



Appeal Decision

Site visit made on 15 August 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2023

Appeal Ref: APP/U2235/W/22/3308617

The Chequers Inn, Old Loose Hill, Loose, Kent ME15 0BL

- 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 Shaw Cavill of The Tall Guy Ltd against the decision of Maidstone Borough Council.
 - The application Ref 22/502839/FULL, dated 7 June 2022, was refused by notice dated 24 August 2022.
 - The development proposed is a retrospective application for construction of a seating canopy, laying of artificial grass, and new patio and brick wall.
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Decisions

1. The appeal is dismissed insofar as it related to the seating canopy.
2. The appeal is allowed insofar as it related to laying of artificial grass, new patio and brick wall and planning permission is granted for the laying of artificial grass, and new patio and brick wall at The Chequers Inn, Old Loose Hill, Loose, Kent ME15 0BL in accordance with the terms of the application, Ref 22/502839/FULL, dated 7 June 2022, and the plans submitted with it so far as relevant to that part of the development hereby permitted.

Preliminary Matters

3. The application form describes the development in constructional detail. The Council has summarised the wording in its decision notice and this wording sets out the key elements of the proposal. I am satisfied that this wording provides an accurate description and that there would be no prejudice by using this as the description of the development.
4. The application form confirms that the works have been completed and the scheme is to be considered retrospectively. I was able to see the works at my site visit and I have considered the proposal accordingly.
5. The reason for refusal argues, that in the view of the Council, harm is caused by the seating canopy and the new brick wall. The reason for refusal does not raise objection to the laying of artificial grass or the new patio. Based on my site visit, I have found no planning reasons to disagree. While it is argued that the artificial grass does not require planning permission it is specified in the description of the development, including on the application form, and I will consider the appeal on this basis. It is not the role of a s78 appeal to decide the lawfulness in terms of the need for planning permission of a particular element of the works, especially when it has been applied for as part of a development proposal.

Main Issues

6. The main issues are, therefore, whether or not the seating canopy and/or the brick wall preserves or enhances the character or appearance of the Loose Valley Conservation Area¹ and its effect on the setting of The Chequers Inn, a Grade II Listed building.

Reasons

7. The Loose Valley Conservation Area is fairly extensive, and its heritage significance includes the water features and mills within the valley and the traditional and vernacular built form at Loose. Within the Conservation Area is located The Chequers Inn, a Grade II Listed Building. It is in use as a public house. The building has heritage significance including because of its early to mid-17th Century origins, the timber framed and front gable appearance, clay tiled roof, distinctive windows and overall architectural composition. It is an attractive building, forms a focal point within this part of Loose and contributes to the heritage significance of this section of the Conservation Area.
8. Part of the significance of this listed building also derives from its setting. This includes the open, verdant space to the general north, and the frontage within the street scene, in association with Brook House to the south with its front boundary wall and the landscaped garden. Within the site itself, the rear and side of the public house are visible to patrons and the garden area provides space around the building that allows the form of the building, with the various clay tiled roofs, chimneys and painted elevations, to be experienced. Consequently, the pub garden forms part of the setting to the building.
9. In terms of assessing the proposal, I am conscious of the statutory duties in relation to listed buildings and conservation areas. With a listed building there is the duty to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess². For a conservation area there is the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a conservation area³.
10. Within the rear pub garden area, a brick wall has been constructed which subdivides the open space. The wall is not attached to the listed building, is constructed from a brick with an acceptable appearance and the structure is not especially high. Indeed, within this garden area, the wall is about the same height as the tops of the chairs and tables which are sited throughout this space and, as a consequence, the wall is not a particularly noticeable feature. It does not undermine the understanding of the original space, have sufficient prominence to detract from the setting of the listed building nor does the wall adversely affect the character or appearance of the Conservation Area. The wall has a neutral impact upon these two designated heritage assets and is acceptable development.
11. The other element of the scheme which requires assessment is the four bay seating canopy that has been constructed alongside the side boundary wall. It

¹ The reason for refusal refers to the Loose Conservation Area, however, the Conservation Area Map and other details refer to the Loose Valley Conservation Area and therefore this is the name that I have used in this decision.

² Section 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

³ Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

is a fairly substantial structure, constructed from a timber frame, with a metal sheeted roof.

