
Appeal Decisions

Site visit made on 3 February 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Appeal A Ref: APP/F3545/W/24/3336467

17 High Street, Brandon, Suffolk IP27 0AQ

- 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 U Baris against the decision of West Suffolk Council.
- The application Ref is DC/23/1100/FUL.
- The development proposed is retrospective application for rolling roof pergola at the rear side of the premises.

Summary decision: The appeal is allowed and planning permission is granted.

Appeal B Ref: APP/F3545/C/24/3339218

17 High Street, Brandon, Suffolk IP27 0AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr U Baris against an enforcement notice issued by West Suffolk Council.
- The notice was issued on 31 January 2024.
- The breach of planning control as alleged in the notice is “without planning permission, installation of a rear pergola with retractable roof”
- The requirements of the notice are to: (1) Remove the rear pergola with retractable roof; and (2) Remove from site all resultant debris.
- The period for compliance with the requirements is 2 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The appeals both concern the erection of a pergola with a retractable roof to the rear of the appeal property, which operates as a local restaurant. The pergola helps facilitate use of the garden area in conjunction with this restaurant use.
2. Appeal A follows refusal of an application for retrospective planning permission for the development, and Appeal B relates to the enforcement notice which was subsequently issued by the Council in respect of the same. Given the appeals both relate to the same development, I have dealt with them together in the same decision letter.

APPEAL A

Main Issue

3. The sole main issue is the effect of the development on neighbouring amenity, with particular regard to noise and smell.

Reasons

4. The appeal site is located along the High Street of Brandon town centre. Properties along the High Street mostly comprise commercial uses at ground floor level, with residential flats above. There are several restaurants and late-night takeaway uses along the High Street, which are typical of the town-centre location. Nonetheless, there are residential streets to the rear of the High Street, which means dwellings are also sited near to the commercial premises.
5. The appellant's Noise Impact Assessment (NIA) has assessed the likely noise impact of the development for when the retractable roof of the pergola is either open or closed. In either scenario, the assessment concludes that resultant internal noise levels at the nearest sensitive receptors, which include the flat above the appeal property and the residential property to its rear, will comply with the desirable guideline levels within British Standard 8233:2014¹. In turn, the NIA concludes that the structure is capable of operating into the evening as a seated external area, without causing loss of amenity of nearby residents.
6. The Council's Public Health and Housing Officer initially raised several concerns with the NIA. These related to the metric used to assess patron speech, limitations of BS8233:2014 in terms of assessing the effects of noise within existing buildings, and limitations of the guidance when assessing noise from commercial premises. However, through further dialogue with the appellant, the Public Health and Housing Officer subsequently confirmed that conditions to address the identified acoustic concerns could be accepted to restrict operating hours and usage of the pergola. This suggests the noise impact of the development could be mitigated adequately through appropriate conditions.
7. More generally, the appeal site is situated within a town centre location, where some noise from commercial activities would typically be expected. Subject to appropriate conditions to govern hours of use, I am therefore satisfied that the noise impact of the development is appropriate to its context.
8. In terms of odour impact, the development helps facilitate the consumption of meals outdoors, which could introduce associated smells within the vicinity of the appeal site. However, the development does not alter the kitchen facilities or extraction system associated with the restaurant use, which means any corresponding impact is likely to be limited. Once again, given the location of the development within a town centre, smells from restaurants and takeaways, which are prevalent along the High Street, are not uncommon. When considered in this context, I am again satisfied the development does not harm the amenity of the area in terms of odour.
9. Overall, subject to conditions, the development preserves the amenity of the area. The development is consistent with Policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document (2015), both of which seek to ensure neighbouring amenity is adequately protected as part of new development.

Other Matters

10. Some neighbours have expressed concern regarding the impact of the development on their privacy. However, it is important to highlight that the

¹ British Standard 8233:2014: Guidance on Sound Insulation and Noise Reduction for Buildings

enforcement notice relates to the pergola itself, and not use of the appeal site. Whilst the Council suggests use of the external area would also not be lawful, little information has been presented on this point. In turn, if the appeal was dismissed, there is little before me to suggest the garden area would not continue to be used for outdoor dining. Such use would potentially have a greater impact on neighbouring privacy than the covered area, as the pergola at least provides a degree of screening.

11. Notwithstanding this position, the site's location along the High Street of the town centre is also important, as external restaurant seating areas are not unusual in such locations, nor should they be. In this context, the development does not harm the privacy of neighbouring occupiers to an unacceptable degree.
12. Concerns regarding property rights and rights of access to drainage within the appeal property are a civil matter between the parties. This is also the case for any damage to adjoining properties which could stem from the development, whether through water run-off or otherwise. Fire safety is covered by licensing and Building Regulations, which are again separate statutory regimes. Whilst concerns have also been raised regarding the absence of dedicated parking provision, the appeal site is located within an accessible town centre location where nearby parking opportunities are also available.
13. The appeal site is located within the Brandon Conservation Area (CA), and in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving this heritage asset and its setting. In this instance, the development is sited to the rear of the property, and does not impact on the character of the overarching street scene. In turn, I am satisfied it does not harm the CA nor its setting.

Conditions

14. I have reviewed the Council's suggested list of conditions, in line with guidance in the National Planning Policy Framework (2024) and Planning Practice Guidance.
15. I have included a condition to confirm approved plans, to ensure certainty over the development permitted (condition 1).
16. I have included conditions which prescribe the hours when the roof, doors and windows of the pergola can be open (conditions 2 and 3). I have also included conditions to restrict overall hours of use (condition 4), to prohibit the use of music (condition 5), and to restrict the overall number of patrons (condition 6). These are all needed to help protect neighbouring amenity of the area.
17. Finally, I have included a condition to secure biodiversity enhancement measures at the appeal site (condition 7), which should be commensurate in scale to the development. Whilst there is a deadline for submission of relevant details, I have not precluded occupation pending discharge of the condition, as such a measure would be disproportionate to the enhancements sought.

Appeal A - Conclusion

18. The development is consistent with the development plan as a whole, and planning permission should be granted.

Appeal A – Formal Decision

19. The appeal is allowed and planning permission is granted for rolling roof pergola at the rear side of the premises at 17 High Street, Bandon, Suffolk IP27 0AQ in accordance with the terms of the application, Ref DC/23/1100/FUL, subject to the conditions in the attached schedule.

APPEAL B

20. Notwithstanding the outcome of Appeal A, I have still addressed the enforcement appeal in full. However, in practice, the outcome will be of little consequence, as planning permission has been granted for the development.

Ground A

21. The acceptability of the development is contingent on appropriate conditions to protect the amenity of the area, which cannot be secured through a ground (a) (deemed planning application) appeal. Without these protections, neighbouring amenity cannot be properly safeguarded, and the development would therefore conflict with Policies DM2 and DM14 of the Joint DMPD. In turn, the appeal on ground (a) must fail.

Ground F

22. Pursuant to ground (f), the appellant says that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach of planning control. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the notice is to remedy the breach of planning control, and the requirements must achieve this purpose. In this instance, the requirements to remove the pergola and all resultant debris are proportionate steps, which go no further than remedying the breach. The appeal on ground (f) therefore fails.

Appeal B – Conclusion

23. For the reasons given, I conclude that the enforcement appeal should not succeed. I shall therefore uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).
24. Notwithstanding the outcome of the enforcement appeal, planning permission has been granted on Appeal A for the totality of the development alleged in the enforcement notice. In these circumstances, pursuant to s180(1) of the 1990 Act, the enforcement notice will cease to have effect.

Appeal B - Formal Decision

25. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Mr James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS (APPEAL A)

- 1) The development hereby permitted shall be retained in accordance with the following approved plans and documents:
Location Plan
2107.D2 (Site Loc and Block Plan)
23.06.D3 (Existing Plans)
Noise Impact Assessment (Sound Licensing Ltd, V1.0)
- 2) The retractable roof shall be closed at 9pm each day and shall remain closed until the start of business at 11am the next working day.
- 3) With the exception of use for access and egress, all windows and doors within the pergola shall be kept closed between the hours of 9pm and 11am the next working day.
- 4) The pergola shall only be used between the hours of 11am and 10pm, and at no other times.
- 5) No music or other entertainment shall be provided for the patrons of the pergola at any time.
- 6) The maximum number of patrons within the pergola shall not exceed 44 at any time.
- 7) Within 6 months of this permission, details of biodiversity enhancement measures to be installed at the site, including the timetable for installation, shall be submitted to the Council for approval. The approved measures shall be installed in accordance with the agreed timescales and retained thereafter.