
Appeal Decision

Site visit made on 20 December 2024

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **31 DECEMBER 2024**

Appeal Ref: APP/G5180/W/24/3345990

334 High Street, Orpington, Bromley BR6 0NQ

- 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 S Hamzi against the decision of the Council of the London Borough of Bromley.
 - The application Ref is 23/04456/FULL1.
 - The development proposed is Construction of single storey rear extension to be used for additional customer seating and storage for existing restaurant.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.
3. I noted, during the site visit, that work had started and is partly retrospective. However, my assessment of the proposal is based on the plans before the Council at the time of the planning application. I will refer to the 'proposal' throughout my decision, although certain aspects may already be complete.

Main Issues

4. The main issues are:
 - The effect of the proposal on a protected tree within the site; and
 - The effect of the proposal on the living conditions of occupiers of neighbouring properties, with particular reference to noise.

Reasons

Trees

5. Within the appeal site is a large Sycamore tree which is subject to a Tree Preservation Order (TPO), and which makes a positive contribution to the character and appearance of the area. The proposal extends across the majority of the appeal property's rear yard, including around the TPO tree, in an area where its roots are present.

6. No substantive information has been provided to demonstrate that potential effects on the tree from construction or future pressure have been assessed. Details, within an Arboricultural Assessment (AA), related, for instance, to the tree's root protection area (RPA), or the extent of encroachment into the RPA have not been provided. The proposal's construction around the tree has the potential to create an enclosure around its stem, which could raise temperature and humidity around the bark, enabling conditions that may encourage the growth of decay fungi. These factors would reduce the tree's lifespan.
7. It has been put to me that the structure is lightweight and did not involve extensive groundworks, such as excavation of trenches. I have also taken into account that the form of the proposal has been designed to be constructed around the tree. However, an Arboricultural Assessment has not been submitted, and no further details have been provided to demonstrate how potential harm to the tree would be mitigated. In the absence of any coherent mitigation measures in place, I cannot be certain that there will not be an adverse effect on the longevity and health of the tree. Given that this information would need to be known in advance to establish that the proposal would not harm the health of the tree, it would not be possible to deal with this matter through the use of planning conditions.
8. For the above reasons, I conclude that it has not been demonstrated that the proposal would not have a detrimental impact on the health of the TPO tree within the appeal site. I therefore find that it conflicts with Policies 73 and 74 of the Bromley Local Plan (2019) (BLP) and Policy G7 of the London Plan (2021) (LP). Amongst other things, these policies require that development proposals retain and protect significant existing trees.

Noise

9. There are nearby residential units within the upper floors of buildings on the High Street. Whilst the front of the appeal site addresses the busier High Street, I found the rear where the proposal is located to be quieter, without high levels of ambient noise. Consequently, the addition of upto 56 customers, as indicated on the submitted drawings, has the potential to create a significant source of noise that could affect the occupiers of the nearby properties.
10. Whilst not fully constructed at the time of my site visit, the application form indicates that the proposal's roof would be timber framed, crown-pitched and covered with transparent, plastic, corrugated sheets to slopes. It seems to me that this lightweight construction would provide limited noise mitigation to neighbouring occupiers.
11. The appellant has suggested a planning condition which would prevent the use of the proposal after 20.00 hours and prevent playing amplified music within the proposal. However, the number of customers within the proposal has the potential to cause significant noise nuisance throughout the day. In the absence of substantive evidence, such as a Noise Impact Assessment, to demonstrate otherwise I find that the extension would significantly increase the level of noise reaching the neighbouring accommodation. This would have a harmful effect on the living conditions of neighbouring occupiers.
12. In the absence of a Noise Impact Assessment, it has not been demonstrated that the proposal would not have an adverse effect on the living conditions of occupiers of neighbouring properties, with particular reference to noise. Therefore, in this

respect, it would be contrary to Policy 37 of the BLP and Policy D14 of the LP which require that new development respects the amenity of occupiers of neighbouring buildings by providing healthy environments and ensuring they are not harmed by noise and disturbance

Other Matters

13. I understand that the unit has been empty for some time. I acknowledge that both parties agree that some form of the structure in this location is acceptable in relation to its effect on character and appearance. The proposal may also be compliant with various other provisions of the development plan. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.

Conclusion

14. The proposal conflicts with the development plan as a whole and there are no material considerations which indicate that a decision should be made other than in accordance with it. The appeal is therefore dismissed.

B Pattison

INSPECTOR