

Planning Committee: 18 July 2023

Item Number: 10

Application No: [W 23 / 0625](#)

Town/Parish Council: Kenilworth
Case Officer: Michael Rowson
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Registration Date: 26/04/23
Expiry Date: 21/06/23

The Royal Oak, 36 New Street, Kenilworth, CV8 2EZ
Erection of barbecue shed in rear garden area FOR The Royal Oak

This application is being presented to Planning Committee due to the number of support comments received and it is recommended for refusal.

RECOMMENDATION

Planning Committee is recommended to refuse planning permission for the reasons set out at the end of this report.

RELEVANT PLANNING HISTORY

None.

THE SITE AND ITS LOCATION

The application property is sited on the southeast side of New Street and contains a Grade II Listed Public House set within a row of terraced properties. The rear garden has a raised patio to the rear of the pub, stepping down to another patio and garden area laid to stones beyond. A smoking shelter marquee is positioned to the rear of the building.

The site is within the Kenilworth Conservation Area.

DETAILS OF THE DEVELOPMENT

The application proposes the erection of a single storey building for use as a barbecue shed to the rear of the pub, on the lower of the two patio areas. It would be sited towards the north-east side boundary of the site and be set off that boundary by 1.20m. The building would measure 3.0m by 3.8m in floor area, with a gently sloping roof with a front overhang. The building would have a maximum height of 2.40m.

Internally, the barbecue shed would have two indoor barbecue pits which would be fuelled by wooden pellets. The flues serving the pits would be on the northeast side of the building.

The southwest elevation of the building would include an access door and serving hatch for serving the cooked food.

RELEVANT POLICIES

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- BE1 - Layout and Design
- BE3 - Amenity
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- HE1 - Protection of Statutory Heritage Assets
- Guidance Documents
- Residential Design Guide (Supplementary Planning Document- May 2018)
- Kenilworth Neighbourhood Plan (2017-2029)
- KP13 - General Design Principles

SUMMARY OF REPRESENTATIONS

Kenilworth Town Council: Objection – Members were mindful of protecting the amenity of the area and any nuisance to neighbouring properties. It was specifically noted this appeared to be an industrial smoking unit which would be harmful to neighbouring properties by way of smoke and noise pollution. The above objections were considered material considerations, in contravention of relevant Planning Policy, specifically including the Kenilworth Neighbourhood Plan KP13 (General Design Principles).

Environmental Health Officer: Objection-

The application includes a specification document for the barbecue units (FEC120) which indicates that the units will be fuelled by wood pellets. The specification document says that the flue should be installed under an appropriate extraction canopy, or the flue should vent directly to the outside if circumstances permit. The proposed shed building is located in close proximity to the boundary of two residential properties: 38A and 40A New Street, Kenilworth. Given that the proposed barbecue pits appear to vent directly to the outside, it is likely that residents of these properties will experience smoke, ash, and odour issues since the flue gases will discharge at a low level and be unabated.

The units will need to be in operation several hours per day, each day of the week for smoking meat. As there are a number of residential windows overlooking the proposed flues, we anticipate that emissions from these units will have an adverse impact on residential amenity. The discharged smoke and odour will rise vertically and enter through open windows, resulting in a loss of amenity and residents having to keep their windows closed to avoid this. On this basis, we make an objection to the proposed development as the location of the proposed shed is not compatible with the adjacent residential uses and will likely give rise to adverse impacts on their amenity due to smoke, ash, and odour.

Conservation Officer: No objection, subject to elevations showing indicative use of materials.

WCC Ecology: No objection, subject to inclusion of a note regarding avoiding disturbance of nesting birds.

Public Response: 59 received (10 objection, 39 support) raising the following issues:

Object:

- Harm to neighbouring amenity – odours, noise, air quality and ash
- Neighbours will need to keep windows closed, leading to overheating in the summer.
- Safety concerns regarding operation of the cooking facilities
- Lack of hygiene facilities
- Rubbish clearance concerns leading to potential rodent infestation.
- Increased parking problems
- Insufficient details provided regarding ventilation, fumes, and smells.
- The application will generate CO2 and increase greenhouse gases.
- The description of development does not state that a preparation area is proposed.
- The cardboard serving boxes will result in unnecessary waste.
- The Royal Oak is located in a smoke-controlled zone and the pellets recommended for use in this equipment are not included in the DEFRA list of authorised fuels for use in a smoke-controlled zone.
- The Public House has a history of disregarding the terms of its license, including disregard about using the garden after 11:00pm. This would make the situation worse as more customers would be outside.
- Many of the supporters of the application are not local or regular patrons of the pub.
- The ovens have been purchased following the withdrawal or refusal of a similar scheme at another pub.

