

Appeal Decision

Site visit made on 21 August 2019

by John Whalley

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

Decision date: 28 August 2019

APPEAL A - Appeal ref: APP/X5210/C/19/3219958

Land at 25-26 Red Lion Street, London WC1R 4PS

- The appeal is made by Shu Jie Limited under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Camden Council.
- The notice was issued on 21 December 2018; reference No. EN/18/0487.
- The breach of planning control was: Without planning permission: Erection of a glazed roofed rear canopy.
- The requirements of the notice are:
 1. Totally remove the canopy structure, including all associated fixtures and fittings; and
 2. Make good any damage caused as a result of the above works.
- The period for compliance with the requirements is 3 months.
- The appeal was made on grounds (f) and (g). There was no appeal on ground (a). Separately, an appeal was made against a refusal by the Council to grant planning permission for the works the subject of the enforcement notice. That is set out below.

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

APPEAL B - Appeal ref: APP/X5210/W/19/3220986

Land at 25-26 Red Lion Street, London WC1R 4PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal was made by Shu Jie Limited against the decision of the London Borough of Camden Council.
- The application ref: 2018/4645/P dated 25 September 2018 was refused by a notice dated 13 December 2018.
- The development was described as the Erection of canopy within rear garden (retrospective).

Summary of decision: The appeal is dismissed. Planning permission is not granted

Note:

The planning merits of the retention of the works enforced against are firstly considered in the s.78 appeal.

APPEAL B

The s.78 planning application appeal

1. This appeal arises from the refusal by the London Borough of Camden Council to grant planning permission to the retrospective application made by Shu Jie Limited for the erection of a canopy within the rear garden of the restaurant premises on the ground floor of the 2 mid-terrace buildings at 25-26 Red Lion Street, London WC1. The property lies within the Bloomsbury Conservation Area.
2. The timber and plastic appeal canopy that covers the walled rear garden to No. 26 Red Lion Street is 8.5m by 6m in plan area. It has a pitched roof, with a ridge some 3m high, 2.2m high at the eaves. It provides shelter to the sitting out area for 42 restaurant customers.
3. I consider the main issues in deciding whether to grant planning permission for retaining the appeal structure are as identified by the Council. That is, the effect of the appearance of the structure on this part of the Conservation Area and especially the effect of the use of the sitting out facility on the amenity of neighbouring residents.
4. A conservation area is an area "of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance", (s.69 Planning (Listed Buildings and Conservation Areas) Act 1990). Development in conservation areas should therefore preserve or enhance the character and appearance of that area. The low pitched roof of the appeal structure is covered by double skin translucent plastic sheets of the type frequently used for roofing domestic conservatories. I consider that the resulting utilitarian external appearance of the appeal structure has no evident regard to the need to preserve or enhance this part of the Bloomsbury Conservation Area.
5. The appeal canopy is surrounded by buildings. It cannot be seen from public viewpoints. However, occupiers of those buildings fronting the private passageway just to the east have views from upstairs windows to the appeal structure roof. The lack of wide public views to the appeal canopy is not good reason to permit the erection of a building quite unsympathetic to its surroundings.
6. In concluding that planning permission should not be granted to retain the appeal rear garden canopy as built, I am also mindful of Government planning policy, expressed in National Planning Policy Framework published in July 2018 that states at 193 under the heading: *Proposals affecting heritage assets; 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Also at 196 - *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.* There is a benefit to the restaurant at Nos. 25/26 Red Lion Street in having an improved facility for their customers' enjoyment. But there is no public benefit that overrides the harm caused to the appearance of this part of the Bloomsbury Conservation Area.

7. The second issue concerns the emanation of cooking fumes and odours from within the appeal structure. It appears to be a particular feature of the Shu Jie restaurant that food is cooked for customers at their table. No facility for containing those fumes and the smell of cooking has been incorporated in the building, the roof eaves being open where they would normally be closed onto the walls. It might be possible to deal with those deficiencies by means of conditions. But the appeal canopy's minimal structure is also ill-equipped to contain inevitable noise from customers within. Again, those problems might be addressed by conditions. But if that could be achieved, I consider that it would require a total reconstruction and re-design of the building and the provision of appropriate mitigation equipment. In my view, that would be outside the scope of the application before me which is to retain the canopy as built.
8. I know that the Appellants said there had not been a change of use of the premises as a result of constructing the canopy. Questions of lawfulness are not before me. That is, considerations as to whether the type of use of the rear garden area of No. 26 and its canopy or its extent has materially altered the lawful use of the restaurant. But it must be that the canopy was constructed and intended to be an enhancement of the restaurant, offering more convenience and shelter to what is likely to have been an increased number of customers. The complaints about noise and fumes that have been made by adjoining residents would seem to confirm that the appeal canopy has facilitated greater activity that has been disturbing nearby residents to what appears to have been an unacceptable level.
9. My conclusion is that planning permission for the retention of the appeal canopy at the rear of the restaurant at Nos. 25 and 26 Red Lion Street should not be granted. Appeal B, the s.78 appeal, against the Council's refusal to grant planning permission, fails.

APPEAL A

The enforcement notice appeal on ground (f)

10. The appeal on ground (f) asserts that the requirements of an enforcement notice are too onerous and that something less should be substituted. Section 173(4) of the Act sets out the purposes of the requirements. They are:
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
11. It appears the Council sought to remedy injury to amenity. That is, the failure to preserve or enhance the Conservation Area and harm to local residential amenity. The requirement to remove the canopy is pertinent and proportionate in respect of the Conservation Area harm. A significant reduction in its size and a changed design for the canopy was suggested by the Appellants. That would be a matter for consideration of a different facility, not the possible application of a less onerous requirement in the context of a ground (f) appeal.

12. With regard to the harm to local residential amenity, I do not consider the requirement to remove the canopy excessive. The Appellants said use of the rear garden area of No. 26 for customer seating and eating was lawful. Further, they said the appeal canopy had no significant effect on the level of use for those purposes. As above, I make no comment on lawfulness. But it is reasonable to assume, (para. 8 above), that the canopy was erected with a view to encourage more custom. Removal of the canopy is in my view, reasonable and necessary. No lesser requirements should be substituted. The appeal on ground (f) fails.

The appeal on ground (g)

13. The appeal on ground (g) asserts that any period specified in the enforcement notice in accordance with section 173(9) falls short of what should reasonably be allowed. The period of 3 months in this instance provides ample time in which to arrange for and have the canopy removed. It is a lightweight structure, capable of being readily dismantled. An extended period is not justified for the possible examination of alternatives. Particularly in view of the adverse effect the use of the canopy has had on local residential amenity, I will not extend the period for compliance. The appeal on ground (g) fails.

FORMAL DECISIONS

APPEAL A – s.174 enforcement notice: Appeal ref: APP/X5210/C/19/3219958

14. The enforcement notice is upheld.

**APPEAL B – s.78 planning application: Appeal ref:
APP/X5210/W/19/3220986**

15. Planning permission is not granted on application ref: 2018/4645/P dated 25 September 2018 for the retention of the canopy within the rear garden of the restaurant at Nos. 25-26 Red Lion Street, London WC1R 4PS.

John Whalley

INSPECTOR