
Appeal Decision

Site visit made on 7 August 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2018

Appeal Ref: APP/G1250/C/18/3196633

98-102 Charminster Road, Bournemouth BH8 8US

- 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 H Erdogan against an enforcement notice issued by Bournemouth Borough Council.
- The enforcement notice was issued on 25 January 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a canopy.
- The requirements of the notice are to dismantle the canopy and its fixings and remove all resultant materials from the land.
- The period for compliance with the requirements is two months.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Ground (a) appeal

Main Issues

1. The main issues in this ground of appeal are:
 - The effect of the canopy on the character and appearance of the area.
 - The effect on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance.

Reasons

Character and appearance

2. The appeal premises consist of a building of functional appearance used for retail purposes. Fruit, vegetables and other items are displayed for sale on the forecourt. The premises therefore have an active retail frontage. The bustling thoroughfare of Charminster Road, which is lined with a variety of shops, cafes, restaurants and other services, is nearby. However, the premises actually front onto Nortoft Road, a mostly residential street generally consisting of rows of traditional properties of similar age, architectural style and external materials.
3. The canopy extends across the front elevation of the premises. It also projects a significant distance outwards from the front elevation. Therefore, the canopy is of substantial size. Owing to the use of a shallow pitched roof, the canopy has a rather squat profile. Additionally, the canopy has been constructed of utilitarian external materials, consisting of a lightweight timber frame with clear

polycarbonate sheeting on the sides and roof. None of the above factors pay any meaningful regard to the architectural forms and external materials typical of traditional buildings in the surrounding area. I note that the forecourt is bounded by a high boundary wall on one side and a large single storey extension to a commercial property on the other side. Nevertheless, the canopy extends much closer to the street than the front elevations of the adjoining residential properties. Therefore, taking all of the above factors into account, the canopy fails to integrate satisfactorily with surrounding development and it appears as an awkward, obvious and alien addition to the premises in the street scene. Consequently, the canopy causes unacceptable harm to the character and appearance of the area.

4. Reference was made to canopies on the front of other commercial premises on Charminster Road. However, for the most part those canopies were of a modest scale and of a design and materials which integrated with their surroundings. Consequently, other canopies in the vicinity are not comparable with the canopy in this appeal.
5. The appellant suggested that the canopy could be retained in part, the timber frame could be painted or stained and/or the polycarbonate sheets could be replaced with lightweight timber. Although this was raised on ground (f), given s177 (1) (a) of the Act it is appropriate to deal with these suggestions on ground (a). Even so, no indication of what part of the canopy might be retained was provided. Having regard to its materials of construction and profile, retention of part of the canopy is still likely to cause the visual harm identified above. For similar reasons, painting or staining the frame and/or cladding the canopy with timber would not address the harm identified. As a result, none of the appellant's suggestions represent an obvious alternative to the requirements of the notice.
6. Therefore, the canopy fails to accord with Policy CS41 of the Bournemouth Local Plan: Core Strategy (CS), as its siting, character and appearance does not respect the site and its surroundings and it is detrimental to the built environment and the character of this part of the Borough. The canopy is also inconsistent with the revised National Planning Policy Framework (the Framework) at section 12 concerning achieving well designed places, as it is not visually attractive, it does not maintain a strong sense of place and it fails to take the opportunities available for improving the character and quality of the area. The Council also made reference to its guidelines for the design of shopfronts. However, as the paragraph on canopies and blinds refers to listed buildings and conservation areas it is of little relevance to the appeal.

Living conditions

7. Planning permission was granted for the display, sale and storage of goods at the front of the premises in July 2009¹. The canopy covers the permitted display area but does not incorporate any extension to it. Therefore, even if the canopy were removed customers would still be coming and going to the premises, they would still be able to peruse goods for sale outside the premises and apart from perhaps during inclement weather, they could congregate on the forecourt.

¹ Council Ref: 7-2009-6039-AK.