Support:

- It will support and enhance the pub offering and existing business.
- It will ensure the long-term success of the pub.
- It will be good for the community.
- It would create little to no disruption or noise.
- The location is perfect.
- Great for families
- It will enable catering for more charity events at the pub.
- It will enable people to enjoy a meal and a drink in a relaxed and enjoyable setting.
- It will support the local economy.
- It will enable people without huge gardens to dine alfresco style.

ASSESSMENT

Visual impact and impact on the character of area

Local Plan Policy BE1 requires new development to positively contribute to the character and quality of its environment through good layout and design. This is further supported through the Residential Design Guide SPD which provides a framework through which additional design principles are set out to ensure that high quality design is promoted, sensitive to, and in keeping with the area in which it is located.

KP13 of the Kenilworth NDP (General Design Principles) states that development proposals should achieve a standard of design that is appropriate to the local area.

The proposal would be relatively small in scale and similar to a garden shed in appearance. It would be sited in the rear pub garden, in an area currently laid to patio, and would not be visible from the public realm. Officers are satisfied that the design is suitable in the context of the surrounding area and that the development would not result in any visual harm to the street scene.

For the above reasons it is considered the development is acceptable in this regard and as such accords with Policy BE1.

Impact on heritage assets

Considerable importance and weight should be given to the duties set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, when making decisions that affect listed buildings and conservation areas respectively. These duties affect the weight to be given to the factors involved.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, "In the exercise, with respect to any buildings or other land in a conservation area... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

Policy HE1 of the Local Plan expects development proposals to have appropriate regard to the significance of designated heritage assets. Where any potential harm may be caused, the degree of harm must be weighed against any public benefits of the proposal.

KP13 of the Kenilworth NDP (General Design Principles) states, amongst other things, that development proposals should demonstrate regard to heritage assets and their settings in the locality and must be respected in accordance with their significance. The policy goes to state that development proposals within the Kenilworth Conservation Areas must assess and address the guidance provided within the Kenilworth Conservation Areas Design Guide. Policy KP13N of the Kenilworth NDP manages design quality in the character area in which the site is located, derived from the Kenilworth Conservation Areas Design Guide and states the need to maintain the street scene and have regard to its originality to the town.

Paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Having regard to the design considerations set out above, there is no objection to the proposal. It is located at the rear of the pub and would have no impact on the character of the conservation area. Furthermore, it would not be attached to the listed building, would be modest in scale and is considered to preserve the special architectural and historic interest of the Listed Building and its setting.

Had the application been otherwise acceptable, a condition regarding the samples of materials would have been attached, as requested by the Council's Conservation Officer.

It is therefore considered that the development is acceptable in this regard and as such accords with the above detailed policies.

Impact on neighbouring amenity

Warwick District Local Plan Policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents and to provide acceptable standards of amenity for future users or occupiers of the development. The phrase 'amenity' is defined as the extent to which people are able to enjoy public places and their own dwellings without undue disturbance or intrusion from nearby uses.

The building containing two barbecue pit units would be positioned close to the north-east boundary of the pub garden. A number of objections have been raised regarding neighbouring amenity by local residents and the Council's Environmental Health Officer has also raised an objection to the proposal.

The north-east boundary of the site is formed by dwellings which face onto New Street (38A and 40A New Street). There are several windows in the roof and side elevations of those dwellings which are in close proximity to the proposal. The introduction of a barbecue shed 1.20m from the boundary and those windows would be likely to result in smoke, ash and odour from the barbecue units rising vertically from the proposed flues and entering those dwellings. Neighbouring residents would be required to keep their windows closed for a significant part of the day to avoid the fumes, which is considered unacceptable and could result in additional overheating concerns during summer months if rooms are not served by windows facing away from the subject site.

The barbecue units would burn wood pellets to create heat and smoke meats over a long period of time every day in preparation for serving later in the day. The applicant has stated that the units proposed have been designed to minimise smoke and noise pollution, which would be combined with an extractor fan and carbon filter to improve the situation regarding neighbouring impacts. However, the specification document for the units (FEC120) says that the flue should be installed under an appropriate extraction canopy, or the flue should vent directly to the outside if circumstances permit.

