

Appeal Decision

Site visit made on 30 November 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 30 December 2016

Appeal Ref: APP/M0655/C/16/3150010

Piccolino's Restaurant, 85-87 Victoria Square, London Road, Stockton Heath, Warrington, Cheshire WA4 6LG

- 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 David Martin on behalf of The Individual Restaurant Company against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice was issued on 11 April 2016.
- The breach of planning control as alleged in the notice is without planning permission, two ricci parasols have been erected and installed on the first floor terrace to create an all-weather outdoor seating area at the above mentioned premises, on the area shown hatched in blue on the plan attached to the notice.
- The requirements of the notice are to remove the two ricci parasols from the site edged in red.
- The period for compliance with the requirements is 42 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with corrections as set out in the formal decision below.

Matters concerning the notice

1. For my header above, I have taken the address from the issued notice. For greater precision, the notice should simply allege *without planning permission the erection of two parasols on the first floor terrace at the premises*. It is unnecessary to refer to 'ricci'. This is a minor correction. From the written representations before me, it is clear that the appeal parties have correctly understood the notice's intent. They have interpreted the notice without any confusion. The recipient is fully aware of what has gone wrong and what is required to remedy the alleged breach. I am satisfied no injustice to any party occurs. I shall correct the notice.

Ground (c)

2. In pursuing an appeal on this ground, the onus of proof is squarely upon Mr Martin to show, on the balance of probabilities, that the matters stated in the corrected notice do not constitute a breach of planning control.
 3. A *building* includes any structure or erection and any part of a building, but not plant or machinery comprised within a building. Thus, for planning purposes, building has a wider contextual meaning than is normally given to it in everyday phraseology. The meaning of *development* includes the carrying out of building or other operations in, on, over or under land. Building operations comprises activities that usually result in some physical alteration which has some degree of permanence. There is a further definition of *building operations*
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to include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder.

4. The parasols provide all-weather seating area on the building's roof at first floor. Attached to the frame is outdoor heaters and each parasol is 7 m wide and 4 m deep. Together they are 14 m wide and cover the entire roof space. Although retractable, they are substantial in size and comprise metal frame supported on beams. The design and layout suggests base plates fixed to the building's roof provide structural stability. While rainwater goods appear to run along the edges, the frame seems interconnected and physically attached by means of bolts, clamps or other devices. They do not have an ephemeral character. Indeed, there is nothing to indicate they have moved from their fixed location. They are not readily moveable, due to their design, size and scale, without substantially removing the supporting frame by undoing the bolts. I consider the parasols can reasonably be regarded as a structure that firmly falls within the definition of a *building* for planning purposes.
5. In all probability, the parasols were erected at the site because of their size and scale. The method, type and extent of the operations are likely to have required some expertise and skill; work normally done by a person carrying on trade as a builder. This building work has resulted in a physical alteration to the host building, which materially affects its external appearance. I consider that the nature and scale of the work involved in the erection of the parasols constitute a building operation for development control purposes.
6. No argument is advanced on the basis that the building operations benefit from a deemed planning permission. As a matter of fact and degree, express planning permission is required and it has not been obtained. The alleged matters constitute a breach of planning controls. Therefore, it follows ground (c) must fail.

Ground (a)

7. The **main issue** is whether the development preserves or enhances the character or appearance of the Stockton Heath Conservation Area (CA) and, linked to that, its effect upon the setting of nearby listed buildings.
8. The street scene mainly comprises commercial properties with accommodation above. The area is located within a local shopping district. The CA includes examples of buildings typical of the Victorian era, and its special interest comes from the architectural style of buildings and the arrangement and layout of the streetscape.
9. The site is part of a group of retail and leisure units situated within the Victoria Building Development. The building is constructed from Accrington red brick with yellow sandstone quoins. Part of the complex was built in the 1900's and is locally listed given its example architectural style and quality. While there have been recent alterations, I consider that it makes an important visual contribution to the quality of the CA.
10. Mr Martin contends that the parasols are modern extensions to the building. The structure is retractable and the roof with glazed panels does not challenge the street scene. My opinion is that the parasols undermine the traditional architecture of the host building, because of the type of material used. Even when retracted, I observed that the frame forms an imposing addition because

of its projection and design. The white colour and texture of the parasols result in an incongruous addition. The parasols obscure the host building. The modern addition is visually out of keeping with its architectural style, due to their size.

11. Mr Martin argues that metal and glazed canopies are features of modern buildings in the wider locality. However, these appear limited in scale. Nonetheless, he claims that the subject development upgrades the environment but I take a different approach. This is because the parasols appear out of keeping with the traditional architectural built form and layout of buildings in the CA, given their height, scale and design. They are prominent in views from the surrounding area. Due to their elevated location and position, they are obtrusive additions to the CA that detract from its interest.
12. The site is located in proximity of the Milestone, Victoria Square, Police Station and The Mulberry Tree Hotel, which are grade II listed. Mr Martin maintains that the development causes no harm to their setting. I disagree. Given the geometric layout of the streetscape and the location of these listed buildings relative to the site, it firmly falls within their setting. The host building's architectural style reinforces their heritage interest and is noticeable in short and medium views. In contrast, the design, type of material used and the overly dominant parasol feature intrude in views towards and away from these listed buildings.
13. Drawing all of the above points together, I find that the development causes harm to the visual appearance of the appeal building and fails to preserve the character and appearance of the CA, and the setting of nearby listed buildings. The development conflicts with the design, amenity and historic environment protection aims of policies CS1, QE7, QE8 and SW1 of the Warrington Borough Council Adopted Local Plan Core Strategy (CS) 2014.
14. In the terms of the National Planning Policy Framework (NPPF), the harm caused to the significance of the CA and setting of the listed buildings is less than substantial. There is, however, real and serious harm which requires clear and convincing justification.
15. It may be the case that the roof space was under-used in the past. Mr Martin claims parasols permit the use of this space and add to a fine eating-out experience, but I have seen nothing to suggest the business would suffer without this type of parasol. There is no evidence to suggest that the viability of the business is at risk should the parasols be removed.
16. CS policy SW 1, and aspects of the NPPF, encourages business vitality and viability of local centres. The former also requires proposals to contribute positively to the character of district centre. I am not persuaded that the type of material used combined with the height, scale and overall style of the parasols is the only design solution for the roof terrace.
17. In balancing the various considerations, I consider that any benefits of the development are insufficient to outweigh the considerable importance and weight that is attached to the visual harm caused to the heritage assets by the development. Accordingly, the development conflicts with CS policies CS1, QE7, QE8 and SW1, and advice found in paragraphs 17, 56, 58, 61, 69, 132 and 134 of the NPPF.

Conclusion

18. For all of the above reasons, and having considered all other matters, I conclude ground (c) fails. Ground (a) should not succeed and planning permission will be refused on the deemed application.

Formal decision

19. It is directed that the enforcement notice be corrected by the deletion of all of the text in section 3, the matters which appear to constitute the breach of planning control, and the substitution therefor by the following text:

Without planning permission the erection of two parasols on the first floor terrace at the premises.

20. It is directed that the notice be corrected by the deletion of the word 'ricci' in section 5, what you are required to do, sub-paragraph (i).
21. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A U Ghafoor

Inspector