



Appeal Decision

Site visit made on 7 September 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 25th April 2024

Appeal Ref: APP/E5900/W/23/3316640

Unit B3/1, 15 Water Street, London, E14 5GX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Dishoom Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/01672 is dated 23 August 2022.
 - The development is described as the erection of a pergola structure with retractable cover to create external dining terrace, external alterations including installation of awning associated with the restaurant premises and associated signage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposal reflects the fact that the appellant also intends to erect advert signage, however, this is being considered under a separate advert consent.
3. The proposed pergola structure and awning have already been erected. I have therefore determined the appeal on the basis that the development has already occurred.
4. The incorrect reference number PA/22/02433/NC was used in the appeal form, instead of PA/22/01672. The main parties have both confirmed that they have no objections to the determination of this appeal on the basis of the amended reference number.
5. The parties have referred to plans which were attached to an extant planning permission PA/22/02433. The plans for the permission in question were not included in the original appeal documentation, but have since been submitted.
6. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a delegated planning decision report, which, had they made the decision, recommended that planning permission should be refused. In reaching this view, they found that the scheme would not have been in accordance with development plan policies. I have had regard to the report and their recommendation, insofar that it provides clarity in terms of the reasons the Council would have considered had it been able to do so. I have also had regard to further submissions by the parties throughout the appeal process.

Main Issues

7. Taking into account the above background, evidence from the parties and my observations onsite, I consider the main issues are:
- the effect of the proposed pergola on the character and appearance of the building and the surrounding area; and
 - The effect of the proposed pergola on pedestrian connections within the public realm.

Reasons

Character and Appearance

8. The appeal site is outside the Dishoom Canary Wharf restaurant, along a section of the walkway area in front of the building known as Plot B3. The host building is a contemporary high-rise brick building with substantial amounts of glazing at all levels, including the ground floor level. There are large pavements to all sides of the unit providing active external space for the commercial uses and for pedestrians using the space. These characteristics combine to give the street scene a vibrant, modern and spacious feel. Indeed, the host building is part of a group of buildings that incorporate significant amounts of fenestration, that create a pleasant open visual balance.
9. The proposal is to retain a large single storey pergola structure, which provides further seating space for customers within the public realm. It incorporates a metal frame, retractable fabric roof, freestanding adjustable glass screens, and tile clad planters with steel railings at ground level. The sides of the pergola structure are enclosed by further fenestration in the form of floor level glass screens, planters and ceiling level glass panels. The structure is adjacent to an existing landlord kiosk, which functions as an air intake. This kiosk was granted temporary permission and the evidence before is that it will be relocated at a later date. Two additional canvas parasols are located to the eastern end of the restaurant's frontage. The overall area of public realm that the pergola structure would cover would be around 80sqm. Other forms of outdoor seating exist in the nearby area; however, they are not as large or as enclosed as the proposed development. They also generally utilise parasols, as opposed to the pergola which is a permanent structure with a retractable roof.
10. The proposed development extends the dining area of the restaurant to enclose a large section of the public realm, thereby disrupting the permeability of the street scene and the surrounding pattern of development. Although it would be limited in height, the enclosure of the customer seating area behind glass screens and panels creates a clear sense of disconnection from the public realm. While the form of these panels and screens is consistent with the overall rectangular design of the host building, they also have a visually disruptive, divisive, and enclosing effect. As such, it would negatively impact the open character of the street and obstruct views towards the adjacent water space and Union Square, thereby eroding the sense of spaciousness of the public realm. It also obscures the frontage of the host building, eroding the open glazed design through significant levels of massing which is incongruous in scale in comparison with other similar seating areas in the area. The appeal development would also be very readily apparent from the public domain, such that it would have a discordant presence on the street scene.

11. In reaching this view, I have considered the fact that the pergola creates a visually welcoming entrance to the restaurant, while providing an active front seating area for customers. I recognise that the pergola increases the visibility of the restaurant, however, in the absence of such a structure I am not persuaded that the restaurant would become unacceptably obscured. While the service kiosk does have an unusual visual effect on the appearance of the local area, it is not significantly large enough to block the sightlines of the restaurant from the public realm. Accordingly, the proposed development would have a harmful effect on the appearance on the local area, which is characterised by buildings with a lower ratio of outdoor seating areas and wide-open spaces. The increase in built form would erode the spaciousness of the appeal site and surrounding pavements in so doing, would have a detrimental effect on the area's generally open character.
12. I have considered the use of planning conditions. A condition to secure the use of space is not likely to be sufficiently precise or enforceable. Any alteration of the space would substantively alter the arrangement of the pergola, which would result in a fundamental alteration of the proposed layout and require the submission of new plans. Additionally, this alteration would prejudice the interests of parties who have not had the opportunity to be consulted. Finally, such a condition would be contrary to the Procedural Guide¹ which states that the appeal process should not be used to evolve a scheme. A condition to restrict the use of the pergola to visitors, would not make the development acceptable in terms of the appearance. In any event, I am not persuaded that these conditions would be precise, necessary or enforceable and thus they would not make the development acceptable in planning terms.
13. There is an extant permission² for the erection of a smaller pergola structure with retractable cover to create external dining terrace, external alterations including installation of awning associated with the restaurant premises. The appellant's case is that the extant permission would form a realistic fallback position should this appeal be refused, and thus that a substitution of development should be consequently allowed, since they both permit the construction of a pergola and external dining terrace. There is no information before me which contradicts the appellant's case that they would not pursue this permission if necessary. Thus, there is nothing before me to indicate that the implementation of this permission is not a realistic possibility.
14. However, the extant permission would only enable the construction of the pergola to a much lesser depth. In comparison, the proposed development would approximately double the amount that the pergola extends into the street. Consequently, the increased forward projection would result in a structure that is appreciably larger in scale, as it significantly increases the arrangement of seating towards the front. As such, there would be a significant intensification of the visual impact of the pergola. These differences would be clearly visible from the front but would be moderately obscured by the kiosk from the side. However, both parties agree that the kiosk is a temporary structure and accordingly, it is not unreasonable to consider that it would be removed at a later date. The extant permission would not have the same visual effect on the appearance of the street scene and the surrounding area, as it would be more limited in size and occupy less public space. Accordingly, when

¹ Paragraph 16: Procedural Guide – Planning Appeals – England (2024)

² Reference number: PA/22/02433

considering the lower visual effect of the pergola as a smaller structure, the extant permission is not sufficiently comparable to the proposed development as to justify it.

15. I have also considered the use of a temporary consent for the pergola structure to tie in with the kiosk's removal, however, this would not make the development acceptable in terms of the issues identified above.
16. In conclusion, the proposed development would harm the character and appearance of the building and the surrounding area. It would not respect and positively respond to its context and landscape, contrary to Policy S.DH1 of the Tower Hamlets Plan 2031. Additionally, the proposed development would not positively contribute to the public realm, contrary to Policy D.DH2 of the Tower Hamlets Plan 2031.

Public Realm - pedestrian connections

17. The pergola is located in a public area that is currently open and provides a pleasant pedestrian environment. This area also serves as a crucial connection between Union Square, the adjacent waterspace and Canary Wharf, making it an important location for foot traffic.
18. The pergola reduces the depth of the public realm by around 8.8m, however, the distance from the pergola to the edge of the pavement would remain over 3m. As such there remains a significant amount of space available for pedestrians to pass and repass. Despite the location of the kiosk and the pergola, it was noted during the site visit that there was no significant alteration of passage for pedestrians or pedestrian desire lines.
19. By reason of this corner location, the appeal site does not impede primary pedestrian flows along the footway. Although the appeal site is located at a junction between two roads, the pergola itself would not interfere with pedestrian desire lines along the footway. This is due to the low levels of pedestrian traffic which navigate this corner and the broad width of the footways in the surrounding area.
20. In conclusion, the proposed development would not obstruct users of the public realm to the detriment of convenient pedestrian connections. It would create a well-connected and integrated space and maintain existing public routes, in compliance with Policies S.DH1 and D.DH2 of the Tower Hamlets Plan 2031.

Other Matters

21. I have considered representations made by Canary Wharf Management. Notwithstanding that the proposed development deviates from the Canary Wharf planning strategy, there is no evidence before me that this unit would be incapable of being let if the proposed development did not reach approval. I recognise that the proposed development partially obscures the kiosk, functions as a windbreak and is constructed from sympathetic materials. However, these considerations do not overcome the harm that I have found on the main issue of character and appearance.

Conclusion

22. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in

accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR