



Appeal Decision

Site visit made on 5 December 2024

by **A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st January 2025

Appeal Ref: APP/U5930/W/24/3347679

Peppers Ghost Public House, 777 High Road Leyton, Waltham Forest, E10 5AB

- 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 Star Pubs and Bars against the decision of Waltham Forest London Borough Council.
 - The application Ref is 231776.
 - The development proposed is external alterations to form new area of outside seating for customers, with new fencing, new planter boxes and new festoon lighting.
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Decision

1. The appeal is allowed and planning permission is granted for external alterations to form new area of outside seating for customers, with new fencing, new planter boxes and new festoon lighting at Peppers Ghost Public House, 777 High Road Leyton, Waltham Forest in accordance with the terms of the application, Ref 231776, 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 lighting hereby approved shall not be used or switched on between the hours of 2200 and 0900.
 - 3) The development hereby permitted shall be carried out in accordance with drawing nos: Proposed Ground Floor Layout – Drawing Number 1217-P-02C; External Elevations as Proposed – Drawing Number 1217-P-04A; Site Location Plan and Block Plan – Drawing Number 1217-P-05A.
 - 4) The fencing hereby approved shall not be erected until a service and delivery plan has been submitted to, and approved in writing by, the local planning authority. Thereafter the development shall operate in accordance with the approved details at all times.

Preliminary Matters

2. Since the original decision the Council have adopted the Waltham Forest Local Plan Part 1 (2024). This replaces the Waltham Forest Local Plan - Core Strategy (2012) and the Waltham Forest Local Plan - Development Management Policies (2013) such that the policies of those plans cited on the decision notice are no longer part of the development plan and have no weight. I have therefore considered the relevant policies within the Waltham Forest Local Plan Part 1 (2024). The timescales are such that both main parties have had the opportunity to comment on the new local plan.

3. On 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement (WMS). Having regard to the main issues in this appeal, it has not been necessary to invite submissions from the parties on the revisions that have been made to the Framework.
4. I am in receipt of amended plans from the plans considered by the Council. The amended plans remove the originally proposed festoon lighting to the external seating area.
5. As this is a minor amendment, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests or those of any interested parties would be prejudiced if I take these amended plans into account. Therefore, having regard to the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the "Wheatcroft principles" set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), I shall therefore determine the appeal on the basis of the amended plans.

Main Issues

6. The main issues are the effect of the proposed development on 1) the living conditions of occupants of nearby residential properties with regard to noise and disturbance, and 2) highway safety.

Reasons

Living conditions

7. The appeal property is an existing public house with car park to the rear. It is located on a busy corner junction between High Road Leyton and Capworth Street. The surrounding area contains a number of commercial properties with residential properties dominating as you move away from High Road. There is a modern block of flats adjacent to the appeal site where there appear to be secondary habitable room windows which overlook the appeal site.
8. The proposed plans show, amongst other things, that new fencing is proposed to be erected and new planters installed. An external seating area is proposed where there are currently parking spaces. From the submitted evidence and my own observations on my site visit it appears that the existing car parking area and the public house building form one planning unit. That is that the car parking is within the curtilage of the property. The primary use of the land as a public house may therefore be carried out on any land within any part of the planning unit.
9. The creation of an outdoor seating area from an existing outside area at a public house such as, in this case, a car park, does not require planning permission provided that the land falls within the planning unit occupied by the public house. This is because there is no material change of use.
10. That said, operational development, which is proposed to be carried out, may require planning permission in its own right and this would fall to be considered against the development plan and other material planning considerations.
11. In this appeal, the elements of operational development bear little association with facilitating the use of the land as a seating area. Features such as planters and fencing are not a direct requirement of providing the seating area. Moveable items,

tables and chairs that are not permanently fixed to the ground, and are not required to be moved by machinery, are, as a matter of fact and degree, not operational development. The Council acknowledge in this case that the appellant could set out tables and chairs within the car park as an ancillary use.

12. Whilst some outdoor installations such as decking, outdoor heating, or permanently installed seating and fixtures would directly facilitate the use of the outdoor space by patrons and may require planning permission, the operational aspects of the development before me in this appeal do not (directly facilitate the use of outdoor space by patrons). And whilst such theoretical installations would not have wrought a material change of use of the land, it would have been necessary for me to consider how their installation and their direct facilitation of outdoor seating may or may not impact on the living conditions of nearby residents.
13. The proposed development includes the installation of festoon lighting to an existing pergola. The Council refused permission as a lighting assessment had not been submitted to identify the impact on the adjacent residential flats. Given the degree of separation from the existing pergola, the low energy nature of the lighting sitting underneath the pergola roof, and the presence of existing street-lighting, I do not consider that this lighting would cause harm to living conditions. Consistent with the premises licence, I will impose a condition requiring that the lighting is not switched on between 2200 and 0900.
14. I note that various objections have been made relating to noise and disturbance caused through the use of the land to the side for outdoor drinking and other activities, particularly during the warmer summer months. I do not doubt that residents have been adversely impacted by these activities, and this is indeed unfortunate.
15. However, given that there would not be a material change of use, the use of the car park for outdoor seating and uses ancillary to the public house use would not require planning permission. There are other powers available to the Council through Public Health and Licensing to control noise and disturbance from the premises and I note that no objection was received from the Council's Environmental Health or Licensing departments.
16. The appellant outlines how the external area is covered by the existing licence which allows for use by patrons until 2200. I acknowledge that planning and licensing are covered by separate legislation, and the PPG advises decision makers not to presume that licence conditions will provide for noise management in all instances. However, as I have found no planning reason to resist the operational development aspects of this appeal, and that there would not be a material change of use, it would fall upon the other powers available to the Council to deal with matters of noise and disturbance should they arise.
17. It is also pertinent that the public house, and the land to the side forms part of an established business which predates the residential units to the side. Paragraph 200 of the Framework advises that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
18. The Council consider that the intensification of the use of the land for external seating would be an intensification and therefore require planning permission. In

this case, there is not a material change of use. The Courts have held that intensification which does not amount to a material change of use is mere intensification and outside planning control. There is no development, or more specifically material change of use, if the intensified use remains within the same use class as the planning unit as a whole.

19. I therefore conclude that based on the operational development before me in this appeal, there would not be harm caused to the living conditions of occupants of surrounding residential properties as a result of the development. The proposed development would therefore comply with Policies 46, 50 and 57 of the Waltham Forest Local Plan Part 1 (2024). These policies require, amongst other things, that new developments respect the amenity of neighbours by avoiding harmful impacts from noise and light.

Highway safety

20. There is reference in the reason for refusal to the absence of a Transport Assessment. Whilst further details relating to transport and parking can be necessary for decision making, I agree with the appellant, that having regard to the Council's Validation Checklist and the scale and nature of the development proposed, a Transport Assessment is not necessary in this instance.
21. The evidence outlines that the development would involve the loss of 6 parking spaces. Two parking spaces would be retained and are shown to be for use by staff. The appellant has undertaken a Parking Stress Survey¹ which demonstrates capacity in the surrounding area, for at least 6 parking spaces.
22. It is also pertinent that the site is within the commercial centre of this part of High Road Leyton, and has a PTAL rating of 6a which indicates it has excellent public transport accessibility. I also acknowledge, as the appellant highlights, the majority of customers would be likely to walk to the premises.
23. I note representations refer to the use of the car park at the nearby supermarket. This is not, however, proposed and I note that the car park is subject to time restrictions and for supermarket customers only. This is subject to a private arrangement.
24. In terms of servicing and deliveries, a rear yard area would be retained with gates in the proposed fencing. The proposed timber planters are moveable, and this would allow for easier access. There is nevertheless limited information in terms of the general operation of servicing and deliveries and how this would be undertaken. Therefore, I consider that a condition should be imposed requiring the submission of such details. This should be done prior to the installation of the fencing.
25. Therefore, based on the above, the loss of parking and the implications for servicing and deliveries, this would not lead to an unacceptable impact on highway safety, nor would the residual cumulative impacts be severe.
26. I have considered the comments received from the highways department. Aside from matters relating to parking and servicing, they are not pertinent to the main issues. As there is not a material change of use, and given the aspects of

¹ Alpha Parking – 10 July 2023 – Version V01

operational development before me, the works that are suggested are not necessary to make the development acceptable in planning terms.

27. I therefore conclude that based on the operational development before me in this appeal, there would not be an unacceptable impact on highway safety. The proposed development would therefore comply with Policies 63 and 66 of the Waltham Forest Local Plan Part 1 (2024). These policies, amongst other things, seek to manage vehicle traffic and ensure that developments minimise the adverse impacts of deliveries and servicing.

Other Matters

28. I acknowledge comments relating to the removal of the existing metal railings. I am not aware of the building or the area being a designated heritage asset and the railings do not appear to be original features. There is no reason to dismiss the appeal due to their removal. The proposed fencing has a reasonable separation from the footpath and given its size and siting it would not cause harm in character and appearance terms. Given the existing make-up of the site, it would be unreasonable to dismiss the appeal on the basis of more planting being deemed necessary.
29. The issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

30. As there is no material change of use, it would be unreasonable to impose conditions relating to the use of the planning unit (or part of it). I am also mindful that the terms of the licence are such that the hours for use of the outdoor area are restricted in any event. I will however, in the interests of living conditions, impose a condition to require that the outdoor lighting subject to the appeal is not used between 2200 and 0900.
31. Given the position of the proposed festoon lighting and that it is low energy LED bulbs and is in the context of existing street lighting in a commercial area, when combined with the hours restriction I will impose, it is not necessary for further details to be submitted for consideration.
32. In the interests of highway safety, I will impose a condition requiring the submission of a service and delivery plan.

Conclusion

33. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR