

Appeal Decision

Site visit made on 23 October 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/P4605/W/24/3339129

**Five Guys Restaurant, Unit SU528, Bullring Shopping Centre,
Birmingham B5 4BU**

- 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 Five Guys JV Limited against the decision of Birmingham City Council.
 - The application Ref is 2023/06573/PA.
 - The development proposed is for extension and alterations to existing external seating terrace.
-

Decision

1. The appeal is allowed, and planning permission is granted for extension and alterations to existing external seating terrace at Five Guys Restaurant, Unit SU528, Bullring Shopping Centre, Birmingham B5 4BU in accordance with the terms of the application, Ref 2023/06573/PA, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the submitted Site Location Plan; Block Plan; Proposed New Terrace Details & Sections, Drawing No. FIV019-P691 Rev E and Proposed New Terrace Plan & Front Elevation, Drawing No. FIV019-P690 Rev E.

Preliminary Matters

2. The description of development on the planning application form also referred to advertisements. The appellant confirms¹ that this application (and appeal) relates solely to the external seating terrace, and that any necessary advertisement consent would be sought separately. Therefore, I have taken the description of development from that used on the appeal form and decision notice, which omit references to advertisements.

¹ Paragraph 3.4, Appellant's Appeal Statement of Case

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area, including having special regard to the significance of the Parish Church of St Martin and the Monument to Lord Nelson, both Grade II* listed buildings.

Reasons

4. The appeal site lies within the Bullring Shopping Centre, a large-scale modern city centre complex with many retail and leisure units. The proposals concern the frontage of the appeal unit that faces onto a pedestrian passageway that widens out to terminate in St Martin's Square. The focal point of the square is the Grade II* listed Parish Church of St Martin (the church). Facing towards the church is the Grade II* listed Monument to Lord Nelson (the monument).
5. There are views down towards the church, with the monument in the foreground from the north-western end of the pedestrian passageway. The broadly clean lines and large scale of the modern commercial buildings frame the view of the church and spire. Hence, the deliberate underlying settlement pattern defers to the church. Counteracting what would otherwise be a somewhat sterile large-scale modern built environment along the passageway, is the degree of vibrancy derived from human activity at ground floor level. In part this is derived from the many eateries that line the passageway and have outdoor seating areas running parallel to it.
6. The official list entry for the church indicates that it is at least late 13th century in origin and describes it as the mother church of Birmingham. Over time, various elements of the building have been repaired, restored and rebuilt reflecting the evolution of religious architecture, as well as bomb damage suffered by the city. In the 19th century, the tower and spire were restored by P C Hardwick and the rest of the church was demolished, rebuilt and enlarged under the direction of J A Chatwin. It is now a large and imposing building with a steep spire signalling a longstanding spiritual and community focal point. The church possesses considerable heritage interest owing to the quality of its architecture and striking presence. Its significance is comprised of many components which include its considerable aesthetic and communal value as a historic religious building.
7. The monument is a bronze sculpture by Richard Westmacott, depicting Lord Nelson in uniform, leaning on an anchor with the prow of a man-of-war behind him. It was originally erected in 1809. Its significance primarily derives from its artistic and historic interest, which relate to an important historical figure and the esteem in which he was held by the city.
8. The built environment and immediate setting of the church and monument will have changed considerably over time. Nevertheless, the high prominence given to them within the central cityscape has endured. Today this partly comes from the framework of building blocks and the street pattern that gives rise to the vista along the passageway. By focussing attention on their presence, the underpinning layout allows for a greater appreciation of their respective special qualities. Hence, this element of their

setting contributes positively to the significance of both designated heritage assets.

9. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to have special regard to the desirability of preserving listed buildings or their setting, or any features of special architectural or historic interest which they possess.
10. Overall, the character and appearance of the area derives from a combination of factors. It has a bustling, commercial modern character at its core, but the surviving historic environment has an important presence. The juxtaposition and balance of commercial activity against a backdrop that includes tangible reminders of local history makes for a distinctive and vibrant character and appearance.
11. The appeal site comprises an established restaurant within a ground floor modern unit. Like several restaurants lining the central passageway, it has a slightly raised outdoor seating area for customers defined in part by glazed panels. This runs parallel to the central space and is of a modest scale such that it does not interfere with direct views towards the church and monument. Consequently, it reinforces the qualities identified above that positively contribute towards the commercial vibrant character and appearance of the area.
12. It is proposed to extend the existing terrace by approximately 2 metres south-eastwards, and square off the chamfered corner at the north-eastern end. The area would be contained by adjustable height glass screens within a canopy structure which would also house a retractable sky roof.
13. The presence of the canopy structure combined with the increase in footprint would give more definition to the space. Relative to the scale and height of the host commercial building and width of passageway at this point, the space would remain modest and proportionate. Moreover, the rectangular dimensions of the canopy structure would broadly echo the horizontal emphasis seen in the fenestration above and would be sympathetic to the contemporary façade treatment.
14. The proposed features would give greater flexibility to shield the area from the elements making it more likely that the space could be used throughout the year. In turn, this could facilitate an increased level of activity, surveillance and vibrancy within the street, which would reinforce positive aspects of the place. City Note SS-2 of the Birmingham Design Guide, September 2022 (BDG) advises that development should enhance public environments, with buildings that interact, activate and engage with the public realm by creating activity and vibrancy. Further broad support for such elements is found in Design Principle 3 of the BDG which encourages the creation of great streets.
15. The development would visually delineate and physically contain the outside seating furniture in a way that would be appropriately sympathetic to the façade of the contemporary building. As such, I cannot agree that it would appear cluttered. Therefore, it would not run counter to the advice in City Note SS-4 of the BDG in this respect.

16. The appellant confirms² that the seating area would not project further out than the present terraced area, rather the increased area would continue into the space that runs directly adjacent to the building. The relatively minor scale of the proposals at ground floor level so close to the building would not feature prominently within the established context. Therefore, its presence would not harmfully interfere with the general vista towards the church and monument. Whilst there would be some visual changes, they would read as inconsequential alterations to an existing outside eating terrace. It follows that the development would not hinder the ability to appreciate the architectural, artistic or historic value of these listed heritage assets.
17. My attention has been drawn to recent approvals³ for alterations to the existing external seating terrace at the appeal site, both of which could be implemented as alternatives. The scheme approved in 2022 shows a broadly similar extension area, the second approved in 2024 involves a giant umbrella in addition to height adjustable screens. The proposal before me is comparable in terms of its nature and scale, and therefore, these approvals tend to reinforce my view. It is further strengthened by other nearby approvals for broadly similar development, such as at Unit SU513⁴ (Bill's). This concerned a covered structure with retractable roof to enclose an existing external seating area.
18. In coming to my findings, I have taken account of the design principles and advice in the BDG specified on the Council's decision notice. The design advice is generic in nature and would not lead me to find otherwise on the specific merits of the proposal. Moreover, the design advice relating to advertisements is not applicable. The Council contends that an undesirable precedent would be set but given that I have not found harm would result from the proposal, this would not be the case.
19. Taking these factors together, I find the development would be in keeping with the character and appearance of the area and would have a neutral impact on the setting of the listed church and monument. Hence, it would preserve the special qualities of the listed buildings and their respective setting in line with the expectations of the Act.
20. It follows that the development would avoid causing harm to the significance of the designated heritage assets which aligns with the national policy approach to the conservation of the historic environment. On that basis, there is no need to further consider the heritage balances contained in the National Planning Policy Framework.
21. Consequently, I find no conflict with policies PG3 and TP12 of the Birmingham Development Plan, January 2017. Amongst other things, these policies seek development of high design quality that reinforces the sense of place by responding positively to its context whilst protecting heritage assets.

² Paragraph 5.17 Appellant's Appeal Statement of Case

³ Planning references 2022/04278/PA & 2024/02183/PA

⁴ Planning reference 2021/07453/PA

22. The Council also cite policy DM7 of the Development Management in Birmingham, Development Plan Document, December 2021. This policy sets out criteria relevant to determining advertisement proposals. As those do not form part of the development before me, it is not directly applicable, and I find no conflict with it.

Conditions

23. A time commencement condition and the identification of approved plans are necessary in the interests of certainty.

Conclusion

24. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

INSPECTOR