



Appeal Decisions

Site visit made on 11 March 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeal Ref: APP/G5180/C/24/3345286

Land adjoining Pierluigi's, 86-90 High Street, Beckenham BR3 1ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)
 - The appeal is made by Mrs Irene Bianchi against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 25 April 2024.
 - The breach of planning control as alleged in the notice is Without the required planning permission, the erection of a pergola structure with perspex roof.
 - The requirements of the notice are to:
 - (a) Remove from the land the pergola structure with perspex roof
 - (b) Restore the land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (g) 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.
-

Decision

1. 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.

Preliminary Matters

2. As the site is in the Beckenham Town Centre Conservation Area (CA), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).
3. I am aware that a s78 appeal¹ has previously been dismissed in relation to an outdoor seating terrace that was already in place at the property. It was described as a pergola with a Perspex roof to the south elevation of the property. It is not clear whether the structure the subject of the enforcement notice is the same or has been altered but I have determined the appeal on the basis of the structure I saw on site.

The appeal on ground (a) and the deemed planning application

4. The main issues are usually taken from the reasons for issuing the notice. In this case, both parties have provided comments in relation to the effects of noise on local residents, although this was not referred to in the notice. As this matter goes

¹ Ref APP/G5180/W/22/3304723

to the heart of whether the development is acceptable, I have considered noise as a main issue. The main issues are therefore:

- whether the development preserves or enhances the character or appearance of the CA, and
- the effects of the development on the living conditions of neighbouring occupiers with regard to noise.

The CA

5. The CA is centred on the historic core of Beckenham, with a mix of building styles mainly dating from the 19th and 20th centuries. Beckenham was originally a small parish but its population expanded through a significant period of growth, mainly in the late 19th century, leading to rapid urban change. The CA is characterised by late Victorian three storey buildings, interspersed with some more modern development. Insofar as it relates to the appeal, the significance of the CA lies in its tight knit pattern of development broken up by alleyways between buildings. As a modern infill development which respects the pattern and scale of the surrounding development, the appeal building makes a positive contribution to the significance of the CA.
6. The structure has been erected to the side of the host building, intruding into the distinctive alleyway. It is constructed from a variety of materials and appears as a flimsy temporary addition that does not respect the materials or appearance of the host building or surrounding street scene. As a result, it appears incongruous and detracts from the appearance of the host building and the character of the area. It therefore erodes the character and appearance of the CA and harms its significance, which is a matter to which I attach considerable importance and weight.
7. Paragraph 212 of the National Planning Policy Framework (NPPF) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration or destruction of the asset or from development in its setting and that any such harm should have a clear and convincing justification.
8. Taking into account the scale and nature of the development, I find the harm to be less than substantial, but nevertheless of considerable importance and weight in the planning balance of the appeal. Where a proposal leads to less than substantial harm to the significance of a designated heritage asset, paragraph 215 of the NPPF advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
9. The development supports the evening economy in the town centre. The town centre is well connected, having a public transport accessibility level of 5. The site is not in an area at high risk of flooding. The retention of the covered seating area is said to be essential for the continued operation of the restaurant, particularly due to the need to ensure 'social distancing'. The country is no longer subject to restrictions from a global health pandemic but I acknowledge the likely benefit to the business of having additional seating and the support in the NPPF for town centres. I note that the NPPF in paragraph 85 advises that significant weight should be placed on the need to support economic growth and productivity. This

does not outweigh the need to give great weight to the conservation of designated heritage assets. Furthermore, it has not been shown that there are no alternative means of providing outdoor seating that would be less harmful to the significance of the CA.

10. Taking all this into account, I do not find that the public benefits are sufficient to outweigh the harm I have identified. It has not been shown that the continued viable use of the appeal property as a restaurant is dependent on the development in this form.
11. Given the above and in the absence of public benefits that outweigh the harm that has been caused, I conclude that the character and appearance of the CA is neither preserved nor enhanced. This fails to satisfy the requirements of the PLBCAA. The development is in conflict with paragraphs 212 and 215 of the NPPF, and conflicts with policies 37 and 41 of the Bromley Local Plan 2019 (BLP) and policies D3 and HC1 of the London Plan 2021 (LP) insofar as they seek to ensure that development preserves or enhances the character or appearance of conservation areas, enhances local context, and is of a high standard of design.

Noise

12. The appeal property is in an area with a mix of uses including residential flats nearby at Rokewood Apartments as well as residential uses on the upper floors of properties on the High Street. Due to the flimsy and open sided nature of the construction it could reasonably be expected that there is noise transmission to the surrounding area from customers and DJ entertainment within the building. This is likely to cause disturbance to local residents, adversely affecting their living conditions.
13. The Inspector previously found that the appellant had failed to demonstrate that the noise levels generated during weekend periods would not be harmful to nearby occupiers. This was on the basis of a Noise Assessment (NA) prepared by Enzygo, with noise evening assessments undertaken on 1 and 2 December 2021. The report stated that these were midweek, with further assessments to be undertaken and reported separately for a typical weekend evening. The same NA has been submitted with this appeal.
14. I have not been advised that there has been a change in circumstances since the previous appeal was dismissed. The appellant states that a second noise assessment will be undertaken on a weekend date in January to ensure that a weekend evening scenario is modelled but it is not clear whether this has been carried out and in any event a copy has not been provided. It has not been demonstrated that noise levels are acceptable or can be adequately mitigated. The development would not therefore be made acceptable by imposing a condition requiring the use to cease until an updated acoustic assessment has been carried out. That the Council has not provided details of any complaints does not indicate that noise levels are acceptable.
15. I therefore conclude that the development is harmful to the living conditions of neighbouring occupiers with regard to noise. It is therefore in conflict with NLP policy 37 and LP policy D3, insofar as they seek to ensure that development helps prevent or mitigate the impacts of noise.

16. The appellant has requested that consideration is given as to whether a temporary planning permission for two years could be granted, to allow time for discussions to take place with the landlord to extend the lease and replace the structure with a permanent steel framed structure. However, this would allow the harm that is caused to the significance of the CA and the noise disturbance to local residents to continue for a substantial period of time and I do not therefore consider that a temporary permission would be justified. In the alternative, the appellant requests a temporary permission for six months. It would be more appropriate to consider this in relation to the appeal on ground (g).
17. For the reasons set out above I conclude that the appeal on ground (a) should fail and the deemed application for planning permission should be refused.

The appeal on ground (g)

18. The ground of appeal is that the period for compliance with the steps is unreasonably short. The notice provides for a 3-month period for compliance. The appellant considers that six months would be reasonable, as an alternative business model will need to be found, bookings have already been taken and the business is trying to manage the cost-of-living crisis which is affecting the restaurant sector.
19. It seems to me that three months strikes a reasonable balance between the appellant's interests and the need to bring the identified harm to an end without unnecessary delay. The appeal on ground (g) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall 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.

N Thomas

INSPECTOR