The Council's EHO has stated that the production of smoke from the units will depend on a number of factors including the quality of combustion and the moisture content of the fuel. Although the ovens will be using wood pellets, this is still a solid fuel that is burned for heat and smoke-flavouring and will therefore create smoke.

The manufacturer's brochure says that the ovens are a contained system that self-regulate to ensure consistent temperatures and efficient burning of the pellets. The applicant has proposed to install an extractor fan and a carbon filter to mitigate the impact of the proposal. However, the EHO has stated that the

efficiency of these will depend on the dwell time of the carbon filter and the efflux velocity of the flue. Whilst the carbon filter will provide a certain level of odour abatement, the low-level flue height will limit the effective dispersal of emissions. This could result in cooking and combustion odours being emitted over long periods of time, which would enter neighbouring dwellings unless those windows were closed. Smoking food is a slow process so the ovens will need to be in use over long periods of time, which would extend impacts on neighbouring residents and require them to keep windows closed.

The Barbecue shed would be 1.20m from the shared boundary with the adjacent dwellings. The Council's EHO considers that the proximity of the ovens to residential boundaries and windows, coupled with the low-level flue height, creates undesirable circumstances that would negatively impact on existing residential amenity. As the property is bounded by residential dwellings on all sides, an alternate outdoor location is unlikely to be viable, whilst the inclusion of a flue of an acceptable height to overcome these concerns would also not be practical considering the height of flue required and resulting impact on the appearance of the site.

For the above reasons it is considered the development fails to accord with Policy BE3.

Parking

Policy TR3 (Parking) of the Warwick District Local Plan states that new development will only be permitted that makes adequate provision for parking. The Council's adopted Parking Standards SPD provides additional guidance in this regard.

An objection has been received regarding parking impacts in the local area. The pub is well-established, and the proposal would result in only a small increase in floorspace across the site, none of which would be utilised by patrons of the pub, only the cooking staff. There would therefore be no increase in parking requirement as set out in the Parking Standards SPD. Should patrons wish to park in close proximity, there is public parking available at the Abbey Fields Car Park. For the above reasons, officers are satisfied that the development is acceptable in this regard and would comply with the above detailed policies.

Impact on ecology and biodiversity

The National Planning Policy Framework (NPPF) places significant weight on the protection and enhancement of biodiversity and geodiversity, stating at Paragraph 180(a): *If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*

Policy NE2 of the Warwick District Local Plan 2011-2029 states that development will not be permitted that will destroy or adversely affect protected, rare, endangered or priority species unless it can be demonstrated that the benefits of the development clearly outweigh the nature conservation value or scientific interest of the site and its contribution to wider biodiversity objectives and connectivity. Policy NE3 of the Local Plan (Biodiversity) states that development

proposals will be expected to protect, enhance and/ or restore habitat biodiversity and where this is not possible, mitigation or compensatory measures should be identified accordingly.

The building would be located on an area of existing hardstanding and would therefore not impact biodiversity on the site. WCC's Ecology team were consulted and raised no objection, subject to a note regarding avoiding any disturbance of nesting birds. It is therefore considered that the development accords with the above detailed policies.

Other matters

Objections from members of the public include hygiene and food safety concerns, waste and rodent infestation concerns; potential existing and future licensing infringements; and the site's location within a smoke controlled area.

Officers consider that these concerns are subject to separate legislation and could therefore be controlled outside of the planning assessment process.

Conclusion and planning balance

The proposed development would enable the Public House to increase the food offering available for patrons and would likely result in economic benefits for the operators and a level of community benefits for patrons. However, for the reasons set out above, it is considered that the proposal would harm living conditions at neighbouring properties.

On balance, it is considered that the economic benefits to the operator of the pub and benefits to the patrons do not outweigh the harm to the living conditions of neighbouring residents. It is therefore recommended that the planning application is refused.

REFUSAL REASONS

- 1 Policy BE3 of the Warwick District Local Plan 2011-2029 states, amongst other things, that development will not be permitted if it has an unacceptable adverse impact on the amenity of nearby uses and residents.

In the opinion of the Local Planning Authority, the proposed cooking units and lack of adequate mitigation would result in smoke, cooking odours and ash entering adjacent neighbouring windows, resulting in nuisance, undue disturbance, and harm to the living conditions within those neighbouring dwellings.

The proposal is thereby considered to be unneighbourly and contrary to the aforementioned policy.