

Appeal Decision

Site visit made on 20 August 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/D5120/W/23/3336108

**White Cross Inn Public House, 146 North Cray Road, Sidcup, Bexley
DA14 5EL**

- 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 Danny Brooker against the decision of the Council of the London Borough of Bexley.
 - The application Ref is 23/01793/FUL.
 - The development is described as 'alterations to site access; with new parking layout, hard and soft landscaping; alterations to beer garden layout to include external amenities, outdoor Bar, pergolas and seating (Part-Retrospective)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit, alterations had already been made to the access and parking layout, including closure of the vehicular exit. Alterations had also been undertaken to enlarge the beer garden, including additional decking, walls and fencing, erection of a sail canopy roof and installation of an outdoor bar. However, the proposed dining pods and electric vehicle charging points had not been installed. As such, while I am considering elements of the development retrospectively, I have had regard to the additional proposals detailed on the application drawings.
3. On 30 July 2024, the Government published a consultation and Written Ministerial Statement, covering proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Both parties have had the opportunity to comment on any implications for the appeal.

Main Issues

4. The main issues are:
 - whether the alterations are inappropriate development in the Green Belt as defined in the Framework and relevant development plan policies,

- the effect on living conditions for occupiers of nearby dwellings, with particular regard to noise and disturbance,
- the effect on heritage assets, with reference to the character and appearance of the North Cray Village Conservation Area, the significance of the locally listed public house and the setting of the Grade II Listed Building Loring Hall, and whether any harm to designated heritage assets is outweighed by public benefits, and
- whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development

5. The appeal site is within the Green Belt and comprises a public house with car parking and outdoor seating to the rear. Prior to the alterations already undertaken, there were separate vehicular entry and exit routes, to either side of the building. The beer garden included areas of outdoor seating with decking and astroturf, but was mainly behind the building, with only a small area of seating in the northeastern part of the site, under a timber pergola.
6. Policy G2 of the London Plan 2021 and Policy SP8 of the Bexley Local Plan 2023 (BLP) both require that the Green Belt should be protected from inappropriate development. Paragraph 154 of the Framework says that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a series of defined exceptions. The term 'building' is widely defined for planning purposes¹, to include any structure or erection. As such, paragraph 154 is relevant to consideration of additional built features within the appeal site, even though they largely do not comprise permanent, roofed buildings.
7. There is no proposal to enlarge or replace the public house building itself, so the exceptions in paragraph 154 relating to the extension or replacement of existing buildings are not relevant. However, Paragraph 154g allows for the partial or complete redevelopment of previously developed land, including sites in continuing use, where it would not have a greater impact on the openness of the Green Belt than the existing development. Since the alterations are within parts of the site which are already developed for use by customers of the public house, the development could be regarded as partial redevelopment of previously developed land. Therefore, paragraph 154g is relevant and requires consideration of the effect on openness, compared to the pre-existing layout.
8. The alterations are within areas previously used for car parking and circulation, or outdoor seating. Parked cars, boundary fencing, and outdoor furniture already had some effect on openness within this area. However, using the appellant's figures, the area devoted to external seating and play space has increased by over 50%. Within that area is a significantly increased quantity of decking, walls and fencing, as well as additional movable paraphernalia such as picnic tables and benches. The new fence at

¹ Section 336 of the Town and Country Planning Act 1990

the front creates an increased sense of enclosure between the building and the site boundary. In comparison with photographs provided of the pre-existing situation, the affected part of the site could no longer be described as verdant and open.

9. The proposed dining pods would project above the new fence, further increasing the scale of built development. The sail canopy has introduced a significant new area of roof at the rear. While this is an open-sided and lightweight form of roof covering, it nevertheless has a significant visual presence and enclosing effect. There is no indication that it is either temporary in nature or intended to be removed when not in use. Both the sail canopy and the dining pods have a more substantial character than the previous parasols, which are more modest in scale and likely to be closed down when not in use.
10. Overall, the level of built development and movable paraphernalia within the site has significantly increased and would increase further as a result of the additional alterations proposed. This is harmful to openness in spatial terms, compared to the way those parts of the site were previously laid out and used. While the fence at the front largely screens the beer garden from the road, the fence itself has an effect on openness. It does not fully screen the taller elements of the development, such as the dining pods and sail canopy. The development as a whole is conspicuous to all those using the public house, and from surrounding properties. Therefore, there is also harm to openness in visual terms.
11. For the above reasons, the development has a greater impact on the openness of the Green Belt than the pre-existing development on the site. As such, it does not benefit from the exception defined in paragraph 154g of the Framework. Nor are any of the other exceptions applicable. I therefore conclude that the alterations are inappropriate development in the Green Belt, as defined in the Framework and relevant development plan policies. This conflicts with Policy G2 of the London Plan and Policy SP8 of the BLP, and with relevant provisions of the Framework, as summarised above.

Living Conditions – Noise and Disturbance

12. The public house is a long-established feature of the area, and occupiers of nearby properties can reasonably expect to experience some level of associated noise and activity. Indeed, there are supportive representations from some nearby residents, who report noise levels as being reasonable, particularly when the proximity of the main road is also taken into account.
13. However, other nearby residents report having been disturbed by live music at weekends, which is described as a recent innovation. While the appellant claims that there have been no complaints, the Council's Officer Report refers to an ongoing noise complaint relating to live music events.
14. The sail canopy creates a substantial new covered area and is fitted with loudspeakers of a scale suitable for playing recorded music. The space could feasibly be used for live music performances, potentially with additional amplification. The availability of a new covered area, protected from the elements, facilitates that activity. Furthermore, the appellant's statement mentions the introduction of live music when describing the potential for

increased employment. Consequently, although the use of the site as a public house is well-established, the development materially increases the likelihood of noise and disturbance at a level which is harmful to living conditions within nearby residential properties.

15. Since the sail canopy is open-sided, it will do little to prevent noise travelling. In mitigation, the appellant proposes a restriction on use of the beer garden after 9pm and agreement of an Operational Management Plan, including regulation of noise thresholds. However, representations from affected residents refer to disturbance from live performances at weekends, during the day, which would not be addressed by a restriction on late evening opening. Furthermore, no technical evidence has been presented to demonstrate that noise from live and amplified music could be reduced to an acceptable level.
16. The Council's Environmental Protection Team advises that use of the outdoor space for amplified music is not compatible with preserving the amenity of local residents. On that basis, in the absence of convincing evidence that suitable noise levels and management arrangements could be enforced, I cannot be confident that the proposed conditions would provide sufficient mitigation of noise and disturbance for affected residents.
17. Therefore, based on the evidence before me, I conclude that the development has a harmful effect on living conditions for occupiers of nearby dwellings, with particular regard to noise and disturbance. That is contrary to Policy DP11 of the BLP, which requires that development proposals do not unacceptably affect existing neighbouring residents by means of noise and disturbance. In the absence of clear evidence that the harm can be adequately mitigated, the development also conflicts with relevant provisions of the Framework and London Plan, which recommend use of appropriate management and mitigation measures to avoid noise giving rise to significant adverse impacts on health and quality of life.

Effect on Heritage Assets

Conservation Area and Locally Listed Building

18. The North Cray Village Conservation Area (CA) comprises an important group of 18th and 19th Century buildings, many of which are listed or locally listed. They historically formed a village to either side of a winding lane. The significance of the CA is described in the Conservation Area Appraisal² (CAA). It includes a vibrant village character from the diverse range of building styles and a rural setting deriving in part from the meadows and River Cray at the rear of the appeal site. The CA retains a spacious, rural character, despite now being rather dominated by the main North Cray Road.
19. The White Cross Inn is one of the more prominent buildings in the CA, sitting forward on its site and directly addressing the main road. It is identified as a landmark building within the CAA and can be regarded as a non-designated heritage asset, since it is identified by the Council as a locally listed building. Hard landscaping and clutter within the site is identified in the CAA as a negative feature, with opportunities for enhancement being identified, such

² North Cray Village Conservation Area Appraisal and Management Plan, December 2008

as removal of fencing, consolidation of services, and increased soft landscaping.

