale of the proposed development leads me to consider that the public benefits would be limited. The benefits do not therefore outweigh the harm I have identified to the CA and the great weight given to the conservation of designated heritage assets. The development therefore conflicts with the provisions of the Framework in relation to conserving and enhancing the historic environment.

Noise

16. There are nearby residential units within Rokewood Apartments, and also on the upper floors of buildings on the High Street. It is common ground that in this case, the use of the external seating area would be a source of noise that could affect the occupiers of the nearby properties.
17. The appellant's Noise Impact Assessment (NIA) prepared by Enzygo Environmental Consultants provided a noise survey and assessment. The baseline noise survey was undertaken between 20.00 hours on Wednesday 1st December 2021 and 00:15 hours on Thursday 2 December 2021, and is said to be reflective of a typical midweek evening dinner service.
18. The Council has raised concerns that the tests did not continue until the weekend, which often includes DJ entertainment, and so did not measure the times which have the potential to be the noisiest. The NIA also acknowledges this and states that a noise survey and assessment of a typical weekend evening, should be reported separately.

19. Whilst DJ entertainment may not take place within the terrace, it seems to me that, music indoors within the restaurant has the potential to be audible outside the premises. The lack of evidence regarding the noise levels generated during the weekend periods, provides uncertainty in respect to the potential disturbance on nearby occupiers, particularly during times that there may be DJ entertainment.
20. The appellant has suggested a condition that would prevent the use of the area until a comprehensive noise survey and assessment, which includes weekend activity, has been submitted and approved by the Council. However, the matter of noise emanating from the premises is a key matter in dispute between the parties, and goes to the heart of one of the main issues in this appeal. In these circumstances it would not be appropriate to require the submission of a detailed noise survey as I cannot be sure that this information would make the development acceptable. Consequently, such a condition would not be reasonable as required by paragraph 56 of the Framework.
21. The appellant has submitted letters of support from neighbouring residents who state that the restaurant is well managed and that they have not experienced noise issues related to the business. A neighbouring business owner also supported the proposal. However, in the absence of a weekend noise survey and assessment, it has not been demonstrated that the proposal does not have an adverse effect on the living conditions of occupiers of neighbouring properties, with particular reference to noise. Therefore, in this respect, it would be contrary to Policies 37 and 119 of the BLP which require that new development respects the amenity of occupiers of neighbouring buildings, whilst requiring the submission of full noise assessments to identify issues and appropriate mitigation measures.

Other Matters

22. I understand that the proposal is sought for a temporary period whilst the appellant undertakes pre-application discussions with the Council regarding the design of a permanent structure. The appellant is keen to provide a permanent solution and suggests that a condition could be imposed to limit the permission for a temporary two year period. Whilst I have sympathy with the appellant that the Council's pre-application period was closed for a period of time, I have identified that the proposal less than substantial harm to the CA, and the temporary nature of the proposal does not mitigate this. Furthermore, in the absence of sufficient information to determine the noise impacts from the proposal, a condition enabling its retention for a further two years would not be appropriate.
23. I acknowledge that both parties agree that some form of structure to cover a seating area in this location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.

Conclusion

24. The proposal harms the character and appearance of the appeal property and the CA and insufficient information has been provided to determine the impacts of noise on neighbouring occupiers. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material

considerations, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR