



Appeal Decision

Site visit made on 17 October 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Appeal Ref: APP/V1260/W/23/3317831

Cafe India, 33 Seamoor Road, Bournemouth BH4 9AE

- 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 Dilli Haat against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 7-2022-7762-H, dated 14 June 2022, was refused by notice dated 17 November 2022.
 - The development proposed is to create rear single storey extension over existing basement area.
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Decision

1. The appeal is allowed and planning permission is granted to create rear single storey extension over existing basement area at Cafe India, 33 Seamoor Road, Bournemouth BH4 9AE in accordance with the terms of the application, Ref 7-2022-7762-H, dated 14 June 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing number 22-T5532/103 Proposed Floor Plan Rear Conservatory; drawing number 22-T5532/104 Proposed Elevations Rear Conservatory; drawing number 22-T5532/105 Proposed Block Plan Rear Conservatory; and, drawing number 22-T5532/106 Site Location Plan Rear Conservatory.
 - 3) Prior to commencement of any work on site, further details of mechanical and artificial ventilation systems shall be submitted to and approved in writing by the Local Planning Authority. The ventilation system shall be implemented in full as approved prior to the first use of the development hereby approved and retained thereafter.
 - 4) Prior to commencement of any work on site, a refuse management plan detailing the storage of waste within the building and location for collection shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the proposal shall comply with the approved details.
 - 5) Prior to the first use, the extension hereby approved shall be constructed to provide sound attenuation against internally generated noise of not less than 35 dB averaged over the frequency range of 100-3150Hz. The approved works shall be retained for the life of the development.

Preliminary Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application form.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to noise;
 - the effect of the proposal on the existing premises, with particular regard to energy efficiency and usability; and,
 - the effect of the proposal on the storage and collection of waste.

Reasons

Living conditions

4. The appeal property is located within a designated shopping area comprising a commercial use at basement and ground floor with dwellings on the upper floors. The site is adjoined by other commercial properties, some with dwellings above, and a church. Beyond the church to the north-west of the appeal site are further dwellings.
5. The appeal site benefits from an enclosed rear courtyard set over two levels and accessed from the basement. Given the enclosed nature of the courtyard and its location set back from Seamoore Road, the courtyard is generally quiet with limited activity.
6. In light of the quiet nature of the courtyard, the more intensive nature of the proposal, and previous complaint of noise to the Council regarding the existing restaurant, the proposal has the potential to harm the living conditions of nearby occupiers. However, the proposed extension would be relatively small and double-glazed with no opening windows reducing levels of noise audible to residents. Moreover, the restaurant opening hours would remain unchanged and I note the comments from Environmental Health requesting a pre-commencement condition to ensure that the proposal is constructed to provide sound attenuation to a level that would protect the living conditions of nearby occupiers. As a result, and subject to the construction of the extension to provide sound insulation, I am satisfied that noise from the proposed extension would have no greater detrimental impact upon the living conditions of nearby occupiers than the existing restaurant.
7. In addition to the potential for noise from activity within the restaurant extension, on hotter days, and given the lack of windows and natural ventilation, there is also the potential for the inside of the restaurant extension to get hot. In such circumstances, this would necessitate the provision of air conditioning or similar mechanical or artificial ventilation. In light of the lack of details of any such measures, there is the potential for any ventilation system to create noise outside of the restaurant. However, should I be minded to allow

the appeal, in the interests of protecting the living conditions of nearby occupiers, this could be adequately addressed via the imposition of an appropriately worded condition to ensure the submission, approval and installation of any mechanical and artificial ventilation systems prior to the commencement of development.

8. With regard to odour, I note that the existing kitchen is to remain unchanged and that the extraction system would continue to serve the extended restaurant and is not proposed to be altered by the proposal. Moreover, and given the limited number of additional seats within the proposed extension, I have little evidence before me to demonstrate that the existing extraction system would no longer be adequate to serve the extended restaurant.
9. It follows from the above that I conclude that the proposal would not substantially harm the living conditions of nearby occupiers with particular regard to noise, subject to the imposition of appropriate planning conditions. As a result, the proposal would not conflict with Policies CS38 and CS41 of the LP, which, amongst other things, seeks to ensure that development minimises potential pollution by way of noise, that new development is well designed and enhances the amenities of neighbouring residents.

Existing premises

10. The existing basement to the appeal property comprises the kitchen, staff room, staff toilet and stores. The kitchen is served by a rear window, although half of this window is integrated into part of the kitchen extraction equipment. The remaining half of the window adjoins an air conditioning unit, further extraction equipment and directly faces the raised platform forming part of the rear courtyard. As a result, and given the north facing orientation of the window, the kitchen already receives a very restricted level of daylight and no direct sunlight.
11. Whilst the proposed extension would further reduce the daylight that the kitchen would receive, given the already restricted outlook and orientation, the proposal would not result in any significant greater reliance upon artificial lighting or heating. As the remaining outdoor area at basement level would not be used intensively as part of the restaurant, and is already enclosed with restricted light and usability due to the rear raised platform and courtyard walls, the further enclosure of this area would not be harmful to the operation of the restaurant and would result in limited additional reliance on artificial light.
12. As stated above, there is the potential for the restaurant extension to get hot, particularly in the summer months when fully occupied. As a result, the proposal is likely to necessitate the provision of air conditioning or a similar control to cool the temperature of the room. However, given the relatively small area of the proposed restaurant extension, orientation to the north of the host building within an enclosed courtyard providing some natural shading, and link to the main restaurant through double doors, the reliance upon air conditioning or similar temperature control would be very limited in extent and time and would not in itself result in an excessive or unreasonable use of energy.
13. In conclusion, the proposal would not result in a harmful effect on the existing premises with regard to energy efficiency and usability. As a result, the

proposal does not conflict with Policy CS41 of the LP and the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that new development is well designed and achieve sustainable development.

Storage and collection of waste

14. At my site visit I noted the presence of a bin storage area in the shared corridor serving the restaurant and upper floor flats. Alongside the storage area within the basement, there is adequate internal storage space for refuse and recycling to serve the extended restaurant.
15. I note however that the ground floor bin store is not annotated on the plans forming part of the appeal, and that there is limited information accompanying the appeal in relation to refuse storage and collection. In light of this, and given the comments raised by the Council regarding the storage of refuse bins on collection days, if I were to allow the appeal, it would be reasonable and necessary to condition the submission and approval of these details via a refuse management plan.
16. In light of the above, I conclude that the proposal would have an acceptable effect with regard to waste management, subject to the imposition of an appropriate planning condition. As a result, the proposal would not conflict with Policy CS41 of the LP, which, amongst other things, seeks to ensure that new development is well designed and respects the site and its surroundings.

Other Matters

17. Given the partially enclosed nature of the rear courtyard, and full obscure glazing to the appeal proposal, there would be no detrimental overlooking of neighbouring occupiers. It is noteworthy that the Council came to the same conclusion in this regard.
18. I have taken into account the concerns regarding the increased use of the pavement to the front of the premises for smoking, and level of disturbance in the area declining the quality of the area. However, there are a limited number of additional seats proposed within the extension and limited evidence to demonstrate that they would result in a harmful increase in the use of the pavement by smokers or further decline the quality of the area. Moreover, the appeal site is located within a designated shopping area where there are other restaurants and drinking establishments and where an element of activity already takes place.
19. I note the concern from a third party regarding the lack of engagement with neighbours prior to the submission of the planning application. However, this is not a matter which is for consideration in this appeal.
20. The appeal site lies within the Westbourne Conservation Area. As a result, there is a statutory duty as set out in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. In light of the small scale of the extension and the location within an enclosed rear courtyard with very limited views from the public domain, the proposal would preserve the character and appearance of the Westbourne Conservation Area. It is noteworthy that the Council came to the same conclusion in this regard.

Conditions

21. I have had regard to the tests in the Framework in relation to conditions, and the planning conditions suggested by the Council. In addition to the standard time condition, it is necessary for a condition to confirm the approved plans in the interests of certainty.
22. A condition is necessary to ensure the submission and approval of details of mechanical and artificial ventilation for the extension prior to the commencement of work in the interests of protecting the living conditions of neighbouring occupiers. These details are required prior to the commencement of development as they need to be established before construction commences so that measures can be suitably incorporated into the extension.
23. A pre-commencement condition is necessary to ensure the submission and approval of details of refuse storage in the interests of protecting the amenity of neighbouring occupiers and protecting the character and appearance of the area. A pre-commencement condition is required to ensure that adequate storage is designed into the proposal. I have however amended the wording of the condition to ensure compliance with the approved details.
24. A further condition is necessary to ensure that the extension is constructed with suitable sound attenuation in the interests of protecting the living conditions of neighbouring occupiers. I have however amended the wording of this condition in the interests of preciseness and certainty.

Conclusion

25. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR