



Appeal Decisions

Site visit made on 5 June 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

The Bay Horse Public House, 61 - 65 Melford Road, Sudbury, Suffolk CO10 1JS

Appeal A Ref: APP/D3505/C/22/3297211

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Micaela Andrews against an enforcement notice issued by Babergh District Council.
 - The enforcement notice, numbered EN/21/00180, was issued on 24 March 2022.
 - The breach of planning control as alleged in the notice is the development of first-floor roof terrace.
 - The requirements of the notice are:
 - a) Return the roof to a pitched roof rather than a flat roof; and
 - b) remove the French doors which allow access to the terrace from the first-floor room and replace with a sash window as existed previously.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/D3505/W/22/3289391

- 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 Ms Micaela Andrews against the decision of Babergh District Council.
 - The application Ref DC/21/04674, dated 20 August 2021, was refused by notice dated 22 October 2021.
 - The development proposed is the retention of a rear first floor terrace at The Bay Horse Public House 61-65 Melford Road, Sudbury, Suffolk, CO10 1JS.
-

Appeal C Ref: APP/D3505/W/22/3288127

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Ms Micaela Andrews against the decision of Babergh District Council.
- The application Ref DC/21/03958, dated 9 July 2021, was approved on 7 September 2021 and planning permission was granted subject to conditions.
- The development permitted is the retention of existing raised decking platform and shelter.
- The condition in dispute is No 2 which states that: The raised decking platform hereby permitted shall be used as an outdoor seating area and for live music events only. No more than 30 amplified events shall be permitted per year. Music Noise Levels during events, measured as LAeq, 15mins (EN) should not exceed background noise levels

measured as LA90 (WEN) by more than 5 dB when measured at 3m from the façade of residential dwellings.

- The reason given for the condition is to enable the Local Planning Authority to retain control over the development in the interests of amenity.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the substitution of eight months as the time for compliance
2. Subject to the variation the appeal 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.

Appeal B

3. The appeal is dismissed.

Appeal C

4. The appeal is dismissed.

Procedural matters

5. Appeal A relates to an enforcement notice against the development of a first floor terrace. Appeal B relates to the same development and these two appeals will therefore be considered together. Appeal A is proceeding on grounds (a), (f) and (g).
6. Appeal C relates to different development at the same site. Planning permission was granted in September 2021 for the retention of existing raised decking platform and shelter. This permission was, however, subject to a number of conditions. The condition in dispute and subject of this appeal is Condition No 2 that in summary restricts the use, number of times the deck can be used and the levels of noise emitted during events. This appeal will be dealt with separately in the decision letter.

The site

7. The site is an established public house (PH) located to the western side of Melford Road (A31) just to the north of Sudbury town centre. Immediately to the north there is a large restaurant with two storey housing beyond. Further residential properties lie to the south and to the eastern side of Melford Road.
8. Melford Common and the River Stour are located to the rear of the site. The main building is sited close to the frontage with a vehicular side access to a number of outbuildings, the pub carpark and associated garden. From the site visit, it was clear that these residential properties to the north and south, generally have long narrow rear gardens, leading down towards the river.

Appeal A and B main Issues

9. I have had regard to the reasons why the Council issued the notice and refused to grant planning permission. I note that the reason for refusing the planning

application relates primarily to overlooking, although the notice also refers to the character and nature of the surrounding residential development. I therefore consider that the main issues are:

- The effect of the development on the living conditions of neighbouring properties with regards to overlooking; and
- The effect of the development on the character and appearance of the area.

