



Appeal Decision

Site visit made on 11 March 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/N4720/W/23/3335672

35 King Street, Drighlington, Bradford BD11 1EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr B Kidger against the decision of Leeds City Council.
 - The application Ref is 23/04831/FU.
 - The development proposed is described as 'covered seating area to front and rear with covered walkway to side.'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in relation to this appeal are the effect of the proposed development upon i) the character and appearance of the host building and wider area and ii) the living conditions of neighbouring residents, with particular regard to noise and disturbance, and odour.

Background

3. Retrospective planning permission was refused by the Council in 2020 for the erection of an external canopy on the side elevation of the appeal property and the siting of 2 gazebos to the front and rear of the site¹. The reasons for refusal related to the effect of the proposal on the character and appearance of the host property and wider area, and upon the living conditions of neighbouring residents. This decision was subsequently upheld on appeal². A further appeal was also upheld in 2022, in relation to the issuing of an enforcement notice for the removal of these structures and the restoration of the land to its former condition³. It is unknown whether the enforcement notice has been complied with in full. However, the proposed development seeks to reintroduce the canopy and gazebos, which at the time of my visit were not in situ.

Reasons

Character and Appearance

4. King Street comprises a mixture of commercial and residential developments. The location is urban in nature but of a neat and pleasant character. The appeal site contains a detached 2-storey building currently occupied as Romano's restaurant/pub. It is constructed of stone with a largely symmetrical

¹ Planning application reference number 20/05454/FU.

² Appeal ref APP/N4720/W/21/3270753.

³ Appeal ref APP/N4720/C/21/3282516.

façade and attractive architectural detailing including mullioned windows and corbelling. As a historic building of some stature and high-quality materials, it contributes positively to the character of the area, despite the visually cluttered outdoor drinking and dining area to the front.

5. An open sided gazebo would be sited within the front courtyard, in the same position as previously refused⁴. Whether or not the proposal is something that could reasonably be expected within the frontage of a restaurant, due to its form, scale and position on an area of raised decking, it would result in a conspicuous structure visible above the existing boundary enclosures. Sited to the side it would partially obscure north-easterly views of the host building, albeit to a localised degree.
6. Other stone or brick buildings within the street scene are sited at the back edge of the pavement, such that there is some variety to the building line. However, their presence and position does not in my view justify the provision of an open sided timber structure, forward of the host building.
7. There is limited evidence as to the appearance of the site before. Whilst it is suggested that the removal of a reed fence and some pot plants has improved the appearance of the forecourt, I observed that the numerous signs, pots, water feature, timber shelter and differing types of fencing nonetheless present a chaotic forecourt. Given that the proposed gazebo would be viewed in connection with this remaining paraphernalia, the current appearance of the site would not offer suitable mitigation for the harm generated. Instead, it would exacerbate the cluttered appearance and would fail to respect the character and quality of the building it would serve. There is no compelling reason to take a different view to the findings of the previous Inspectors⁵.
8. Although adding to the visual clutter around the host building, the proposed front gazebo due to its siting and scale would largely screen the side canopy and rear gazebo from external vantage points, such that they would not in themselves cause harm to the character and appearance of the area.
9. I find no harm arising from the proposed side canopy and rear gazebo to the character and appearance of the wider area. However, the proposed gazebo to the front of the appeal site would be harmful to the character and appearance of the host building and the wider area. The proposal therefore conflicts with Policy P10 of the Leeds City Council Core Strategy 2014 (CS) and saved policies BD6 and GP5 of the Leeds Unitary Development Plan, Review 2006 (UDP). Together these policies seek to ensure that new development respects the scale, form, detailing and materials of the original building and is appropriate to its context.

Living Conditions

10. The appeal site is said to have been in use as a commercial establishment notably a public house, since the 1800's. The appellant contends that unreasonable restrictions should not be placed on an existing business as a result of recent new housing development nearby. However, dwellings now form the context of the appeal site and the appellant wishes to add new

⁴ Planning application reference number 20/05454/FU and appeal reference APP/N4720/W/21/3270753.

⁵ Appeal references APP/N4720/W/21/3270753 and APP/N4720/C/21/3282516.

development, such that any proposals requiring planning permission, need to consider the impact on the amenity afforded to neighbouring occupants⁶.

11. Indeed, paragraph 191 of the Framework advises that planning decisions should ensure that new development is appropriate for its location, taking into account the likely effects of pollution on living conditions. In doing so, it goes on to state that development should mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impact on health and the quality of life.
12. The restaurant/pub already has outdoor eating areas to the front and rear, a fact acknowledged by both of the previous Inspectors. However, it is not clear whether the restaurant can legitimately use all of the land around the building for outdoor dining, particularly the area immediately adjacent to the boundary with No 1⁷. Nonetheless, it is not for me to make a determination on the lawful use of the land as part of this appeal.
13. I am advised that there are no restrictions on the hours of use of these outdoor areas and acknowledge that noise generation from patrons eating, drinking and talking outside could already occur. The premises licence would also permit opening late into the evening/early hours of the morning, including the performance of live and recorded music.
14. A 'management plan' seeks to positively address concerns highlighted by the previous Inspectors. Measures proposed include limiting the use of the external seating areas after 9pm Sunday-Thursday and 10pm Friday and Saturday, with no piped music, bins not emptied between the hours of 9pm and 8am and the provision of designated smoking and non-smoking areas⁸.
15. Notwithstanding these measures, the provision of gazebos and a canopy would enable patrons to spend more time outside in the evenings and in more inclement weather than is currently possible. The sound of patrons drinking and talking would be very audible to neighbouring occupants, given the proximity of No.1 and its neighbour to the rear, to the proposed location of the structures. This would particularly be the case when the outdoor seating area is at capacity and voices are raised to counter the background level of conversation, passing traffic, or due to the consumption of alcohol. This would be especially distracting and disconcerting to nearby residents who are likely to feel uncomfortable in their home as a result. Restricting the hours of use for the outdoor area would still enable people to congregate in proximity to No 1 at a time in the evening, when the occupants should reasonably expect the quiet enjoyment of their home, or children may be sleeping.
16. Any loud noise and/or unreasonable behaviour would rely on swift intervention by staff. Prompt action may limit the impact on surrounding residents, but by the time such measures are taken, disturbance will have already been experienced by the neighbouring occupants. Thus, I am not convinced that such measures would be effective even with trained staff.

⁶ As set out in Policies GPS5 and BD6 of the UDP and Policy P10 of the CS.

⁷ Figure 4 of the appellant's statement of case, although blurred indicates a driveway between the front outdoor eating area and No.1.

⁸ As set out in paragraph 6.4 of the appellant's statement of case.

17. The suggestion that the proposed side canopy would be used as a covered walkway appears to be unrealistic. It would not physically connect to any other structure such that it would prevent patrons from getting wet when moving around the building, which would be the purpose of a covered walkway. There would be nothing to prevent patrons from gathering, nor moving chairs and tables underneath, to obtain shelter if the weather was to change.
18. Although the management plan indicates that areas would be designated for smoking, these are not shown on the submitted plans. Careful control of these areas may be difficult if patrons are not within full and regular sight of staff. Thus, it is likely that smoking in proximity to neighbouring homes and gardens would be injurious to their living conditions.
19. For these reasons, I find the proposed mitigation would not be sufficiently robust or enforceable to prevent the proposal from exerting an adverse effect on the living conditions of neighbouring occupiers for the reasons given above. Consequently, I find no evidence has been presented to justify departing from the findings of the previous Inspectors.
20. The proposal would have a significant and harmful impact on the living conditions of neighbouring residents from increased noise and disturbance, and odour. The proposal would therefore conflict with Policy P10 of the CS and saved Policies BD5 and GP5 of the UDP which collectively seek to protect the living conditions of residents.

Other Matters

21. I note the letters of support from interested parties that suggest the covered areas would be a positive addition to the restaurant for patrons. However, support for a proposal does not equate to a lack of harm, and I note that the majority of such representations are made by people living away from the appeal site. I do not doubt that the venue is of benefit to the local community. Nonetheless, that does not justify the harm that would be caused to the living conditions of neighbouring residents or the character and appearance of the area.
22. No information has been presented to demonstrate what benefit the proposed structures would have if any, on the profitability of the business or its future financial viability. It is likely that there are other ways to develop and grow the business that would not generate the harm identified. A split decision is not possible in this instance, given that all of the structures would be unacceptable.

Planning balance and Conclusion

23. I have found there would be no harm with regard to the impact of the proposed canopy and rear gazebo on the character and appearance of the wider area. However, the proposed front gazebo would be harmful to the character and appearance of the host building and the wider area. All of the proposed structures would also be harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. For these reasons the proposed development would conflict with the development plan. There are no other considerations that would outweigh this conflict. Accordingly, the appeal is dismissed.

M Clowes - INSPECTOR