



Appeal Decision

Site visit made on 27 November 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal Ref: APP/D1590/W/24/3343968

Billet Wharf, High Street, Leigh-on-Sea, SS9 2ER

- 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 Osborne Bros Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 24/00094/BC4.
 - The development proposed is to use public amenity space adjacent to existing seating area to Osborne Bros Cafe to provide additional external seating with associated landscaping improvements.
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Decision

1. The appeal is allowed and planning permission is granted to use public amenity space adjacent to existing seating area to Osborne Bros Cafe to provide additional external seating with associated landscaping improvements at Billet Wharf, High Street, Leigh-on-Sea, SS9 2ER in accordance with the terms of the application, Ref 24/00094/BC4, subject to the conditions in the attached schedule.

Background

2. The use of the appeal site as additional external seating for the adjoining café was dismissed at appeal in 2022 (Ref: APP/D1590/W/22/3295646). This decision is an important material consideration. The proposal has been revised in several respects in response to the Inspector's findings. However, it should be assessed in its own right rather than on the basis of how this scheme compares to an earlier, unacceptable form of development.

Main Issue

3. This is whether the proposed development would preserve or enhance the character or appearance of the Leigh Old Town Conservation Area.

Reasons

4. The appeal site includes a small area of public space along Leigh seafront. It is situated immediately outside the tightly packed line of development along the High Street and adjacent to Belton Bridge. The land is occupied by public seating and tables, hard surfacing, trees and shrubs and Old Leigh Buoy. A public walkway between the High Street and seafront is also within the site. At the eastern end, although outside it, is a large anchor. The site is adjacent to an existing outdoor seating area for Osborne Bros café which is surrounded by a metal fence.

5. The conservation area is linear and contains five distinct character areas as defined in the Conservation Area Appraisal. Its significance as a heritage asset is diverse but derives from the origins of Leigh as a small fishing and boatbuilding settlement and the subsequent growth of the oyster, shrimp and cockle industries. The townscape is varied ranging from the intimacy of the traditional buildings along the High Street to the industrial sheds at the western end. The mix of uses also contributes to its character. These include houses, pubs, cafes, restaurants and workshops. It is a popular destination for visitors to attend festivals, eat seafood or walk along the coast path.
6. The last Inspector focused on the informal layout of buildings along one main road but the special architectural and historic interest of the conservation area is multi-faceted.
7. The appeal site provides a place for people to sit and enjoy extensive views over the Thames Estuary, possibly eating food purchased locally. It also provides the immediate setting for the buoy and the anchor which are marine-related objects of interest. They were placed there by the Council as environmental enhancement works. The trees provide a contrast to the surrounding buildings and hard surfacing. In these ways, although it could not be described as open or relating to the grain of the area, the site makes a positive contribution to the overall qualities of the conservation area.
8. Nevertheless, the local Conservation and Heritage group observe that the area needs some care and regular upkeep. On the bleak November day when I visited, the site may not have been seen at its best. However, it did appear rather untidy and unkempt. Furthermore, the site is within the Belton Bridge Area which the Appraisal identifies as an ideal location for some enhancement. As part of the scheme most of the site would be re-surfaced with a new cobbled pavement or by cockle shells set in resin. This would be a visual improvement on the existing paving and concrete.
9. The function of the area would change as it would no longer be publicly available but the existing benches would be re-located onto the adjoining tarmac path. In this way, those passing through would still be able to pause and take in the expansive vista as they do now. Tables are shown in the section that links the coast path to the High Street. This is an important thoroughfare in terms of the permeability of the area and should be kept open. A condition could be imposed to ensure that this would be kept free of seating which would otherwise be permissible without such a restriction.
10. The pole supporting a CCTV camera sits on a raised plinth next to the railings overlooking the water and marshland. It is not possible for this to be removed or lowered so there would be a 'pinch point' of just over 1.2m between the edge of the base and the appeal site. Whilst narrower than the current arrangement the remaining width would be similar to many footways and would not obstruct all wheelchairs and buggies. In any event, the adjoining area within the appeal site could be kept free of benches or planters and so provide an area of 'overrun' if required. This aspect of the proposal would therefore not overly restrict movement through the conservation area.
11. The buoy is described as a "focal point" although it is surrounded by trees and shrubs. The proposal would separate it from the new seating area by means of a 1m high post and rope enclosure and the resin surfacing would provide a clear setting. From most directions the buoy would be seen in the context of

the proposed tables and chairs, benches and posts as well as any diners. However, the buoy is a tall structure in a strong green colour so that the low-level ephemera associated with the use would not unduly impede views of it. Neither would it detract from the buoy's value as a symbol of Leigh. Indeed, by opening up this area, its significance would be better revealed.