Reasons

Living conditions

10. The roof terrace has been constructed to the rear of the main building at first floor level, with access from the living accommodation. The original pitched part of the roof has been replaced by a flat roof with French style doors replacing the original sash timber window. This gives access to the roof. The terrace is moderate in scale, surrounded by a glass balustrade giving sufficient space for several people to sit. The appellant has submitted that there is a sail canopy to help to prevent overlooking, although at the time of my site visit this was not in use, or apparent.
11. I acknowledge that the appellant may not have realised that the development would require planning permission and accept that it is an attractive feature for those living above the PH. However, from the edge of the terrace I had clear uninterrupted views into the rear gardens of the neighbouring residential properties to the south. These views included those areas nearest to the dwelling, I consider that a greater degree of privacy would typically be expected. There were further views into the rear gardens of the dwellings to the north, although these were reduced largely due to the distances involved.
12. I recognise that there would have been some opportunity for overlooking from the original window. However, the terrace provides more enhanced views and encourages people to sit, or linger for prolonged periods of time. This in turn increases the perception of overlooking and loss of privacy for those residents that are most affected.
13. I accept that there are a number of neighbours who have written in support of the appeal. Nonetheless, it is necessary to consider the development on its own merits, including the potential for the circumstances of neighbours to change and for future residents to have different views and expectations.
14. Overall and for the above reasons, I find that the development causes unacceptable harm to the living conditions of neighbouring residents, through overlooking. The development is therefore contrary to policies CS1, of the Babergh Local Plan 2011-2031 Core Strategy and Policies (2014) (CS) and saved policies CN01 and HS33 of the Babergh Local Plan Alteration No.2 (2006) (LP). These policies seek to ensure that new development is appropriate in scale and form, paying attention to the surrounding environment and is not detrimental to the amenity to those living in adjoining dwellings.

Character and appearance

15. The Council have provided little evidence to support their contention at paragraph 3 of the notice, that the development causes unacceptable harm to the character and nature of the surrounding residential development. The site

is located within an area characterised by a mix of uses, architecture and design. The rear of the main building is unremarkable, with a stepped design and appears to have been extended over the years. The new roof terrace extends across part of the rear elevation at first floor level.

16. From the site visit, the development is not visible from Melford Road. I acknowledge that it would be visible from the rear gardens of neighbouring properties. However, it is fairly modest in scale and even with the glass balustrade, in my judgement it has no detrimental effect on the overall character or appearance of the building, when viewed in the context of this substantial and previously extended building, or the wider area.
17. Consequently, I find that the development has no detrimental effect on the character and appearance of the host building or the wider area. Therefore, I find no conflict with development plan policies.

Appeal A Ground (f)

18. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4) (a)), or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the flat roof is restored to a pitched roof and the French doors are removed and replaced with a sash window.
19. It is the appellant's case that one of the reasons for issuing the enforcement notice was to remove the opportunity for overlooking. She goes on to suggest two options: either permanently fixing the French doors shut; or applying bars or a glazed screen across to the doors to prevent the flat roof from being used.
20. The purpose of the notice is to remedy the breach of planning control. An appeal under ground (f) provides some scope for a solution short of a complete remedy. However, any substituted scheme must be precisely defined.
21. The appellant has suggested permanently fixing to doors closed, although I have no details how this would be achieved. Simply locking them would not, to my mind, provide an appropriate and permanent solution. Furthermore, I have no details about the proposed bars, or glazed screen, to assess whether it would overcome the Council's objections, and how it would affect the external appearance of the building.
22. For these reasons, the appellant has not advanced sufficient details of either proposed scheme to adequately demonstrate how any other lesser steps would fulfil the purpose of the notice. I therefore have no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision to allow part, or parts, of the terrace to remain. The appeal on ground (f) consequently fails.

Appeal A ground (g)

23. Turning to ground (g) the gist of the Council's concerns primarily seems to relate to the loss of amenity brought about by increased overlooking, rather than an intrinsic objection to the appearance of the terrace.

24. The enforcement procedure is intended to be remedial rather than punitive. I have already found no harm to the character and appearance of the host building or the wider area. In light of this, it may be possible for the appellant to explore with the Council whether an alternative scheme would overcome the planning objections, at less cost and disruption than the removal of the French doors and reinstatement of the pitched roof. I therefore find that it is reasonable to extend the period for compliance with the notice, to allow time for further discussions with the Council.
25. For the above reasons I shall vary the time for compliance with the notice from one month to eight months. This should provide sufficient time for an alternative scheme to be explored and any planning application submitted. The appeal on ground (g) therefore succeeds to this extent.

Appeal C

26. To clarify the chronology, the area of decking to the rear of the PH was permitted by DC/19/03550 (the original permission). This permission was subject to conditions, including one that restricted its use to outdoor seating only. A further application was then made to the Council against Condition 2, (DC/21/03958). This application was granted but with a new, but less restrictive condition. This is an appeal directly against that condition, with the appellant seeking to have Condition 2 removed.
27. Therefore, the main issue, for this appeal, is whether Condition 2 is reasonable and necessary, having regard to the living conditions of the occupiers of nearby dwellings with regard to noise.

Reasons

28. Condition 2 of DC/21/03958, stated that 'The raised decking platform hereby permitted shall be used as an outdoor seating area and for live music events only. No more than 30 amplified events shall be permitted per year. Music Noise Levels during events, measured as LAeq, 15mins (EN) should not exceed background noise levels measured as LA90 (WEN) by more than 5 dB when measured at 3m from the façade of residential dwellings.'. The reason for imposing the condition was to enable the Council to retain control over the development in the interests of amenity.
29. In summary, it is the appellant's case that: The deck represents a small part of the available space that could be used for live events; There is alternative legislation available to deal with noise that results in a statutory nuisance; The condition serves no practical purpose; It is not practical to enforce the condition; and the development is acceptable without the condition.
30. Where development is being considered for developments that are likely to generate noise, there are 4 broad types of mitigation: Reducing the noise generated at source and/or containing the noise generated; Where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings; Using planning conditions to restrict activities allowed on the site at certain times and specifying permissible noise levels and; Mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building. Noise can constitute a statutory nuisance and is subject to the

provisions of the Environmental Protection Act 1990 and other relevant law. This includes noise affecting gardens.

31. In this instance the Council has sought to restrict the impact of the use, by limiting the number of events and the level of noise generated through amplified music. This is a less restrictive condition than that imposed by the original planning permission DC/19/03550.
32. From the evidence it is understood that there have been a number of historic complaints from local residents about the noise generated from the site. I am therefore satisfied that the playing of amplified music and the general noise associated with large gatherings of people, even to 2100 hours, has the clear potential to cause undue disturbance to nearby families. Moreover, the appellant has submitted 'no substantive evidence' (noise report for instance) to persuade me otherwise, or to clearly demonstrate why the methodology used by the Council in their drafting of the condition, is in any way flawed or unsound.
33. I do accept that the remainder of the car park and garden are not restricted and thus events could be held elsewhere on the site. Nonetheless, the deck clearly facilitates such events, by providing a focal point with a partially enclosed area for equipment and a suitable viewing surface that avoids interference with the car park. It is clear from the planning history, that the appellant wishes to use this area, for more than just an outdoor seating area. Consequently, it is reasonable to control its use, given the open nature of the deck and its proximity to a large number of residential properties. I am satisfied that the condition is enforceable by the Council.
34. For the above reasons, I find that the effect of removing the condition would result in an unacceptable risk, that the living conditions of nearby occupiers would be adversely affected. Therefore, the condition is both reasonable and necessary. Consequently, I find that the proposal conflicts with Policies CS15 and CS16 of the CS and saved Policy EM20 of the LP, which seek to avoid loss of amenity.

Other matters

35. I acknowledge the difficulties experienced by public houses, through and since the pandemic and the potential benefits of the terrace may bring to future landlords. I have also had regard to the letters from neighbours who have written in support of the appeal. However, these are not sufficient for me to come to different conclusions or overcome the serious potential for overlooking and disturbance that I have identified.

Conclusions

Appeal A

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

Appeal B

37. I have considered all other matters raised and none outweigh the conclusions I have reached. Therefore, I conclude that the appeal should be dismissed.

Appeal C

38. I have had regard to all of the matters raised, but for the above reasons the appeal is dismissed.

Hilary Orr

INSPECTOR