
Appeal Decisions

Site visit made on 9 May 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 24 May 2017

2 Appeals at 384 Cheetham Hill Road, Manchester M8 9LS

- The appeals are made by Abdul Ghafoor against enforcement notices issued by Manchester City Council.
 - The enforcement notices, numbered ENF/12873/15, were issued on 1 November 2016.
 - The breach of planning control as alleged in the notices is the erection of a canopy in the forecourt.
 - The requirements of the notices are: 1. Remove the canopy structure from the forecourt of the property. 2. Remove all material associated with Step 1.
 - The period for compliance with the requirements is two months.
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Appeal A: APP/B4215/C/16/3164588

- 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 proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/B4215/C/16/3164593

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is proceeding on the grounds set out in section 174(2)(e), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
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Decisions

Appeal A: APP/B4215/C/16/3164588

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 2 months and the substitution of 4 months as the period for compliance. Subject to this variation 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.

Appeal B: APP/B4215/C/16/3164593

2. The appeal is allowed on ground (h), and it is directed that the enforcement notice be varied by the deletion of 2 months and the substitution of 4 months as the period for compliance. Subject to this variation the listed building enforcement notice is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Main Issues

3. I consider that the main issues in these cases are the effect of the development on the architectural and historic interest of the listed building and its setting.

Site and surroundings

4. The appeal property is a former billiard hall that is listed Grade II and built, according to the listing description, in 1906. The building stands adjacent to a church and a row of commercial properties and is presently used as a 'super store' shopping outlet. The canopy to which the enforcement notices refer has been erected over the pavement to the front of the building to provide shelter for the goods, mainly fruit and vegetables at the time of my site visit, displayed outside. It is constructed of steel beams and columns, painted green, supporting glazed panels separated by glazing bars.

Reasons

Appeal A - ground (a) and Appeal B - ground (e)

5. The former billiard hall has been used for various purposes since it was first built but manages to retain a number of important original features. It is an interesting example of the eclectic use of a variety of architectural styles, carried out with confidence and attention to detail. Although now in need of repair in places, the external decoration is finely executed and of a high quality.
6. The appellant's historic building consultant has considered the significance of the building and his summary includes the conclusion that this is '*embodied in the building's original surviving features, particularly its castle-like facade and richly-detailed Art Nouveau tiled frontage, along with the elliptical trusses of the former billiard hall*'. He goes on to state '*the contribution made by its setting to this significance essentially arises from its immediate relationship with the adjoining former cinema and Presbyterian Church, which together form a contrasting historic group built at the turn of the 20th century*'. I find no reason to disagree with this assessment.
7. Although the canopy has not resulted in the loss of any historic fabric and is designed to be independently supported, it nonetheless appears as a substantial addition to the building. It draws the eye and this domination causes the main building to recede into the background, effectively cutting the elevation in half.
8. In views from the public realm, the canopy overshadows and obscures a significant portion of the lower part of the front elevation, where most of the decorative motifs are located. The detail can still be seen at close range but, from a wider perspective, the view of this elevation as a whole has, in my opinion, been seriously compromised and the setting of the building harmed. The significance of the listed building, in terms of the design quality of its decorative detail and how this relates to the remainder of the structure, is now unable to be readily or fully visually appreciated.
9. Planning permission and listed building consent were granted for a canopy structure in front of the building in 2012 but these have now expired. Therefore, although the appellant cites these consents as evidence that the Council has accepted the principle of a canopy in this location, there are no extant permissions for such a structure that could represent a valid 'fall back' position should these appeals fail.

10. Even if the permissions were still extant, I do not believe that they would assist in justifying the grant of consent for the development 'as built'. The depth of the original scheme was considerably less than the current canopy and it was intended to be positioned below the existing projecting cornice, rather than above it, where the structure now sits uncomfortably close to the cill of the window above and obscures views of the segmental cornice below. The supporting columns are in a different position to those previously approved and are no longer placed in line with the bases of the side turrets of the building. There is also now a central support for the glazing panels that was not included in the original design.
11. These differences cause the existing canopy to appear much more prominent and heavy than was originally proposed and although the colour is said to reflect that of the tiling on the front elevation, in my view it only serves to make the canopy more dominant. It would, I accept, be possible to change the colour through the imposition of a condition and I note that the previous permission and consent were subject to a number of conditions that would have controlled the detail of the structure.
12. In particular, they required the submission of sections and technical specifications showing junctions with the existing building, details of the lead flashings, details of cross sections of the glazing bars and supporting posts, rainwater goods and pipes, including details of materials and colour. However, as these appeals seek permission for the structure as erected, the only similar condition that could now be readily applied would be that for a change of colour.
13. The planning application that is the subject of appeal A must be determined in accordance with Development Plan policies unless material considerations indicate otherwise. In addition to these policies, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires me to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest before granting planning permission. In respect of Appeal B, section 16 of the LBCA requires me to apply the same criteria before granting listed building consent, and Development Plan policies for the City are also material considerations in this case.
14. Policy EN3 of the Manchester Core Strategy 2012 supports the aims set out in the LBCA, as does saved policy DC19.1 of the Manchester Unitary Development Plan 1995. In addition to these considerations, the National Planning Policy Framework (the Framework), in paragraphs 131 - 134 advises that great weight should be given to the conservation of a designated heritage asset when considering the impact of development on it. Harm caused by development, even if considered to be less than substantial, must nevertheless be weighed against any public benefits arising before consent is granted for it.
15. In this case, I have found that the impact of the development is harmful and does not preserve the architectural interest of the building. It consequently fails to meet the tests set by the LCBA and is in conflict with the Development Plan policies noted above. Although the impact does not meet the high bar of 'substantial harm' that the Framework states should normally result in refusal of permission, I consider that there are no public benefits which outweigh the harm I have identified above.

16. The appellant notes that the business would be assisted by the retention of the canopy and this may well be so, but there is no indication or evidence that it is essential to allow it to remain viable. In fact, the business is described as 'thriving' and I have been given no reason to conclude that the loss of the canopy would change this situation.
17. It is also stated that that the appellant intends to carry out repairs to the building but there are no definite proposals for this and it is not claimed that the retention of the canopy will facilitate this.
18. Consequently, I conclude that planning permission and listed building consent should not be granted for the canopy as built.

Appeal A – ground (f) and Appeal B – ground (j)

19. These grounds of appeal claim that the requirements of the notices exceed what is necessary to remedy the breach of planning control or that they exceed what is necessary to alleviate the effect of the works executed to the building.
20. The appellant believes that the requirements are excessive because consent was previously received for a similar canopy and that the breach could be remedied by modifying the existing structure. He does not, however, put forward any details of how this would be achieved. There is no extant permission for another canopy and, even if the requirements of the notices were altered to require the existing canopy to be modified to reflect that for which permission was previously granted, this would entail the complete removal for the structure that is in place at present.
21. As noted above, the structure is completely different to that for which permission was granted in terms of the height and depth of the canopy and the details of the supporting structure. In any event, the final details of the previous scheme still needed to be submitted for approval and to meet the requirements of the Council in this regard could also preclude the modification or re-use of all or some of the existing structure.
22. In respect of ground (f), the breach is the erection of the canopy without permission and to require its removal does not go beyond what would be necessary to remedy that breach. Similarly, on ground (j), removal of the canopy would alleviate the effect of the works that have been carried out and do not exceed what is necessary to achieve this, given my findings on grounds (e) and (f) above.

Appeal A – ground (g) and Appeal B – ground (h)

23. Under these grounds of appeal the appellant claims that more time is required to comply with the requirements of the notice. He asks for 6 months rather than 2 to allow time for relocating the goods displayed under it within the main body of the shop. I agree that 2 months does not allow much time to source a demolition contractor and to re-arrange the shop interior to accommodate the goods currently displayed outside. I consider that 4 months would be a reasonable period to allow this to happen and I will vary the notices accordingly. The appeals on grounds (g) and (h) succeed to this extent.

Conclusions

24. For the reasons given above I agree that the time for compliance should be increased to 4 months and the appeals on grounds (h) (Appeal A) and (g) (Appeal B) succeed to this extent. The notices will be varied to reflect this, otherwise the appeals fail and the enforcement notice and the listed building enforcement notice are upheld and planning permission and listed building consent are refused.

Katie Peerless

Inspector

