



# Appeal Decision

Site visit made on 7 March 2007

by **Rodney Baker** BSc MA MRICS MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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**Appeal Ref: APP/G5180/A/06/2031438/NWF**

**Land adjacent to Abbaye, Queens Gardens, Kentish Way, Lownds Avenue, Bromley, BR1 1NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tragus Holdings against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/06/00916/FULL1, dated 13 March 2006, was refused by notice dated 16 June 2006.
- The development proposed is installation of decking with umbrellas, lighting and fencing and use of the land for the placing of tables and chairs.

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

## Main Issues

1. The main issues are the impact on the living conditions of the occupiers of flats near the site and the effect on the character of Queens Gardens which is in Bromley Town Centre Conservation Area.

## Planning Policy

2. The Bromley Unitary Development Plan (UDP) was approved in July 2006. It forms part of the development plan for the area. The UDP includes a number of policies relating to conservation areas, landscape and the amenities of residents. Supplementary Planning Guidance has been published on Bromley Town Centre Conservation Area. The Bromley Town Centre Action Area Plan has been referred to, but I am not aware of the status of this document.

## Reasons

### *Noise and disturbance*

3. Abbaye is a public house/restaurant on the ground floor of The Glades shopping centre, it faces onto a walkway or colonnade which in turn gives onto Queens Gardens, a large open space with several imposing mature trees and grassed areas. Above the colonnade are flats which have windows and balconies which overlook Queens Gardens.
4. The appeal site is about 8.8m x 7m. It is within Queens Gardens adjacent to 2 bays of the colonnade. Part of the colonnade is used as a seating area for Abbaye and people were

having lunch there when I visited the site. The colonnade is also used as a pedestrian access to The Glades. Two windows in the flats would be directly above the eastern half of the appeal site at second and third floor level. There are windows at first, second and third floor levels just to the east of the site.

5. The intention is to have about 11 tables probably with umbrellas and heaters and the hours of operation sought are 10:00 - 22:00 Mondays to Saturdays and 12:00 - 21:00 on Sundays. The gardens are part of an alcohol exclusion area, but the appeal site could be taken out of that area if it were licensed for alcohol consumption.
6. The tables currently used in association with Abbaye are beneath the covered way so that any noise from there is muffled. The appeal site could accommodate as many as about 40 people if all the tables were occupied. There is likely to be noise from people talking and making merry, as well as noise associated with the delivery of food and the setting and clearing of tables. This noise would be somewhat attenuated by the umbrellas and by the distance of the tables from the windows, the nearest of which would be about 5-6 m.
7. The site is likely to be most busy in the summer months when the windows in the flats are most likely to be open. This may increase the likelihood of nuisance to the occupiers. However, the disturbance would be limited by the proposed opening hours.
8. The park is a public space and is a busy route between car parks, the Council offices and The Glades, so occasional noise is to be expected. The park is used for occasional music events and permission was granted for a temporary ice rink. The appellant states that there have been no complaints about the use of the colonnade for eating and drinking.
9. Furthermore, there are other forms of control over rowdy behaviour and it would not be in the interests of the operators to allow people to drink, on-site, beverages not bought at Abbaye. Nor would it be in their interests to allow the local residents to be disturbed. I think it likely that the Council as landlord would retain some control over the operations.
10. In these circumstances, I consider that there is a risk that there would be disturbance to residents, but that the risk may be acceptable due to the town centre location of the site.

#### *Conservation Issues*

11. Residents have objected to the loss of public open space in an area which was bequeathed to the public by the Lord of the Manor. Arrangements for the use of the space would be a matter for the Council who are the owners. To my mind, acceptable recreational use of open space can include eating and drinking. The Bromley Town Centre Action Area Plan includes policies for the increased attractiveness and vitality of the centre. Such a policy would be in tune with the advice in Government policy on Town Centres, including that which seeks to maintain lively and attractive centres in the evenings<sup>1</sup>. The gardens are busy and the proposed use is likely to add to their attractiveness to the general public. Even those who did not use the premises may find a well run café/restaurant added to the interest of the area.
12. The Gardens are a well-used part of the conservation area, but also serve as a quiet refuge in an otherwise busy area. Nevertheless, the use would occupy only a small corner of the open

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<sup>1</sup> Planning Policy Statement 6 – Planning and Town Centres

space near the shops; a great deal of space would remain for other forms of relaxation and enjoyment. Consequently, I consider the scheme to be in accordance with conservation and open space policies and with the SPG on the conservation area. The proposals have the potential to enhance the character of this part of the conservation in accordance with Policy BE11. It also complies with Policy G8 on urban open space, as the use is related to the existing use and it is very small in scale.

#### **Conditions**

13. Although there are risks to the living conditions of the occupiers of the flats, the scheme has advantages for the town centre and for the conservation area. In these circumstances it is appropriate to examine whether a temporary permission would be acceptable as a trial run for the operation.
14. The Council officers have suggested a period of 3 years. The appellants would prefer not to be subject to a temporary permission, but if one were imposed it should not be shorter than 6 years, as this would allow the capital costs of about £90,000 to be written off. To my mind, 6 years is a long time for which to grant a temporary permission for a trial period. However, having regard to the benefits of the scheme to the Town Centre, I consider that in this case it would be appropriate. In my view such permission would respect the amenity provisions of Policy BE1 of the UDP.
15. I do not consider that a personal permission would meet the advice in Circular 11/95. Details of lighting would be necessary to minimise the effect of lighting on the neighbours. Details and samples of all materials would be necessary to ensure that the design fitted in with the conservation area. A condition limiting the use to the area applied for is unnecessary as enforcement action could be taken against encroachment into the gardens. A condition preventing the use of loudspeaker equipment is necessary to reduce the potential for disturbance.

#### **Other Matters and Conclusions**

16. I have considered the comments made regarding the tree. Most of the branches are on the side away from the proposed seating area. A temporary permission would enable the effect on the tree to be monitored. A condition requiring a method statement would be necessary to ensure that rain water reached the roots and that the piling system used did not interfere unnecessarily with the root system. To my mind, the railings proposed would not be out of keeping with the conservation area.
17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

#### **Formal Decision**

18. I allow the appeal, and grant planning permission for installation of decking with umbrellas, lighting and fencing and use of the land for the placing of tables and chairs on land adjacent to Abbaye, Queens Gardens, Kentish Way, Lownds Avenue, Bromley, BR1 1NG in accordance with the terms of the application, Ref DC/06/00916/FULL1, dated 13 March 2006, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) No customer shall be permitted to be within the application site and all lighting shall be extinguished outside the following times: 10:00hrs - 22:00hrs Mondays to Saturdays, 12:00hrs – 21:00hrs on Sundays.
- 3) No development shall take place until details and samples of the materials to be used in the construction have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No amplified or other music or other form of broadcasting shall be played within the application site.
- 5) The structure hereby permitted shall be removed and the use hereby permitted shall be discontinued on or before the date 6 years from the commencement of the use. On or before that date, the land shall be restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority. The appellants shall inform the Local Planning Authority of the date of commencement within one week of commencement of the use.
- 6) Before the development hereby permitted commences, details of a scheme of lighting shall be submitted to and approved by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved scheme.
- 7) Before the development hereby permitted commences, a detailed method statement of the construction of the decking and protection of trees and tree roots shall be submitted to and approved by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved scheme.

*RH Baker*