20. As described above, the development significantly increases the level of outdoor clutter. The enlarged beer garden is dominated by areas of decking, enclosed by a variety of low walls and timber enclosures. With the addition of the sail canopy and dining pods, there would be several contrasting forms of outdoor shelter, wrapping around the building and compounding the visual clutter highlighted in the CAA. The increased level of hard landscaping and outdoor paraphernalia is at odds with the rural setting and the development is accordingly harmful to the significance of the CA.
21. The 19th Century building remains clearly identifiable as a landmark on North Cray Road and areas of outdoor seating and car parking are not unusual features within the grounds of a public house. Nevertheless, the fencing, sail canopy and dining pods introduce conspicuous new features within the streetscape, increasing the visible level of clutter. These compete with the distinctive frontage of the locally listed building and somewhat diminish its role as a landmark building.
22. For the reasons given above, I conclude that the development fails to preserve the character and appearance of the North Cray Village Conservation Area and detracts from the significance of the locally listed public house. This conflicts with relevant requirements in Policy HC1 of the London Plan 2021 and Policies SP6, DP11 and DP14 of the BLP. These policies, amongst other things, require that development proposals should conserve and enhance the significance of heritage assets, having due regard to the CAA, and should conserve the characteristics of non-designated heritage assets including locally listed buildings.

Setting of Listed Building

23. Loring Hall is a Grade II listed building immediately adjoining the appeal site. It dates from the 18th Century and was the former home of Lord Castlereagh. According to the CAA, its extensive grounds and secluded setting are important aspects of its setting.
24. The building's current use as a care home has resulted in a more functional landscape. It is also somewhat hemmed in on one side, with limited space along the boundary with the appeal site. The CAA identifies that the setting of the Listed Building is compromised by the close boarded fencing along the boundary and clutter within the grounds of the public house.
25. That being the case, the increased clutter within the appeal site, in very close proximity to the boundary, causes additional harm to the setting of the Listed Building. The new boundary fence is a particularly prominent feature. It is taller and more visually intrusive than the previous close-boarded fence and boundary vegetation, which can be seen on the aerial photographs provided. Although the development does not intrude to a significant extent on public views of the Listed Building, or obscure specific architectural features, the extensive grounds and secluded setting which are important aspects of its setting are further compromised.

26. I therefore conclude that the development does not preserve the setting of the Grade II Listed Building Loring Hall. It therefore conflicts with Policies HC1 of the London Plan and Policies SP6 and DP14 of the BLP, which amongst other things include a requirement to conserve and enhance the significance of designated heritage assets.

Public Benefits and Heritage Conclusion

27. Taking into account the scale of the site and the pre-existing baseline, the level of harm to designated heritage assets is less than substantial. Nevertheless, I have attached considerable importance and weight to the desirability of avoiding such harm, in accordance with Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
28. Paragraph 208 of the Framework states that where a proposal would lead to less than substantial harm to the significance of designated heritage assets, such harm should be weighed against the public benefits of the proposal.
29. Expansion of the beer garden enables the public house to provide a wider and more diverse offering to the local community, with increased capacity, improved facilities for families with children, and a function room for private and corporate hospitality. The appellant highlights a modest increase in local employment and benefits to the visitor economy, which are supported in Policy SP3 of the BLP. While the reaction from interested parties includes objections on several grounds, a significant level of support has also been expressed in response to this appeal. Supporters refer to the business having been rejuvenated and previously neglected areas of the site having been revitalised. As such, there is evidence that the development generates both economic and social benefit.
30. The Director of Operations at Loring Hall is also supportive, commenting that relations with the owners and staff at the public house are good, and that refurbishment of the site has enabled care home residents, including those with disabilities, to make better use of the public house. This is described as adding tremendously to their wellbeing and mixing with the local community. It is also mentioned that the new boundary fence improves privacy within Loring Hall. In light of those issues, I have had due regard to the aims of the Public Sector Equality Duty, as set out in s149 of the Equality Act 2010 (PSED). In accordance with the PSED, positive weight should be attached to the extent to which the development advances opportunity for care home residents with protected characteristics, as well as fostering good relations with the wider community.
31. However, while increased privacy for the care home is a positive factor, a similar level of privacy could be secured through an alternative form of improved boundary treatment more appropriate to the setting of the Listed Building and the rural qualities of the Conservation Area. Furthermore, based on the evidence before me, it is not clear to what extent increased use of the public house by care home residents, or the more general community support, is a consequence of enlargement of the beer garden, over and above the refurbishment and revitalisation of the building and original outdoor seating area, which was already fairly generous in size. Indeed, the CAA includes guidelines for refurbishment of the outdoor areas in a manner more appropriate to the significance of the CA and setting of the Listed

Building, which may reap similar social and economic benefits without the consequent harm to heritage assets.

32. With that in mind, while I have given significant weight to the public benefits of the development, including the benefits for people with protected characteristics, that does not outweigh the considerable importance and weight attached to the harm to designated heritage assets, in accordance with the statutory duties mentioned above. I therefore conclude that the harm to designated heritage assets is not outweighed by public benefits. As such, the development conflicts with the development plan and also with the Framework's approach to conserving and enhancing the historic environment.

Other Considerations

33. While I have noted concerns expressed by some parties about spillover car parking, there is still a significant parking area within the site and there is no substantive evidence of a shortfall against any applicable parking standards. The amended layout maintains two-way flow at the single vehicular access. Visibility has been assessed by the Highways Authority and no highway safety concerns have been raised subject to the imposition of conditions. However, these are neutral factors which weigh neither for nor against the development.
34. While the provision of electric vehicle charging points would be of benefit to customers and would also make a small contribution to reduced reliance on fossil fuels, this proposed improvement is not apparently reliant on the other, more harmful, alterations detailed in the application.
35. The development is within the confines of the site and does not encroach out into the surrounding countryside. It does not amount to unrestricted urban sprawl and there are no issues with the merging of settlements or the setting and special character of historic towns. Therefore, while there is harm to openness, there is otherwise little conflict with the purposes of the Green Belt as defined in the Framework.
36. While I accept that areas of outdoor seating are not untypical within the grounds of a public house, not all public houses are affected by the specific heritage and Green Belt constraints which are applicable in this case. Taking those particular circumstances into account, the development is harmful for the reasons explained above.
37. I have noted the appellant's suggestion that the sail canopy could be removed and the fence alongside Loring Hall reduced. However, both are included within the planning application and detailed on the proposed plans. A condition requiring their removal/reduction in isolation from the rest of the development would lack precision, since it would not be possible to define with sufficient clarity which elements of the development had or had not been approved. In any case, even if such a condition was imposed, the adverse effect on heritage assets and the openness of the Green Belt would not be reduced to an acceptable level.
38. As recognised above, there are social and economic benefits, including benefits to nearby residents with protected characteristics. It is also clear

from the letters of representation that the landlord and staff have a good relationship with their customers and that the recent investment has improved aspects of the site which were discouraging trade. However, the support from the local community is not universal and other residents raise a range of concerns, including those considered above.

Green Belt Balance

39. The alterations are inappropriate development in the Green Belt as defined in the Framework and relevant development plan policies. The development is harmful to the openness of the Green Belt. There is increased noise and disturbance, at a level harmful to living conditions for nearby occupiers, and it has not been demonstrated that this can be adequately mitigated. There is also harm to designated and non-designated heritage assets.
40. The Framework states that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless that harm, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
41. Although I have given significant weight to the economic and social benefits of the development, including the benefits for people with protected characteristics, that does not clearly outweigh the substantial weight attached to the harm to the Green Belt and other harm. In consequence, the very special circumstances necessary to justify the development do not exist.

Conclusion

42. Having had regard to the development plan as a whole, along with all other relevant material considerations, including the aims of the Public Sector Equality Duty, I conclude that it is proportionate and necessary to dismiss the appeal.

Jane Smith

INSPECTOR