12. The bay closest to the road is quite apparent when viewed from some areas in front of the public house. It may be modest in size compared to the building as a whole, however, the extent of timber in combination with its design, the metal sheeted roof and the end profile of the end bay contrast to a noticeable and discordant extent with the appearance of the front facade of the listed building. Furthermore, this bay of the canopy partially obscures the attractive and distinctive curve of the adjoining boundary wall. As a result, this reasonably prominent end section of the canopy, with its appearance near to the listed building, detracts from the surroundings in which the listed building is experienced and does not maintain the character and appearance of this part of the Conservation Area.
13. The other three bays of the canopy are set back into the site and have little impact on the street scene. However, they are clearly visible within the pub garden area. The shallow sloping roof and roof material are not typical of the design of the more traditional buildings within the surroundings. However, the slope of the roof reduces the bulk of the structure and therefore its impact, and the canopy has the benefit of being lower than much of the rear wall. The roof material is likely to weather and appear less strident in time. The two central bays are largely to the side of the building and have, in themselves, a modest influence on the surroundings in which the listed building is experienced.
14. However, the fourth bay, sited furthest into the garden, extends beyond the rear of the flat roofed and nearest section of the listed building. This end bay is quite prominent from some areas within the pub garden area and, in combination, with the length of the seating canopy and its profile, gives the impression that the canopy as a whole is an overly large and imposing structure when experienced within these surroundings to the main building. This leads to harm, from within the pub garden, to the setting of the listed building and this part of the Conservation Area.
15. Drawing these matters together, in respect of the seating canopy, this aspect of the development detracts from the setting of the listed building and harms the character and appearance of the Conservation Area. The harm to the significance of these designated heritage assets is less than substantial within the meaning of paragraph 202 of the National Planning Policy Framework (the Framework). In accordance with the Framework, this harm should be weighed against the public benefits of the proposal. I agree with the Council that this less than substantial harm is at the lower end of the scale, although two designated heritage assets are adversely affected.
16. The appellant has detailed in the appeal papers the public benefits that arise from the development, and I have taken all these considerations into account. This includes the need for a viable business model for the public house which, like many other hospitality venues, suffered during the Covid-19 pandemic. It is explained that there is support for business development from the Government to encourage businesses and, in particular, this type of commercial enterprise⁴. The canopy has been built without affecting the boundary wall or the fabric of the listed building. It is explained that the open fronted booths, which provide partial protection against unpredictable weather

⁴ For instance, the Hospitality Strategy: Reopening, Recovery, Resilience.

with a roof, lighting and heating plus partitioning between each booth, have been installed so outside service can be provided throughout most of the year but especially through Spring, Summer and Autumn. The appellant explains that the bays comply with the ventilation requirements for outdoor smoking to accommodate those patrons.

17. The canopy provides more opportunities for patrons to sit outside under cover, potentially staying longer and leading to increased purchases of food and drink. This increased revenue in turn helps to support the business and thereby the maintenance of the listed building and its continuing public house use. The public house is an important local facility and makes a worthwhile contribution to the well-being of the local community.
18. There have been no third party objections, although the Parish Council raise concern with the retrospective nature of the proposal, and I note the appellant's comments that the Loose Amenities Association has not submitted any adverse representations.
19. These are important considerations, and the details above are all public benefits that are associated with the seating canopy. However, I am not satisfied that the evidence provides a clear and convincing justification for the need for this size and form of canopy, or that given the extent of other seating inside and out, that the canopy with this size and design is essential to the business model of the public house. I consider that the seating canopy, while it may be considered important, appears to be a reasonably modest element of the overall public house offer such that the public benefits should be attributed limited to moderate weight in the heritage balance in terms of paragraph 202 of the Framework.
20. The Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to an asset's conservation, irrespective of the potential harm to the significance. I have found that the public benefits of the proposal afford limited to moderate weight and, therefore, do not outweigh the harm to the setting of the listed building and to the Conservation Area and their significance which, although towards the lower end of the scale of less than substantial harm, in accordance with the Framework, is required to be attributed great weight. In summary terms, the combined harm to the significance of the designated heritage assets is not outweighed by the public benefits accruing from the seating canopy.

Conclusions

21. In the light of the above analysis, I conclude that the brick wall (and patio and artificial grass) preserves (although not enhances) the character and appearance of the Conservation Area and does not adversely affect the setting of the Listed Building. Consequently, these aspects of the development comply with Policies DM4 and SP18 of the Maidstone Borough Local Plan 2017 (the Local Plan) and the Framework which sets, amongst other things, the policy tests for considering development affecting designated heritage assets.
22. However, for the reasons explained, I conclude that the seating canopy unduly harms the character and appearance of the Conservation Area and unacceptably detracts from the setting of this Grade II Listed Building. The identified harm to their significance is not outweighed by the public benefits of

this part of the appeal development. Accordingly, the seating canopy conflicts with Policies DM4 and SP18 of the Local Plan and the Framework. This element of the works does not accord with the development plan when considered as a whole and material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan.

23. Section 79(1)(b) of the Town and Country Planning Act 1990 allows at a s78 appeal the ability for the Inspector to issue a split decision. I am satisfied that the works for the wall, artificial grass and patio are clearly severable, both physically and functionally, from the seating canopy. Each part has been undertaken and been completed independently of each other. I have considered the various elements of the development separately and found some acceptable and the seating canopy not to be.
24. In these circumstances, I intend to issue a split decision. I will allow the appeal and grant planning permission for the wall, artificial grass and patio and dismiss the appeal for the seating canopy.
25. In terms of any conditions that should be attached to the elements to be permitted, the statutory time limit and a list of the plans are not required as the works have been completed. The Council has not suggested any conditions to be attached to this appeal were the scheme to be allowed. This decision is clear as to what aspects of the development are being allowed and, in particular, that the appeal against the seating canopy is dismissed and planning permission for this element of the works is not granted. There is, therefore, no necessity for this to be detailed as a planning condition.
26. Accordingly, I conclude that the appeal insofar as the works to the wall, artificial grass and patio should succeed. However, for the reasons explained, the appeal against the proposal to retain the seating canopy should be dismissed.

David Wyborn

INSPECTOR