



Appeal Decision

Site visit made on 27 October 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal Ref: APP/N1730/C/22/3306686

The Frog & Wicket, Eversley Cross, Eversley, Hook, Hampshire, RG27 0NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Mr David Lilley on behalf of Fuller Smith and Turner PLC against an enforcement notice issued by Hart District Council.
 - The notice was issued on 2 August 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised erection of two structures (pergolas) on the Land.
 - The requirements of the notice are to:
 - i. Demolish the two structures (pergolas) (for identification purposes only shown edged and hatched in pink on the attached plan 2); and
 - ii. Remove any materials arising from the demolition of the two structures (pergolas) from the Land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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Decision

1. 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.

The appeal on ground (a) and the deemed planning application

2. The appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought is the erection of two structures (pergolas).

Main Issue

3. The main issue is whether the development would preserve or enhance the character or appearance of the conservation area, including the setting of a neighbouring listed building.

Reasons

4. The site contains a public house (pub) fronting onto the road, with a large beer garden and parking area to the side and rear. It is located within the Eversley Cross conservation area and next to a grade II listed building known as The Cooperage. The immediate surrounding area is predominantly residential with a mix of traditional and newer dwellings, largely constructed in red brick with tile

roofs. The dwellings are mostly set well back from the road with trees and hedges along front boundaries. This gives the area a pleasant and verdant character which is further emphasised by the generous area of open space opposite the site, which contains the village cricket club and a play area.

5. The Eversley Conservation Areas proposal statement notes that in Eversley Cross, development needs to relate more closely to the scale form and setting of earlier centuries if the overall character is not to be seriously diminished. It also notes the need to retain the open views of early buildings. The listing details for The Cooperage note its "red tile roof in 2 ranges with hipped ends" and "half-timber exposed in upper part of east front, and west gable". The west gable of The Cooperage faces directly towards the appeal site.
6. The main pub building, with its painted brickwork and steeply pitched roof, is traditional in appearance. The single storey section to one side and an outbuilding (skittle alley) appear to be later additions but they broadly reflect the design, proportions and materials of the main building and do not detract from its traditional character and appearance.
7. The two structures subject to the notice consist of wooden uprights, bolted to the floor, with wooden cross members and a corrugated metal roof with a single, shallow pitch. One structure is located to the front and one to the rear of the pub building.
8. The structure located to the front of the pub projects forward of the front elevation. On the approach to the site along the road from either direction, medium distance views of the front structure are limited by the bend in the road and a neighbouring hedge. However, in the area around the pub, and when viewed from the open space opposite, the front structure is highly visible from most perspectives and viewed in the same context as the traditional pub building and the neighbouring listed building. The design, scale and materials, in particular the roof, are significantly at odds with the character and appearance of their surroundings. As a result, the front structure is an incongruous and highly prominent element within the street scene which has a detrimental impact on the character and appearance of the pub and the conservation area, as well as the setting of The Cooperage.
9. The structure to the rear of the pub is not visible from the road but is highly visible from the beer garden and car park within the site. Although this is not public land, it is used by members of the public who use the pub facilities. The rear structure, and in particular the roof, is a prominent element in views towards the listed building. Even when viewed within the context of the other pub buildings, the scale, rudimentary construction and basic materials of the rear structure detract from the appreciation of features noted as important in the listing description for The Cooperage, including the red tile roof and half-timber exposed in upper parts of the west gable. As a result, while the rear structure has no impact on the streetscene, it has a detrimental impact on the setting and appreciation of a listed building.
10. There is a public right of way (PROW) running to the rear of the site but it is a good distance from the rear structure. This separation, combined with screening provided by mature vegetation bordering the PROW, means that the rear structure does not have a significant impact when viewed from the PROW.

