



Appeal Decision

Site visits made on 30 August and 9 September 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/C4615/W/23/3317470

157 Hagley Road, Dudley, Stourbridge DY8 2JJ

- 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 Xiorouppa against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1500, dated 10 October 2022, was refused by notice dated 6 December 2022.
 - The development is described as change of use from public house (sui generis) to restaurant and bar (E). Conversion of first floor flat into restaurant seating area. Elevational changes to include new windows, including the enlargement of window heights at ground floor, doors, amendments to ground floor outdoor patio area and creation of a first floor roof terrace with glass balustrade and retractable canopy roof over. Installation of replacement extraction external flue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been submitted retrospectively and I have dealt with the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect of the development upon the character and appearance of the host property as a non-designated heritage asset and the local area as an Area of High Historic Townscape Value (AHHTV);
 - The effect of the development upon the living conditions of nearby residents with regard to noise and odour; and
 - The effect of the development upon the safe and efficient operation of the local highway network.

Reasons

Character and appearance

4. The appeal property is a two-storey building located within a town centre location. The building was formerly The Retreat public house which has now been converted into a restaurant.

5. The property is identified as a non-designated heritage asset and is located within the Hagley Road and Oldswinsford AHHTV which contains a concentration of heritage assets and historic features.
6. The property largely derives its significance from its historical interest as a nineteenth century public house that would have been frequented by workmen of local craft and manufacturing industries.
7. The historic pattern of development along Hagley Road is largely intact and the architectural detailing, historic form and significance of buildings is clearly understood when travelling along the road, despite some modern interventions to buildings and pockets of modern development.
8. The appellant's Heritage Impact Assessment indicates that some of the historic architectural detailing that in part contributes to the significance of the building have been removed or replaced. These include replacement of the original sash windows and doors with modern glazing, which also sit in enlarged openings and the removal of architectural features including the triangular pediment and transom lights.
9. Other works to the property have been undertaken including a dark charcoal finish to the elevations, the installation of plant and machinery and the formation of a first-floor terrace enclosed by a tall metal and glass surround and roof canopy.
10. I note that the appellant places importance on their brand identity and the associated colour scheme. However, the colour used is a stark contrast to the surrounding colour palette and draws the eye resulting in an unduly prominent and incongruous feature along the street. Whilst it draws the eye, the dark matt finish also camouflages the architectural detailing and features that have been retained undermining the building's appearance.
11. The appellant has created a first-floor terrace enclosed by a full height surround. On account of its overall form and the materials used it appears as an unsympathetic addition to the host property. It has added significant bulk to the building and is completely out of scale with its proportions. Due to its elevated position the surround is seen in relatively long views along Hagley Road and is very apparent from the public realm resulting in a visually intrusive and discordant feature within the street scene.
12. Whilst the window reveals have been retained the alterations to the apertures and the replacement of historic windows and doors with modern replacements has undermined the historic appearance of the host property. There are occasions where old and new can sit comfortably side-by-side. However, in this instance the modern alterations carried out combined with the loss of historic features has significantly adversely affected the architectural and historical significance of this non-designated heritage asset.
13. The National Planning Policy Framework (the Framework), at paragraph 203, sets out that in weighing applications that directly or indirectly affect non-designated heritage assets a balanced judgement is required having regard to the scale of any harm or loss of the significance of it.
14. I acknowledge that a successful restaurant can be a vibrant component within an area and the use of the premises would add to that, alongside the continued use of a non-designated heritage asset. While these considerations amount to

public benefits that weigh in support of the appellant's case, they do not outweigh the significant harm that I have identified.

15. The appellant has suggested that some architectural features could be painted a contrast colour secured through an appropriately worded condition. These revisions directly relate to the first reason for refusal and in the absence of any details I am not satisfied that they would address my concerns in respect of this matter.
16. In any event the Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals. The guidance is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have therefore determined the appeal on the basis of the plans and information that were before the Council when it made its decision and on which all parties were consulted.
17. Drawing all of the above together I conclude that the development adversely affects the character and appearance of the host property and the area including its historic value contrary to Policies ENV2 and ENV3 of the Black Country Core Strategy (2011) (BCCS) and Policies S8 and S12 of the Dudley Borough Development Strategy (2017) (DBDS) which, amongst other things, require high quality developments which preserve and, where appropriate enhance historic character and local distinctiveness and consolidate or enhance the existing positive characteristics of the AHHTV. It would also be contrary to the Framework.

Living conditions of existing occupiers

18. The first-floor terrace accommodates a large number of covers, providing seating for 48 patrons. The appellant has produced an Acoustic Assessment Report (AAR) which deals with noise from the mechanical plant and that from customers. In terms of patrons the AAR outlines that with the roof closed and no music the terrace could operate at full capacity. With the canopy open only 50% of the terrace could be occupied.
19. I visited the site on a Saturday evening and noise emanating from the extraction flue and noise from diners and music on the terrace was clearly audible from within the surrounding area including The Furlongs. Whilst this is a snapshot in time, I cannot accept that local residents are not subjected to a significant adverse effect from the noise produced at the restaurant.
20. I am not persuaded that the noise levels given in the AAR, being based on the worst case scenario of only 50% use, when the canopy is open, is truly representative of the noise likely to be produced during a busy summers evening, which is also the time when nearby residents are likely to use their gardens or have windows open. I note that the appellant is proposing to close the roof canopy at 9pm each evening. To my mind conditions requiring the canopy to be closed at certain times or limiting the capacity of the terrace are simply unenforceable.
21. Furthermore, such dining activities tend to be intermittent and the uncertain and arbitrary nature of comings and goings and noise levels associated with conversations and patrons dining al-fresco is likely to be more noticeable having an unacceptable impact on the living conditions of existing occupiers.

22. In arriving at this conclusion, I note that there was an outdoor drinking area associated with the public house, previously. This was far smaller and at ground level, such that the noise generated by it cannot be compared to that currently.
23. The mechanical equipment in the form of an air intake and extraction ducting operates during trading hours. The AAR outlines that the noise levels of the equipment is only acceptable with a range of mitigation measures including acoustic lining, modification of the air inlet, increased ducting and use of a silencer. I acknowledge that with all the mitigation in place the mechanical equipment would not cause an adverse impact, subject to ongoing maintenance. As such, if I was minded to allow the appeal I am satisfied that an appropriately worded condition to secure the mitigation measures could be imposed.
24. The appellant has submitted an Odour Assessment (OR) which considers the odour impact from the extraction equipment. The OR concludes that odour levels are within acceptable levels subject to a number of mitigation measures include an Electrostatic Precipitator and a carbon filter. I acknowledge that with all the mitigation in place the mechanical equipment would not cause an adverse impact. As such, if I was minded to allow the appeal I am satisfied that an appropriately worded condition to secure the mitigation measures could be imposed.
25. In light of the above I conclude that the development in respect of the roof terrace adversely affects the living conditions of nearby occupiers in respect of noise and disturbance contrary to DBDS Policies D2 and D5 which, amongst other things, seek to protect the amenity of occupiers of existing buildings and users of the public realm from undue harm as a result of a development by virtue of noise and disturbance.
26. I note the Council have referred to BCCS Policy ENV8 and DBDS Policy L1 in the second and third reasons for refusal, however, I find that with specific regard to this appeal I have given them negligible weight in coming to my decision.

The safe and efficient operation of the local highway network

27. At the time of the site visits I observed that this section of Hagley Road is a busy thoroughfare commensurate to its mixed commercial nature. Parking is prohibited along both sides of the road and the restrictions extend into a number of the side roads including St Mary's Lane which leads to the rear of the premises.
28. Based on the evidence before me the premises offers a takeaway service which is likely to generate additional vehicle movements and short-term parking demand. Whilst some customers may be content to park in the spaces on nearby roads customers are more likely to park as close as possible to the premises to collect their orders.
29. Customer parking would hinder the use of pavements and the road resulting in inconsiderate and indiscriminate parking. Parked and waiting vehicles would impede visibility along the road or cause vehicles to manoeuvre close to oncoming traffic. In my judgement, the adverse impact of the proposed development upon highway safety would be severe.

30. The appellant has advised that the premises is a “dine in” restaurant and is not dependent upon the takeaway service. Consequently, they have indicated that they would be willing to accept a condition preventing a takeaway service from operating and which the Council are amenable to. Accordingly, I am satisfied that this matter could be dealt with through an appropriately worded condition.
31. The appellant indicates that deliveries to the premises take place via the front door rather than from St Mary’s Lane which is a narrow road only wide enough for a single vehicle which is also the sole vehicular access for a number of dwellings.
32. Whilst there is a forecourt and parking spaces in front of the property this area is not included within the redline plan submitted with the application. Therefore there is uncertainty over whether it is available to the appellant for deliveries.
33. In such circumstances the only reasonable option would be to service the restaurant from either Hagley Road or St Mary’s Lane. In both situations delivery vehicles would lead to an obstruction of the highway thereby unduly affecting the safe operation of the highway network and compromising highway safety.
34. The bins are currently positioned on St Marys Lane causing an obstruction of the road and the pavement. The appellant has indicated that the bins could be relocated to elsewhere on the premises, however no further information has been provided. Overall, I am not satisfied that sufficient information has been provided to demonstrate that the development would not unduly affect highway safety in respect of servicing and deliveries and the position of waste bins.
35. I conclude that the proposed development is contrary to Policies BCCS TRAN2 and DBDS S17 which, amongst other things, require developments to provide adequate provision for the managing of delivery operations and the servicing of new business to ensure that they do not result in significant transport implications.

Conclusion

36. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR