



Appeal Decision

Site visit made on 27 March 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16.05.2024

Appeal Ref: APP/U3935/W/23/3328226

Kioki, 28 High Street, Swindon, Wilts SN1 3EP

- 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 Alan Mok of Fare888 Ltd against the decision of Swindon Borough Council.
 - The application Ref is S/22/1369/AMMY.
 - The development proposed is extended bar/nightclub opening hours (Wednesdays - Sundays & Bank Holidays 11am to 6am), erection of single storey rear extension, rear store with mechanical plant equipment, enclosure of existing rear outdoor terrace with new roof, changes to shopfront and front windows, and installation of plinth and 2 no. statues to front.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the application the Government published a revised National Planning Policy Framework (the Framework). Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I have referred to the provisions of the Framework below, I have done so with numbering from the revised version.
3. I have taken the description of development in the banner heading above, from the decision notice as it more accurately reflects the proposal. I have removed words that do not relate to acts of development.
4. At my site visit I saw that works have already been carried out, however I have determined the appeal on the basis of the development applied for and the submitted drawings.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the building and the area, including the Old Town Conservation Area (CA);
 - the effect of the proposed development on the occupiers of 26 High Street (No. 26) with particular regard to outlook and light; and

- the effect of the proposed development on highway safety.

Reasons

Character and appearance

6. The appeal site includes a 2.5 storey building in use as a nightclub. It fronts the High Street and has a large flat roof extension at the rear where the plot adjoins a service and parking area. The site is surrounded by commercial uses and the area exhibits considerable variety in terms of both the types of buildings and their uses.
7. The site is located within the Old Town CA. I therefore have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
8. The CA is based around the streets which form the historic core of the Old Town. The CA is characterised by a mix of land uses and old buildings interspersed with more modern development. It derives its significance from its historic street pattern and the architectural and historic interest of many of the buildings within it. Architectural details of individual buildings add to the interest and significance of the CA.
9. The appeal building is of traditional design and proportions and is prominently located adjacent on High Street. It adds to the interest and character of the CA through its use of materials, hipped roof dormer windows and distinctive lintels at ground and first floor. Therefore, the appeal site makes a positive contribution to the CA.
10. The windows on the front elevation of the building have been changed from a design consisting of a series of small panes, to large panes of glass. The multipaned windows added to the interest and character of the front elevation of the building. By comparison the replacement glazing is featureless and bland and is incongruous in the context of the traditional design of the building and the characterful architectural features. There are fully glazed windows within the adjacent building at 26 High Street. However, this is not a positive example which should be replicated.
11. The fully glazed central door has replaced a non-traditional door, however it results in a large, featureless opening which, in combination with the glazed openings to the side, creates a ground floor elevation which is dominated by glazing. This does not respond to the traditional design of the building and appears incongruous in this context.
12. The awning has been installed on the front elevation of the building and extends the majority of its width. Because of its positioning between the ground floor windows and their lintels it visually separates these features and partially obscures them from view, resulting in harm to the character and appearance of the building. This harm is not lessened by the fact that the awning is 'temporary' and could be removed at any time. During my site visit I noted some examples of awnings elsewhere within the CA, however none of these were positioned between a window and its lintel and therefore are materially different to the appeal proposals.

13. The head-shaped statues on either side of the front door occupy a prominent position on the front elevation. Because of their overall size and scale against the relatively modest proportions of the host building the statues appear excessive in scale and overly dominant, thereby detracting from the character and appearance of the building and the area. The butcher statue on Wood Street is located to one side of the shop front to which it is associated and is a singular statue. As such it is not overly dominant in comparison with the appeal scheme.
14. To the rear of the site is an existing parking and servicing area from which the structure is visible, however beyond this immediate context views of it are limited. The area to the rear of the building has been enclosed by installing a corrugated plastic roof, with timber elements to the side and rear elevations including a timber store/plant room. The structure has been positioned between existing flank walls of adjacent properties and is similar in height to the pre-existing rear projections at the appeal site, therefore it does not appear overly prominent or incongruous in terms of its siting.
15. Although the materials used in its construction are relatively utilitarian, corrugated material and timber fencing are both apparent within the locality and therefore they are not alien in this context. As such this element of the proposals does not have a harmful effect on the character or appearance of the building or the area.
16. Despite my conclusions in respect of the rear extension, the other elements of the proposal result in harm to the character and appearance of the building. Consequently, because the building is a positive feature of the CA, the proposals fail to preserve or enhance the character or appearance of the CA as a heritage asset.
17. As required by paragraph 205 of the Framework, great weight should be given to the conservation of a designated heritage asset, irrespective of the amount of harm identified. In this case the proposal would lead to less than substantial harm to the significance of the CA. In such circumstances, paragraph 208 of the Framework states that the harm should be weighed against the public benefits of the proposal.
18. The nightclub undoubtedly contributes to the local economy. However, whilst I acknowledge that the statues constitute part of the branding of the business, I am not convinced that these are critical to its success or that customers could not be attracted to the venue in ways which are less harmful to the CA. Therefore, I consider that only very minor public benefits can be attributed to the proposal to which I attach little weight. Likewise, there is little evidence that the works are necessary to ensure the viable use and maintenance of the building. Given the great weight that must be attached to the conservation of heritage assets, I conclude that the public benefits of the proposal do not outweigh the harm.
19. I conclude that the proposal would have a harmful effect on the character and appearance of the building and area, and the Old Town CA. The proposal would therefore conflict with Policies EN10 and DE1 of the Swindon Borough Local Plan 2026 (Adopted March 2015) (LP) and relevant paragraphs of the Framework which seek to ensure that development achieves a high standard of design and that where it affects heritage assets, it preserves or enhances their significance.

Effect on occupiers of No. 26

20. The property to the north of the appeal site is in use as offices at first floor. An existing window is located within the flank wall of No. 26 which looks onto the appeal site.
21. The timber structure is built off the existing boundary walls with no new wall or screen in front of the window. I noted during my site visit that a retractable blind has been installed within the appeal site above the window. However, this is not part of the proposal which is before me.
22. The appeal proposal has changed the outlook from this window in that the structure which has enclosed the rear area is now visible from it. However, the supporting framework of the enclosure is formed of relatively slim timber elements, none of which are directly in front of the window. As such this is not overly dominant in views from the window. Due to the opaque nature of the roofing material, views of the sky would be obscured. However, the roof is transparent, and the opposing wall is some distance from the window and as such a similar level of openness in the outlook from this window would remain. Furthermore, it does not significantly block the light reaching it. Given that the window serves an office which is occupied on a temporary basis during working hours and which is served by other windows, I am satisfied that the proposal has not resulted in an unacceptable impact on the occupiers of No.26 with regard to outlook from this window.
23. Concerns have been raised by third parties in relation to increased fire risk, however I have been provided with limited substantive evidence in this regard. Furthermore, concerns regarding party wall arrangements and building on third party land are not matters which are before me.
24. I conclude that the proposal does not result in a harmful effect on the occupiers of No. 26 with particular regard to outlook and light. The proposal therefore accords with Policy DE1 of the LP insofar as it seeks to ensure that development achieves a high standard of design including with regards to amenity.

Highway Safety

25. The proposals include a concrete plinth which has been constructed around the pre-existing semi-circular step adjacent to the front door.
26. The width of the pavement to the front of the appeal site is generous. Although the plinth is wider than the existing step, it is only slightly deeper and therefore does not project significantly further out into the pavement. Although the plinth has resulted in a minor reduction in pavement area, given its relatively limited size in comparison to the width of the pavement I am satisfied that pedestrians and other users of the pavement can safely navigate around it.
27. Consequently, I conclude that the proposal does not result in an unacceptable effect upon highway safety. The proposal therefore accords with Policy TR2 of the LP which seeks to ensure that proposals provide access without detriment to highway safety.

Conclusion

28. Overall, I find that the proposal has an acceptable effect on the occupiers of No. 26 with particular regard to outlook and light, and on highway safety. The absence of harm in these respects is a neutral factor in the appeal. However, the proposal has a significantly harmful effect on the character and appearance of the building and the conservation area which is not outweighed by the public benefits of the proposal.
29. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole, and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

E Pickernell

INSPECTOR