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# Appeal Decision

Site visit made on 28 February 2022

**by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 May 2022**

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**Appeal Ref: APP/L5810/W/21/3278905**

**Gaucha Grill, Riverside, The Towpath, Richmond, TW10 6UJ**

- 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 Gioni (UK) Ltd against the decision of Richmond Upon Thames London Borough Council.
  - The application Ref 21/0437/FUL, dated 9 February 2021, was refused by notice dated 13 April 2021.
  - The development proposed is the removal of existing bench to facilitate the temporary and seasonal use (May - September) of part of the pier as a self-contained al fresco restaurant with associated demountable furniture, structures and lighting.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The reasons for refusal as set out on the Council Decision Notice includes those which relate to amenity (particularly noise and odour generation) and servicing (such as refuse storage capacity). These are reasons for refusal Nos 2 and 3.
3. Further information regarding these matters have been submitted by the appellant with this appeal. The Council has responded and whilst there are still matters to consider they have suggested conditions to address these issues. On this basis, these matters are not main issues with this appeal.

## Main Issues

4. The main issues are (1) whether the proposed development is inappropriate within the Metropolitan Open Land (MOL) area; (2) whether the proposal would interfere with the boating/transport functionality and therefore the special character of the River Thames and Thames Policy Area; (3) the effect on the character and appearance of the area, including the significance of heritage assets; (4) whether the proposal results in an over-concentration of restaurant uses along the Richmond Riverside; and (5) the effect of the development on biodiversity.

## Reasons

### *Metropolitan Open Land*

5. The appeal property falls within an area defined as Metropolitan Open Land. The London Plan gives such areas protections that are equivalent to those given in the Green Belt. The London Plan under policy G3 states that the MOL should be protected from inappropriate development in accordance with

national planning policy tests that apply to the Green Belt (as set within the National Planning Policy Framework). MOL is strategic open land which the London Plan describes as a “network of green spaces, features and places around and within urban areas” (paragraph 8.3.1).

6. Policy LP13 of the Richmond Local Plan (2018) (the Local Plan) sets out that MOL will be protected and retained in predominantly open use. Inappropriate development will be refused unless ‘very special circumstances’ can be demonstrated that clearly outweigh the harm to the MOL. The policy sets out what it considers to be appropriate uses within the MOL areas.
7. Currently the pier is a mostly open structure that runs parallel with the adjacent towpath and opposite the restaurant. The proposal is to place tables and chairs along the pier along with some cooking equipment, a generator and waste system, amongst other things. Sunshades would be fixed above tables if required. Although temporary, as it is proposed for the summer months primarily, the use would result in a much more intensive use of the pier which would be occupied daily by the chairs and tables, for example. Although much would be removed when not in use, such as overnight, the use of the pier as an outdoor restaurant would be for many daytime hours and would appear much less open than currently.
8. As set out above, there are uses appropriate to the Metropolitan Open Land, but the proposal for an effective extension to the restaurant to provide for an outdoor eating/drinking area does not fall within the policy exceptions to inappropriate development, with the openness of the pier significantly eroded for a substantial part of the year by the furniture and associated facilities as proposed.
9. In not complying with the exceptions set out within policy LP13 or with Policy G3 of the London Plan, the scheme would consequently comprise inappropriate development. As such, an assessment as to whether very special circumstances would exist for the proposed development will be considered later in this decision letter.

#### *River Infrastructure*

10. The site is to the side of the River Thames and this is a development proposal within the designated Thames Policy Area. Local Plan policy LP18, under section E, states that the Council will resist the loss of existing river-dependent and river-related uses that contribute to the special character of the River Thames, including piers and stairs. Furthermore, London Plan policy SI 15 requires that “development proposals should protect and enhance existing passenger transport piers and their capacity”. Also, policy SI 16 of the London Plan requires that “Development proposals adjacent to waterways should protect and enhance, where possible, existing moorings.”.
11. The proposal would mean that the southern section of the pier would be effectively out of use for boats on the Thames through much of the summer months, with the steps down to water-level appearing to be almost inaccessible from the submitted plans. However, I note that there are still sections of the pier that would remain usable to boats and that the proposal is supported by the boat company that uses the pier.

12. The proposal is explained as a way of supporting the restaurant after the Covid pandemic and also working in a mutually supportive way with the boat company. The appellant has also stated a willingness for the proposed use of the pier to be for a temporary period only (for a 'trial' period). On that basis and on balance there would be no harm to the functionality of the pier, especially in the longer term, as a result of the proposal. On this matter, the proposal is in general accordance with policy LP18 of the Local Plan and policies SI 14, SI 15 and SI 16 of the London Plan.