8. The premises are separated from the closest residential property by the high brick boundary wall and an entrance to a servicing area at the rear of the commercial properties on Charminster Road. Other residential properties are indirectly opposite the premises. Although the premises are just outside of what the Council described as the Core Shopping Area, the adjacent residential properties are close to the variety of commercial uses on Charminster Road. Therefore, nearby residential occupiers are likely to experience some levels of background noise and disturbance from passing pedestrian and vehicular traffic in any event. Due to the above factors, even if there were some increase in the congregation of customers on the forecourt due to the presence of the canopy, any additional noise and disturbance in this respect is likely to largely be assimilated into the general background noise associated with other nearby commercial uses.
9. The Council referred to a previous appeal decision concerning the premises in 2011. However, from the information supplied that appeal concerned use of a larger part of the forecourt for the display of fruit and vegetables. Consequently, whilst the Inspector in that case found that an increased level of activity and exchange on the forecourt would result in a level of noise and disturbance materially harmful to the living conditions of nearby residents, it is not comparable with this appeal.
10. Accordingly, there is no firm evidence that the canopy has encouraged a significant increase in the use of the forecourt by customers of the premises or, even if that has been the case, that unacceptable levels of noise and disturbance have occurred as a result. There is also no firm evidence to suggest that the canopy would lead to encroachment beyond the permitted display area. In any event, the latter would be in breach of a condition attached to the 2009 permission.
11. Therefore, I find that the canopy has not resulted in an unacceptable increase in noise and disturbance being experienced by the adjoining residential properties. Consequently, the canopy accords with CS Policy CS38, as it minimises noise pollution and it accords with CS Policy CS41, as the objective of enhancing the amenities of neighbouring residents would not be compromised.

Other matters

12. I acknowledge that the appellant erected the canopy to provide a shelter for his customers perusing goods in the display area. Whilst that is perhaps an understandable objective, it does not outweigh the visual harm identified above.

Conclusion on Ground (a)

13. The canopy has caused unacceptable harm to the character and appearance of the area, it does not accord with the Development Plan and is inconsistent with the Framework.

Ground (f) appeal

14. This ground of appeal concerns whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. The notice alleged that unauthorised operational development had taken place. It required that

development to be removed, as opposed to its modification or retention in part. Therefore, although the notice does not state so explicitly its purpose must be to remedy the breach of planning control by restoring the land to its condition before the breach took place, as opposed to remedying any injury to amenity.

15. The appellant's suggested alternatives to removal of the canopy were dealt with on ground (a). Removal of the canopy does not prevent the goods displayed on the forecourt from being covered over during inclement weather conditions. Therefore, removal of the canopy would not adversely affect the appellant's ability to display goods on the forecourt.
16. Reducing the requirements to stop short of removal of the canopy would not remedy the breach of planning control described in the notice. Therefore, any requirement other than removal would not fulfil the purpose of the notice of restoring the land to its condition before the breach took place. Consequently, the requirements of the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) must fail.

Ground (g) appeal

17. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The Council specified a two month compliance period. The appellant considered that this should be extended to six months.
18. For the reasons already stated on ground (f), removal of the canopy would not adversely affect the appellant's ability to display goods on the forecourt. Consequently, it would not be necessary for the appellant to sell off displayed stock. Even if he were to do so, it would not take more than a couple of weeks to sell the stock, which mostly appears to consist of items with a short shelf life such as fruit and vegetables. As the canopy is a lightweight structure of simple construction its removal would be a relatively straightforward task for a builder to undertake and could be completed perhaps in as little as a few days.
19. Drawing all the above matters together, two months is not an unreasonably short compliance period. It strikes an appropriate balance between remedying the planning harm caused by the canopy whilst minimising any disruption to the appellant's business. Any longer period of time would perpetuate the harm caused by the breach. Consequently, the appeal on ground (g) must also fail.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

21. 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.

Stephen Hawkins

INSPECTOR