11. The statutory duties in Section 72(1) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, relate to the preservation of designated heritage assets, and are a matter of considerable importance and weight. The National Planning Policy Framework (the Framework) states that harm to a heritage asset might be defined as 'substantial' or 'less than substantial'. Due to the scale and nature of the development I would quantify the harm to the conservation area and the setting of a listed building as 'less than substantial'. Nonetheless, in finding any harm, I must pay special attention to the desirability of preserving the heritage assets and am required to attach great weight to the identified harm.
12. The Framework requires that where less than substantial harm is found, the harm should be weighed against any public benefits. The pub can be considered a community facility and both local and national planning policy supports the improvement of existing community facilities. Notwithstanding this, any such development still needs to comply with all other relevant policies.
13. Covid 19 undoubtedly had a severe impact on pubs and many face ongoing challenges in ensuring long term viability. I acknowledge that the two structures at the Frog and Wicket provide flexibility and choice for customers and I am informed they have been well used. In their statement the appellant says the structures "make a small positive contribution to the pub's financial viability", but the size of the contribution has not been quantified¹. I have been presented with no substantive evidence which would lead me to conclude that without the structures, the pub would necessarily become unviable. Therefore, on the balance of the evidence before me, I conclude that the structures provide a small amount of public benefit, to which I can attach only limited weight. This is not sufficient to outweigh the heritage harm identified above, to which I must attach substantial weight.
14. The appellant states that the roofs could be removed in the summer. No detail has been provided on how each roof is attached, so I am unable to assess how practical this would be and it would be difficult to ensure in the long term. In addition, and more significantly, the unacceptable visual impact of the roofs would remain for the winter months, so this would not mitigate the harm to an acceptable level.
15. The appellant argues that if the structures have to be removed, they would consider utilising permitted development rights for a moveable structure and this should be considered a fallback position. Schedule 2, Part 2, Class G, of The Town and Country Planning (General Permitted Development) (England) Order 2015, (as amended) relates to the provision of one moveable structure, subject to conditions.
16. The two structures currently on site are fixed and both are next to the boundary with a dwelling. The permitted development rights would allow for only 1 moveable structure which would have to be located at least 2m away from the boundary with any neighbouring dwelling. This would significantly limit the size of any moveable structure which could be located to the front of the pub. The footprint size allowable under permitted development means any moveable structure would have a smaller footprint than the existing structure to the rear.

¹ Including in the extra justification document dated 10th November.

17. Consequently, regardless of potentially being greater in height, any moveable structure possible under permitted development rights would have a lesser impact on the character and appearance of the area than the 2 structures subject to this appeal. Therefore, the harmful impact on heritage assets would be less and so any such fallback does not weigh in favour of the retention of the existing structures which are subject to this appeal.

Conclusion on ground (a) and the deemed planning application

18. I conclude that the development fails to preserve or enhance the character or appearance of the conservation area and fails to preserve the setting of a grade II listed building. Consequently, the development does not comply with Policies NBE8 (Historic Environment) and NBE9 (Design) of the Hart District Council Local Plan 2032 (Adopted April 2020). Together, amongst other things, these seek to ensure that development is well designed, in keeping with local character, and conserves or enhances heritage assets and their setting. In addition, the proposal fails to comply with paragraphs 199 and 202 of the Framework which seek to protect designated heritage assets.
19. The development conflicts with the development plan as a whole and there are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is not granted.

The appeal on ground (f)

20. The appeal on ground (f) is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice requirements in this case seek the total removal of both structures, which is consistent with seeking to remedy the breach of planning control.
21. The appellant has suggested that total removal of both structures is excessive and that lesser measures could be taken. In this case, any measures short of total removal would not remedy the breach, but it is reasonable for me to consider if the suggested lesser measures might remedy the injury to amenity caused by the breach.
22. The appellant has suggested reducing the size of the front structure so that it no longer projects forward of the front elevation of the pub, in accordance with details set out in application reference 22/00740/FUL. This application was refused and no appeal was submitted. Setting the front structure back would reduce its visual impact to a modest extent, but it would remain a prominent and incongruous element within the streetscene and would not sufficiently mitigate the identified harm.
23. Alternatively, the appellant has suggested that the front structure could be removed entirely and just the rear structure retained. As set out above, I find the impact of the rear structure to be unacceptable, so this would not remedy the injury to amenity caused by the breach.
24. I conclude that the steps required do not exceed what is necessary to achieve the purpose of the notice. Accordingly, the appeal on ground (f) fails.

Conclusion

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

H Davies

INSPECTOR