
Appeal Decision

Site visit made on 28 November 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/C2708/C/16/3147109

'22 The Square' 57-59 Main Street, Cross Hills, Keighley BD20 8TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Raj Panesar (22 The Square) against an enforcement notice issued by Craven District Council.
 - The enforcement notice was issued on 18 February 2016.
 - The breach of planning control as alleged in the notice is: the erection of 5 (five) air conditioning condenser units on the south west facing gable elevation of the property.
 - The requirements of the notice (in part 6) are as follows:
 - 6.1 Permanently remove the 5 air conditioning condenser units from the property.
 - 6.2 Make good any damage caused to the existing wall resulting from compliance with step 6.1 above using matching materials.
 - 6.3 Permanently remove from the property all debris resulting from compliance with steps 6.1 and 6.2 above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on grounds (c), (f) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied (see formal decision).

Background information

2. The appeal building is a traditionally built, stone and slated structure located on the south side of Main Street; in a prominent town centre location and at the junction with Beech Street. Formally known as the '*Bella Napoli*' restaurant, it is now known as '*22 the Square*' and is a restaurant and wine bar. The 5 air-conditioning units have been fixed to the west elevation which faces Beech Street. The units were installed in July 2015 and the Council was made aware of the works to the building following a complaint. I viewed the units from within both Beech Street and Main Street.

3. As indicated above the relevant fee was not paid and thus the merits of the case are not before me. The grounds pleaded are (c), (f) and (g) which means in essence that, on behalf of the appellant, it is contended that planning permission is not required because the works do not constitute a breach; that the requirements of the notice are excessive and that lesser steps would overcome any harm and that the time given to comply with the notice is too short.

4. There is a detailed planning history for the property, which is set out in the Council's appeal statement. In summary, a change of use to restaurant on the ground floor with living accommodation over was granted in 1978. Between then and 2015 various approvals were granted at the premises for, amongst other things, signage;

alterations to the restaurant; a smokers' gallery; conversion of the restaurant to 6 flats and re-modelling of restaurant to form a wine bar. A retrospective application for the retention of the 5 air-conditioning units was refused planning permission in November 2015. The 5 units vary in size from 0.81m² to 1.44m² and their combined size, as fixed to the wall, is 5.19m².

The appeal on ground (c)

5. To be successful on this ground it must be shown that there has not been a breach of planning control and that either planning permission is not required for the works carried out or the works constitute permitted development.

6. The appellant's arguments under this ground are made mainly on merit grounds. It is stated that the units are required for the restaurant use; that the works were carried out to tidy up a previous ad-hoc installation; to improve ventilation and to remove an unsightly flue. The Council's contention that the units cause excessive noise is disputed and it is indicated that the site is within a busy retail thoroughfare where other nearby food retail units have similar installations.

7. I have noted all of these arguments as well as those set out in the final comments submitted. I have also noted the submissions from occupants at No 59a Main Street which includes reference to the harmful appearance of the units as well as the unacceptable level of noise they create. I am not empowered to consider the merits under the deemed application. Thus, as far as the appellant's arguments are concerned, other than suggesting that the permission for the restaurant requires such units, the arguments are not valid ground (c) arguments.

8. Planning permission is required if works carried out meet the statutory definition of 'development' as set out in section 55 of The Town and Country Planning Act 1990 (The Act). 'Development' includes building operations, material changes in use, engineering operations and other operations normally carried out by a builder. Interior operations do not constitute 'development' and neither do building operations which do not 'materially affect' the external appearance of a building. The term 'materially affect' relates to the significance of the change that is made to a building's external appearance.

9. The question of whether or not any operations 'materially affect' the external appearance of a building is a question of judgement based upon the twin tests of fact and degree. This involves the nature of the change and the character of the building and its setting. In the case of the *Royal Borough of Kensington and Chelsea v CG Hotels [1981]* it was held that any effect had to be more than *de minimis*. In this case I agree with the Council that the 5 units as installed cannot be said to be '*de minimis*'. In order to establish whether or not '*development*' has occurred (due to a building operation or addition to a building) the relevant tests relate to the size of any changes, their permanence and their physical attachment to the building.

10. In terms of their size, the units take up around 5.19m² of the gable wall; they are physically attached to the wall by means of various brackets; they appear to be meant to be permanent, in that they are a requirement in conjunction with the restaurant use. Irrespective of their specific impact (which is not considered in this appeal) they are clearly visible from both near and distant viewpoints. Having concluded that they are not '*de minimis*' and having applied the three tests set out above, I agree with the Council that the units as installed are an addition to the building which meets the definition of being 'building operation' under Section 55 of The Act. The operation has clearly materially altered the external appearance of the building.

11. The works carried out do not constitute '*permitted development*' and it follows, therefore, that the units do need planning permission. This has been refused by the Council and I am not empowered to deal with whether or not permission should be granted. In the absence of any permission it is clear that there has been a breach of planning control and the appeal must fail on ground (c).

The appeal on ground (f)

12. To be successful on this ground it must be shown that the requirements of the notice are excessive and that lesser steps would overcome the harm set out in the reasons for issuing the notice. I note the suggestion that it would be reasonable to only require only part of the installation to be removed, but without full details it is not a point I can cover. It would be a matter for the appellant and the Council to resolve. I can only deal with the notice as issued, under that grounds pleaded. At this stage it has not been shown that lesser steps would suffice to overcome the harm which the Council has identified and which led to the issuing of the notice.

13. Whilst accepting that air-conditioning is a fundamental requirement for a restaurant, this does not alter my view that the requirements are necessary as drafted in order to overcome the breach. The appeal also fails, therefore, on ground (f).

The appeal on ground (g)

14. On this ground I agree with the appellant that a compliance period of just 2 months is not a sufficient period. The applicant will need time to liaise with the Council; to investigate an acceptable alternative scheme to these units and to allow time to carry out any future changes. In my view a period of 6 months is a reasonable and appropriate period. The appeal succeeds to a limited degree, therefore, on ground (g) and I shall vary the notice accordingly under the powers transferred to me.

Other Matters

15. In reaching my conclusions on the grounds pleaded I have taken into account all of the other matters raised by the Council; on behalf of the appellant and by interested persons. These include the planning history; the needs of the business; the final comments submitted and the initial grounds of appeal. However none of these carries sufficient weight so as to alter my conclusions or to change my decision that the appeal should be dismissed and the enforcement notice upheld as varied.

Formal Decision

16. The appeal succeeds to a limited degree on ground (h) and I direct that the notice be varied by deleting the word '*two*' before the word '*months*' in part 6 (WHAT YOU ARE REQUIRED TO DO) and by substituting therefor, the word '*six*'.

17. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied.

Anthony J Wharton

Inspector