



Appeal Decision

Site visit made on 7 December 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 FEBRUARY 2024

Appeal Ref: APP/G5180/W/23/3322360

14 Royal Parade, Chislehurst BR7 6NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Qemal Kabashi against the decision of the Council of the London Borough of Bromley.
- The application Ref. DC/21/02095/RECON, dated 27 October 2022, was refused by notice dated 8 February 2023.
- The application sought planning permission for the erection of shelter structure to rear garden without complying with conditions attached to planning permission Ref. DC/21/02095/FULL1, dated 16 August 2022.
- The conditions in dispute are Nos 4 and 5 which state that:
 4. *The glazed panels in the western elevation of the proposed structure shall be fixed shut at all times and shall be permanently retained as such (including during non-business hours).*
 5. *The roof louvres and sliding glazed panels in the rear and eastern elevation of the proposed structure shall remain closed after 8pm.*
- The reasons given for the conditions are: '*In order to comply with Policy 37 of the Bromley Local Plan and to ensure a satisfactory standard of residential amenity*'.

Decision

1. The appeal is allowed, and planning permission is granted for the erection of shelter structure to rear garden at 14 Royal Parade, Chislehurst BR7 6NR in accordance with the application Ref. DC/21/02095/RECON dated 27 October 2022, without compliance with condition number 4 previously imposed on planning permission Ref. DC/21/02095/FULL1 dated 16 August 2022 and subject to the following conditions:
 - 1) The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission.
 - 2) The materials to be used in the construction of the external surfaces of the building shall be as set out in the planning application forms and/or drawings.
 - 3) The glazed panels in the western elevation of the proposed structure shall remain shut at all times (including during non-business hours). The glazed panels may only be opened to allow access for essential building and garden maintenance.
 - 4) The roof louvres and sliding glazed panels in the rear and eastern elevation of the proposed structure shall remain closed after 8pm.

Background and Main Issue

2. The appeal site is in use as a restaurant. The shelter structure¹ to which the conditions the subject of this appeal relate has been constructed and was laid out for use as part of the restaurant at the time of my site visit, and this is consistent with the appellant's confirmation in the planning application form that work commenced in October 2022. Submissions from the main parties and from a third party refer to the past use by customers of a patio or garden area at the rear of the restaurant. Whilst I have had regard to these submissions, noting that the shelter structure appeared largely complete and in use as part of the restaurant, and this replaces the former patio area, I have determined the appeal on the basis of the shelter structure being in place and in use as a result of the implementation of planning permission Ref. DC/21/02095/FULL1.
3. I have had regard to the recent judgement² provided by a third party, and I note the responses from the main parties on that judgement following my request for their comments. However, given the circumstances of the case before me, including the conditional grant of planning permission and the subsequent implementation of that permission, I am satisfied that I need not examine further the matter of lawfulness of earlier uses within the appeal site. My focus has therefore been on the effect of the proposal before me.
4. The appellant wishes to extend the time until which windows in the rear and eastern elevation, and roof louvres may be opened from 2000 hours, as originally imposed, to 2200 hours; and to allow windows in the western elevation to be openable to facilitate maintenance. As such, the main issue is the effect that the proposal would have on the living conditions of neighbouring residents in respect of noise and disturbance.

Reasons

5. The appeal property comprises a two-storey end-terraced building situated in the small commercial centre of Chislehurst. The ground floor is in use as a restaurant which, following the construction of the shelter structure, now covers most of the plot. The short terrace within which the appeal site is located contains various commercial uses including another restaurant. However, the southern and western boundaries of the appeal site abut the gardens of the neighbouring dwelling, Walton Lodge, with that dwelling itself being positioned a short distance from the western boundary of the appeal site.
6. The proximity of the shelter structure to the gardens of Walton Lodge is such that, when occupied by customers, significant noise is likely to emanate from this part of the restaurant when the roof louvres and windows are open. Condition 5 allows some windows in the shelter and the roof louvres to be opened until early in the evening. Extending the time until which these windows and roof louvres may be opened to 2200 hours would introduce the likelihood of unacceptably harmful levels of disturbance to the occupiers of Walton Lodge because of noise generated within the restaurant which would be clearly discernible later in the evening. This would be particularly noticeable during the summer months when the neighbouring residents would reasonably expect to be able to relax in their gardens or would be more likely to have the windows in their home open.

¹ Granted planning permission under Council Ref. DC/21/02095/FULL1

² *Owolabi Ariyo v Richmond Upon Thames LBC* [2023] EWHC 2278 (Admin)

7. Notwithstanding noise that may have been generated through the use of a previous patio area in the general location of the shelter structure, or the calculated reduction in such noise as described in the Noise Impact Assessment (17 January 2022) were the shelter structure to be built, that patio area now no longer exists, and no other remaining external space would be realistically useable by customers. Whilst the shelter structure would have the effect of reducing noise associated with the previous use of the external space to the rear of the restaurant by customers, this does not equate to the proposal being acceptable, nor is this in itself a justification for allowing development that would be harmful in its own right to neighbouring residents in respect of noise and disturbance.
8. Accordingly, condition 5 meets the requirements for conditions set out at paragraph 56 of the National Planning Policy Framework (December 2023) (the Framework) in that it is necessary, relevant to planning and to the development permitted, enforceable, precise, and reasonable in all other respects.
9. Condition 4 requires windows in the western elevation of the shelter to remain permanently closed. The proposal seeks a variation to that condition to allow access through the windows to the outside of the building for general and garden maintenance. I saw that the planting strip between the side elevation of the shelter and the western boundary of the site is very narrow and there appeared to be no feasible means of access to this space.
10. Given that it is unlikely that maintenance would be undertaken while customers are in the premises, and the extent of maintenance activities is likely to be minimal having regard to the size of the structure and the size of the narrow planted strip, it seems unlikely to me that allowing access to the external space via the windows for these purposes would result in harm to the neighbouring residents through noise and disturbance.
11. I note the concerns expressed by the Council and others that enforcement of a condition allowing periodic opening of the windows in the western elevation would be problematic. However, I disagree that this would be the case. A condition in the form suggested by the appellant could be enforced on apprehension of any breach. Harm associated with such a breach would ordinarily be brought to the attention of the Council by any aggrieved party and, in general with enforcement investigations, evidence could be collected demonstrating the terms of such a breach were one to occur. I therefore give little weight to the assertion that a modified condition in the form suggested by the appellant would be unenforceable.
12. For the above reasons, whilst I have found that condition 5 meets the relevant tests in the Framework, I also find that condition 4 as proposed to be modified would meet those tests and I have seen no compelling evidence that the variation to condition 4 would be harmful to the living conditions of neighbouring residents in respect of noise and disturbance. Condition 5 and the revised condition 4 would also comply with Policies 37 and 119 of the Local Plan³ which expects development to respect the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by noise and disturbance.

³ London Borough of Bromley Local Development Framework Local Plan (January 2019)

Other Matters

13. Interested parties contend that the proposal would affect the setting of a Grade II listed building, Walton Lodge, and the site is in the Chislehurst Conservation Area (the CA). I note also that the Council states that the appeal property is a locally listed building. Thus, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and section 72(1) of the Act I have paid special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses, and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
14. The Council found that the shelter structure would cause no harm to designated and non-designated heritage assets. From my observations during my site visit and having regard to the nature of the proposal before me, I see no reason to disagree with the Council's conclusions on this matter. The proposal would not harm the setting of the listed building and it would preserve the character of the CA and would therefore accord with the requirements of sections 66(1) and 72(1) of the Act. The proposal would also not harm the significance of the appeal site as a non-designated heritage asset.

Conditions

15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant, albeit with minor alterations which remove the opportunity for the Council to agree variations to plans and materials since this may have the effect of circumventing the statutory routes to vary conditions, thus depriving third parties of the right to comment.
16. As the development has started, it is not necessary to impose a condition requiring commencement within a set period. I have imposed conditions in respect of the approved plans and materials to be used in the development in the interests of certainty and to ensure protection of the character and appearance of the area. A condition controlling the opening of windows in the western elevation is attached, as is a condition limiting the opening of windows in the rear and eastern elevations and opening of the roof louvres, in order to protect the living conditions of neighbouring residents.

Conclusion

17. For the reasons given above and having had regard to all matters raised, I allow this appeal and grant a new planning permission subject to the revised conditions as set out in my decision above.

David English

INSPECTOR