

SITE PLAN ATTACHED

**THE BRAVE NELSON WOODMAN ROAD WARLEY BRENTWOOD ESSEX CM14
5AL**

CONSTRUCTION OF A PERGOLA (RETROSPECTIVE)

APPLICATION NO: 21/01331/FUL

WARD Warley **8/13 WEEK DATE** 22 September 2021

PARISH

CASE OFFICER Mrs Carole Vint 01277 312500

Drawing no(s) relevant to this decision: 2395 L04; 2395 L05; 2395 S01;

The application has been referred to committee at the request of Cllr Cuthbert for the following reason:

"The application for the pergola has received a number of objections from local residents both on the planning website and sent directly to me. It is a large structure with controversial features that impact the appearance of the area and therefore the views of the local residents.

Whilst work has been undertaken to try to mitigate residents' concerns, there are still outstanding issues including materials used and potential drainage issues that I feel warrant this going before the committee and the public. Because of the impact that this one structure has on so many dwellings around it I believe this far outweighs and conflicts with the policies listed above."

1. Proposals

This application relates to the retention of a pergola constructed in the public garden area of The Brave Nelson Public House, Woodman Road, Warley.

2. Policy Context

Brentwood Replacement Local Plan 2005

- Policy CP1 General Development Criteria
- Policy PC4 Noise

Emerging Local Development Plan (LDP) to 2033:

The Brentwood Replacement Local Plan 2005 remains the Development Plan and its policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the National Planning Policy Framework (NPPF). Due weight should be given to them, according to their degree of consistency with the NPPF - the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given.

The emerging Local Development Plan went through Pre-Submission (Publication Draft) Stage (Regulation 19) consultation early in 2019, with a further focused consultation later that year following revisions to the detailed wording of some of the proposed housing allocations. The plan was submitted to the Planning Inspectorate in February 2020. The examination hearing sessions opened in December 2020, concentrating on strategic matters, with hearings on more detailed matters held from February to July 2021. The Council proposes to make modifications to the plan and a six-week public consultation on this has recently ended on 11 November 2021. The Inspectors will consider any representations made as a result of the consultation. Provided the Inspectors find the plan to be sound, it is anticipated that it could be adopted by the Council in early 2022.

As the emerging plan advances and objections become resolved, more weight can be applied to the policies within it. At this stage there are outstanding objections to be resolved, although issues have been discussed through hearing sessions and main modifications for soundness have been published. The plan provides a good indication of the direction of travel in terms of aspirations for growth in the borough and where development is likely to come forward through proposed housing and employment allocations. While the examination is a further step in progress towards adoption, because the plan has yet to be adopted, it is still considered to have limited weight in the decision-making process.

National Policy

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

3. Relevant History

- 12/00479/FUL: Redevelopment of site to provide 6 no. (3 pairs of semi-detached) dwellings, formation of vehicular access and car parking. - Application Refused.

4. Neighbour Responses

Four letters have been received from occupiers of neighbouring dwellings, raising the following concerns:

- The proposal is an eyesore with the blue tarpaulin covering the pergola;
- The proposal does not meet the definition of a pergola;
- Resultant extra noise from customers;
- Potential noise and disturbance all year round;
- Possible drainage issues;
- Substantial outdoor building encouraging a congregation of people outside the confines of the public house;
- Objection to the bright blue tarpaulin cover;
- Outdoor entertainment out of place in a residential area;
- Additional outdoor television screens add to the unacceptable disruption to local residents;
- Construction of a soakaway on clay soil, compliance with building regulations.

5. Consultation Responses

- **Arboriculturalist:**

No comments received at time of writing report.

- **Highway Authority:**

The information that was submitted in association with the application has been fully considered by the Highway Authority. The applicant must ensure that any hedge or vegetation to the frontage does not encroach on or obstruct the highway footway, therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority as it is not contrary to the following Development Management policies:

- A) Safety: Policy DM 1 of the Highway Authority's Development Management Policies February 2011
- B) Accessibility: Policy DM 9 of the Highway Authority's Development Management Policies February 2011
- C) Efficiency/Capacity: Policy DM 1 of the Highway Authority's Development Management Policies February 2011
- D) Road Hierarchy: Policy DM 2-4 of the Highway Authority's Development Management Policies February 2011
- E) Parking Standards: Policy DM 8 of the Highway Authority's Development Management Policies February 2011

- **Environmental Health & Enforcement Manager:**

I refer to your memo in connection with the above-mentioned application and would make the following comments.

CONDITIONS

Environmental Health have concerns that the use of the pergola and the additional televisions it accommodates will encourage a prolonged use of the garden and affect the amenity of local residents. We suggest that a provision be made that no amplified sound should occur within the beer garden.

INFORMATIVES: None.

- **Licencing Officer:**

In confirmation of our discussion earlier, I recently submitted an Application to Review the Premises Licence at the Brave Nelson which was only determined earlier this month at a Licensing Sub-Committee hearing on 4th October 2021. The Review related to the unauthorised extended use of the beer garden (in breach of conditions specifically attached to the premises licence to address the public nuisance licensing objective) in order to show the football Euros tournament in July. In mitigation, the licensee was showing England playing - and winning - in a semi-final of a major sporting tournament that ran into extra-time and which triggered the licensing breach.

I did advise the committee that this special occasion (the Euros) now would be the World Cup next year, the Olympics, The Ashes, Wimbledon etc. and that there will always be major sporting occasions that potentially merit the use of additional screening. The addition of five large screens in the outside garden that, even during the pandemic restrictions, can cater for nearly 200 people, has the potential to turn the area into a small stadium. Notwithstanding the licensing technicalities of whether or not TV speakers can or cannot play music or whether sporting commentaries can potentially be muted (although experience has shown that this is never the case), the fact is that sporting events are competitions that evoke passion and rivalries amongst supporters and I defy any collective group of customers to sit and view these events quietly and without a murmur in the beer garden.

I did make the recommendation to the Committee that the removal of the TV screens from the outside area would certainly reduce the noise and public nuisance complaints but, without the support of an Environmental Health representation, it was always unlikely to be accepted.

Effectively, the applicant has spent a significant amount of money improving the facilities in the outside area - no doubt, initially designed to address the extraordinary circumstances arising from the pandemic outbreak last year - but he has also more than doubled his premises capacity by creating an outside bar/lounge area that does not have the benefit of walls and a ceiling that could, possibly, address the noise nuisance issues. The pub already has several TV screens inside the premises that has always previously satisfied the viewing needs of the customers and I do not receive complaints about the running of the INSIDE of

the pub. However, there is a long history of noise nuisance complaints received against the Brave Nelson which always relate to the use of the OUTSIDE beer garden.

6. Summary of Issues

The starting point for determining a planning application is the development plan, in this case the Brentwood Replacement Local Plan 2005. Planning legislation requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant material considerations for determining this application include the planning history, the National Planning Policy Framework 2021 (NPPF) and National Planning Practice Guidance (NPPG). Although individual policies in the Local Plan should not be read in isolation, the plan contains policies of particular relevance to this proposal which are listed in section 2 above.

The main issues which require consideration as part of the determination of this application are:

- The impact of the proposal on the character and appearance of the area;
- Impact on the living conditions of the occupiers of neighbouring occupiers;

Design, Character and Appearance

The application site is located on the northern side of Woodman Road, opposite the junction with Nelson Close and is surrounded by residential properties on all sides.

The proposal relates to the retention of a light weight single storey structure – referred to by the applicant as a pergola - sited in the public garden area to the west of the public house. The structure was initially covered in blue tarpaulin on the roof and rear, leaving it open at the front and sides with three televisions suspended from the ceiling. During the lifetime of the application, it was suggested that the tarpaulin and televisions were removed. A recent site visit has confirmed that the blue tarpaulin has been removed and a more substantial flat roof has been added, however the televisions remain in situ.

The structure is set back from front boundary and is well screened from the street and following the removal of the blue tarpaulin, it is considered that the pergola would be compatible with the surrounding character and appearance of the area and would be compliant with Policy CP1 (i) and (iii).

Effect on neighbours Living Conditions

With respect to physical impact, the structure would not result in any overbearing impact. However, the use of the structure as additional only partly enclosed facilities for customers would act as a focus for activity on this part of the site. It is likely to be intensively used, at least on occasions, due to the use of the television screens to show sporting or other popular events. Due to its only semi enclosed nature, its ability to

retain or control noise from reaching residential properties in the locality will be limited. Use of the structure to show popular televised events is likely to result in an increase in noise experienced by local residents. The applicant advises that the televisions can be controlled with no amplified sound. However, the likelihood of television sound being kept low during events is doubtful and noise and activity from viewers is also likely to be more than limited. With the televisions removed, however, the noise and activity are likely to be much less. Therefore, a condition requiring that the televisions to be removed is proposed and subject to the condition, the proposal would comply with Policy CP1 and PC4.

Conclusion

The proposal is compliant with Policies CP1 and PC4 of the Brentwood Replacement Local Plan and the NPPF and NPPG. The application is recommended for approval subject to conditions.

7. Recommendation

The Application be APPROVED subject to the following conditions:-

1 DRA01A Development in accordance with drawings

The development hereby permitted shall not be carried out except in complete accordance with the approved drawing(s) listed above and specifications.

Reason: To ensure that the development is as permitted by the local planning authority and for the avoidance of doubt.

2 U0043623 No televisions

Within 2 months of the date of approval of this application, all outdoor televisions located in the pergola shall be permanently removed and no future televisions shall be installed or used in the pergola.

Reason: In order to protect the amenity of neighbours from noise and disturbance.

Informative(s)

1 INF02 Reason for approval (objections)

Reason for approval: The proposal would accord with the relevant policies of the development plan as set out below. The Council has had regard to the concerns expressed by residents but the matters raised are not sufficient to justify the refusal of permission.

2 INF04 Amendments to approved scheme

The permitted development must be carried out in accordance with the approved drawings and specification. If you wish to amend your proposal you will need formal permission from the Council. The method of obtaining permission depends on the

nature of the amendment and you are advised to refer to the Council's web site or take professional advice before making your application.

3 INF05 Policies

The following development plan policies contained in the Brentwood Replacement Local Plan 2005 are relevant to this decision: CP1, National Planning Policy Framework (NPPF) 2021 and NPPG 2014.

4 INF22 Approved Following Revisions

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

BACKGROUND DOCUMENTS

DECIDED:

