



Appeal Decision

Site visit made on 11 July 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/A1530/W/22/3309263

The Friar Public House, St Christopher Road, Colchester, Essex CO4 0NE

- 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 Tim Adams on behalf of Greene King against the decision of Colchester Borough Council.
 - The application Ref 221452, dated 8 June 2022, was refused by notice dated 1 August 2022.
 - The development proposed is installation of covered structure and pergola along with new floor finishes.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the character and appearance of the area; and,
 - the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Reasons

Character and appearance

3. The Friar is a public house that occupies a large plot on the corner of St Dominic Road and St Christopher Road. The area surrounding the site is predominantly residential and on the opposite side of St Christopher Road is a row of retail units. The frontage of the retail units consists of a large area of car parking which appears to be well used and this would likely be the case throughout the day and night due to the variety of retail units.
4. The residential properties that surround the remainder of the appeal site are mostly detached and have open frontages consisting of gardens or driveways. St Christopher Road and St Dominic Road features mature trees, grass verges and other vegetation which gives the area an open and verdant character and appearance.
5. The Friar has a flat roof and the appeal site has a large frontage that wraps around the public house. The frontage to St Christopher Road is laid to hardstanding and is used for parking. The frontage immediately on the corner and opposite St Dominic Road is a mixture of grass and hardstanding and is used for outdoor seating with several benches in situ. I acknowledge that it is a common feature for public houses to have gardens to the front and side of the

building that are used by patrons. Other than the benches and low picket fencing the appeal site is open which contributes positively to the open character and appearance of the area and provides a break from the hard frontage of the retail units.

6. The proposal includes a pergola and covered structure, both of which would be located on the open frontage adjacent to St Dominic Road. Due to the open nature of the site and its prominent corner position, as well as the land being at a higher level and the lack of similar structures on any frontages nearby, both structures would appear as prominent and discordant features on the street scene.
7. It is also unlikely that the dwellings nearby, or retail units would have a need to require similar structures to those being proposed. While the proposal is designed to be different and more of a feature of a public house, in this case the open frontage contributes positively to the open character and appearance of the area which the proposal would erode.
8. I note the appellant's comments that paraphernalia including heat lamps could be placed without planning permission and that most would be placed inside the covered structures and therefore hidden from view. However, there is potential for these, along with other paraphernalia to be placed alongside and surrounding the covered structures which would draw further attention and therefore worsen the prominence of the proposal.
9. The appellant has proposed to screen the proposal with new planting, however due to the overall height of the proposal and limited planting proposed it would only partially screen the proposal which would not be sufficient to mitigate the harm.
10. I conclude that the proposal would harm the character and appearance of the area. It would be contrary to policies SP7 of Colchester Borough Local Plan 2013-2033 Section 1 North Essex Authorities' Shared Strategic Section 1 Plan (CBLP1) and DM15 of Colchester Borough Local Plan 2017-2033 Section 2 Adopted July 2022 (CBLP2). Amongst other things, these policies seek to ensure development responds to local character and context and enhances the quality of existing spaces.
11. The proposal would also be contrary to Paragraphs 126 and 130 of the National Planning Policy Framework (the Framework) which seek to ensure development is visually attractive and the creation of high quality, beautiful and sustainable buildings and places.

Living conditions

12. The proposed covered seating area and pergola would be close to residential properties, particularly those on St Dominic Road. There is extensive outdoor seating currently provided by benches however the use of this outdoor seating would likely be unattractive in inclement weather as well as darker evenings and at night.
13. The provision of covered seating, which could be heated and lit, is likely to make outdoor seating more attractive in all weather as well as darker evenings and at night. The structures are not enclosed on all sides and therefore the combination of wooden and open sides are unlikely to provide sufficient mitigation against noise.

14. The provision of the structures are also likely to encourage movements between the pub and structures as well as the potential for people to gather around the structures themselves which would worsen any noise and disturbance.
15. I note the findings of the appellants noise survey, however noise was only monitored on a single occasion which was a Thursday between the hours of 17:00 to 23:00. The Council raise some concerns over the methodology of the noise survey, number of patrons that were considered and that it was considered on the basis of neighbouring windows being slightly open.
16. In my view it is likely that the public house would be busier at the weekend and with the proposed covered seating the public house could accommodate in excess of the 40 patrons which the survey was based on. I note that the noise report recommended the use of thick timber and acoustic material however on the basis of the public house being busier on weekends and being able to accommodate more people I am not convinced that this would be sufficient to mitigate the harm.
17. It is also likely that neighbouring occupiers would be using their gardens during warmer summer months and have their windows open which is contrary to the noise survey. Any noise and disturbance from the public house would be more noticeable in these circumstances. For these reasons, I am therefore not convinced that the proposal would not result in unacceptable noise and disturbance to the occupiers of neighbouring properties.
18. I have had regard to the Council's proposed conditions, including the potential for a management plan. However, for the reasons outlined I am not convinced that these would sufficiently mitigate the noise and disturbance from the proposal.
19. I conclude that the proposal would harm the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance. The proposal would be contrary to policies SP7 of the CBLP1 and DM15 of the CBLP2 which amongst other things, seek to ensure that development protects residential amenity.

Other Matters

20. The appellant has suggested that a larger moveable structure could be installed under Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). I note reference is made within the appellant's appeal documents to an existing structure and whilst none was in situ during my site visit, based on the evidence before me it would appear that a covered structure has been in situ previously. In this regard, based on the appellant's identified need for covered outdoor seating and the previous provision of a structure I find there to be a greater than theoretical chance that this fallback would be implemented.
21. While the fallback position could result in a larger structure than both of those proposed by this appeal, it only permits a single structure. A moveable structure, such as a marquee outlined by the appellant is also likely to be open on all sides and therefore maintain the open character. While the open sides would not mitigate noise as much as a solid structure, the nature of a marquee is not as likely to encourage such frequent use, especially in adverse weather.

22. In my view, for these reasons, the cumulative impact of both structures would be more harmful than a single, moveable structure that could be installed with the fallback.
23. I note that the appellant is seeking to build a new trade kitchen to be able to introduce a full cooked food menu, in an effort to make the pub more family friendly. It is sought that the proposal would recover some of the investment involved with this. I also note that the appellant considers that without the kitchen and outdoor seating that the public house might be financially unviable. While I sympathise with the appellant, it has not been shown that the proposal is the only way to ensure the future viability of the site, nor do these matters outweigh the harm I have identified.

Conclusion

24. For the reasons set out above, while I have not found conflict with all the policies drawn to my attention, I conclude that there is conflict with the development plan as a whole. I also find conflict with the Framework. I therefore conclude that the appeal should be dismissed.

D Wilson

INSPECTOR