#### *Heritage Assets*

13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) is relevant to this appeal as it requires special regard as to whether to grant planning permission for development which affects a listed building or its setting. Also, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in the exercise of planning functions.
14. The National Planning Policy Framework (the Framework) also advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework 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.
15. The site is within the Richmond Hill Conservation Area (CA). The significance of this heritage asset is partially derived from the historic townscape and the river landscape. I note from the Richmond Hill Conservation Area Statement the importance of the 'historic open landscape encompassing both banks and the river Thames south of Richmond Bridge' and that a perceived threat is pressure from development which may harm the balance of the river and landscape dominated setting.
16. Currently, the pier/landing stage is largely open and free from development on top of it. As a pier it is a common feature along the Thames and links well with the river history and uses. The proposal, however, would result in a much more visually cluttered landing stage/pier which would be visually prominent in this location, adjacent to the Towpath. There is already the restaurant opposite the pier, but this would essentially extend the restaurant use out to a position immediately adjacent to the river. This would, to some extent, erode the balance of the landscaped and open river setting in this part of Richmond, to a more commercial and developed setting. The proposal would also diminish the semi-rural openness and tranquillity along the towpath, which I would regard as a positive feature of this part of the CA. The proposal would neither improve nor protect the landscape setting of the river, which is important to the CA character.
17. The site is also within the setting of the Grade 1 listed Richmond Bridge, to the north of the site, which is an important and historic landmark. Whilst there is intervisibility between the bridge and the pier, there is a significant separation distance. Given the modest scale of physical development on the pier, coupled with this separation distance, there would be no harm to the character and integrity of Richmond Bridge.

18. Whilst there would be no harm to the listed bridge or any other nearby listed buildings, the proposed development would fail to preserve the character and appearance of the Conservation Area. The potential for those dining at the proposed site to appreciate the CA and spend more time in this area does not outweigh the harmful characteristics to this heritage asset that I have identified.
19. Nevertheless, the harm would be less than substantial and in accordance with paragraph 202 of the Framework, that harm should be weighed against any public benefits of the proposal. In this case, there may be some public benefits through there being an additional area for 'al fresco' dining/refreshments and potential economic benefits, but the public benefits are limited for this modest proposal. As such, there are no public benefits arising from the proposal that would offset the identified harm, to which I must attach considerable importance and weight.
20. The proposal is therefore contrary to policies LP1 and LP3 of the Local Plan (2018) and HC1 of the London Plan. These policies require that development conserves the historic environment of the Borough, amongst other things.
21. However, though stated in the reason for refusal, I see no conflict with Local Plan policy LP6 which has regard to Kew Gardens World Heritage Site.

#### *Restaurant Concentration of Uses*

22. The proposal would result in the use of part of the pier for dining uses. However, whilst this is physically separated from the Gaucho Restaurant there would be a clear association. Effectively, this would be an extension of the existing restaurant and on a relatively small scale. On this basis the proposal would not result in an over-concentration of similar restaurant uses in this area. Nor would it result in a significant extension in floorspace for the restaurant. The proposal is therefore in general accordance with policy LP26 of the Local Plan.

#### *Biodiversity*

23. The proposal would result in additional lighting on the pier in association with the proposed restaurant use. As the river is known as a commuting corridor for bats, which are sensitive to light, the proposed lighting could have an effect to these protected species. The submitted Bat Assessment (Ecology by Design) stated that without redesigning the lighting the impact to commuting bats would be significant. However, the Assessment concluded that a detailed lighting design to address this matter could be submitted via condition, with some recommendations made for how this could be done.
24. I understand that the Council is not convinced this can be achieved, but from the evidence before me I am of the opinion that a suitable lighting design which would not adversely affect bats could be designed. As such, it is my view that, with a suitable condition, this is not a reason to dismiss the appeal and the proposal can be in accordance with policy LP 15, which has regard to protecting and enhancing biodiversity.

#### **Planning Balance**

25. As set out above, I would consider the proposal to be inappropriate development in the MOL, which is by definition harmful. Inappropriate

development on MOL should only be permitted if the harm by virtue of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

26. In addition, there would be harm due to a failure to preserve or enhance the CA. I have already found that the public benefits of the proposal would not offset the identified heritage harm with this issue.
27. Nonetheless, there are benefits to the proposal. The appellant has explained the need for use of the pier for outside dining to be as part of the financial recovery and support for the restaurant business after the Covid Pandemic. The appellant has highlighted another appeal which was allowed where supporting a business through the pandemic was a factor (ref: APP/Y3615/C/20/3259273). However, at the time of writing there are little or no Covid restrictions and so the need for outdoor dining as an alternative to indoor dining has diminished (even if there will be some customers who prefer this form of dining). The dining area on the pier would still have some economic benefits in supporting the business post-covid, and the use of the pier for dining could also benefit the boating company that uses this landing stage, in what is an accessible location.
28. Taken cumulatively, the benefits would not clearly outweigh the harm resulting from inappropriate development in the MOL and the harm to the significance of the designated heritage asset, to both of which I am required to give substantial weight. Consequently, the very special circumstances necessary to justify inappropriate development in the MOL do not exist.
29. The proposal is therefore contrary to policies LP13 of the Local Plan and G3 of the London Plan due to the development being inappropriate in the MOL with no considerations which are sufficient to comprise very special circumstances.

### **Conclusion**

30. For the reasons given above I conclude that the appeal should be dismissed.

*Mr S Rennie*

INSPECTOR