12. Similar considerations apply to the anchor adjoining the site. The proposed seating area would be separated from it by new surfacing and planters as well as the existing trees. As a result, its value as a nautical artefact would not be diminished and neither would the ability of visitors to appreciate it.
13. The proposal would introduce more hard surfacing around the base of the four whitebeam trees than the previous one and the posts would also be within their root protection areas. They are described as surviving in a "challenging environment" and are modest in stature. Some of them lean due to the onshore winds. Nevertheless, there are few trees in the conservation area and it would not be desirable to lose them.
14. The works could have a negative impact on the trees. However, a method statement could be devised to minimise disruption during construction and a permeable surface could be provided. No detailed arboricultural evidence has been provided about the likely consequences. Given that other aspects of the scheme would enhance this corner of Old Leigh, the trees are not so important that a precautionary approach to tree protection should be taken. Conditions can therefore be relied upon to mitigate the effects.
15. Neither the existing open space nor the trees at the site are highlighted within the Conservation Area Appraisal. Whilst not decisive this confirms that they are not highly significant within an extensive heritage asset. Furthermore, outside seating areas to cafes are mentioned as an important contributor to the fishing village character. The proposal would add to this as well as improving the floorscape whilst retaining and better exposing the large mooring buoy. Although the treatment around the existing trees requires care, the proposal would reinforce and strengthen the attributes of the conservation area.
16. Therefore, the character and appearance of Leigh Old Town Conservation Area would be enhanced. As such, the proposal would comply with Policies DM5 and DM6 of the Development Management Document regarding the historic environment and the Seafront Area. As it would respond positively to local context there would be compatibility with Policy DM3. It would also accord with the broader expectations for design quality in Policy DM1 and with the aims for the urban environment and the development principles in Policies CP4 and KP2 of the Core Strategy.
17. These findings are different from those of the previous Inspector. However, the proposal has been amended. Amongst other things, the original scheme would have enclosed a much greater area with a picket fence and would also have precluded pedestrian access between the seafront and the High Street. The proposed development can therefore be clearly distinguished from the one considered in 2022. In addition, I have undertaken my own assessment of the significance of the heritage asset and the contribution of the appeal site. In particular, greater attention is given to its role within the conservation area as a whole and the implications of the proposal in this respect. A departure from the conclusions of the last Inspector is therefore justified.

Other Matters

18. The Crooked Billet public house is a Grade II listed building at the end of the High Street opposite the appeal site. It dates from the late sixteenth century. The significance of this heritage asset is partly derived from its age and historical connections as well as its vernacular architecture.
19. There is an abrupt change between the termination of the older buildings along the High Street and the area immediately to the west where there are no buildings but mainly roads, walkways and the large bridge. This area therefore contributes little to the appreciation or significance of the listed building. The proposal would, in any event, be well separated from it and would improve the streetscape. Therefore, it would preserve the setting of the Crooked Billet.
20. The appellant has given details of the past trading of Osborne Bros. This included the use of an area shared with the public house although this arrangement ended after the pandemic. The benefits of the proposal to the business and to the local economy in replacing this outdoor facility are not quantified but also weigh in favour of the scheme.

Conditions

21. The approved plan should be confirmed in the interests of certainty. The red line which shows the site boundary includes part of the walkway between the coast and the High Street. As noted above, this is an important route which should be kept open. To avoid its use as a seating area a condition is necessary to preclude tables and chairs being positioned within it.
22. Other conditions are required to preserve the character and appearance of Old Leigh Conservation Area. They relate to details of the boundary treatment, soft and hard landscaping (which should be permeable) and of the six re-located benches. A construction method statement for works within the root protection areas of the trees is also necessary. These details need to be approved prior to commencement as they affect how the development would be carried out.
23. Where necessary, the wording of the suggested conditions has been adjusted for simplicity and clarity and to ensure implementation. The proposed post and rope fence would not enclose all of the area so that public access would not be physically discouraged at times when the seating area was not in use, such as over the winter months. No specific requirement to design the boundary treatment to allow public access at such times is therefore necessary.

Conclusion

24. The proposal would accord with the development plan and there are no material considerations to the contrary. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF 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 drawing no 1841/44A.
- 3) No development shall take place until details of the boundary treatment of the seating area as shown on drawing no 1841/44A have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be installed in accordance with the approved details before the first use of the seating area.
- 4) No development shall take place until details of landscaping and permeable hard surfacing have been submitted to and approved in writing by the local planning authority. These details shall include the number, size and location of the shrubs and plants to be planted and details of the plant containers, together with a management plan (including maintenance of the containers) and details of any external lighting and the relocation of the tourism signage and lamp column.

The approved hard surfacing shall be carried out before the first use of the seating area. The planting and the relocation of the signage and column shall be carried out in accordance with a timescale previously agreed in writing by the local planning authority. The management plan shall be adhered to after the planting has been undertaken for the lifetime of the development and any external lighting shall be installed in accordance with the approved details.

Any plants which die, are removed, severely damaged or seriously diseased within five years of planting shall be replaced with plants of such size and species as may be agreed by the local planning authority.

- 5) No development shall take place until details of construction around the root protection areas of the existing trees have been submitted to and approved in writing by the local planning authority. These details shall comprise a construction method statement for the approved hard surfacing, for the boundary treatment of the seating area and for the mounting of the planters and measures to protect the trees in the long-term. Development shall be carried out in accordance with the approved construction method statement and any approved protection measures shall be implemented before the first use of the seating area and thereafter retained.
- 6) No development shall take place until details of the location, design and materials of the 6 relocated benches shown on drawing no 1841/44A have been submitted to and approved in writing by the local planning authority. The approved benches shall be installed before the first use of the seating area and thereafter retained.
- 7) No tables or chairs shall be positioned within the area hatched black on the attached plan (3343968 PLAN 1).