

Appeal Decision

Site visit made on 19 September 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 23 October 2019

Appeal Ref: APP/M2325/C/19/3224475

62A Clifton Street, Lytham St Annes, Lancashire FY8 5EW

- 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 Arialdo Baccari of Farina & Co (Fylde) Limited against an enforcement notice issued by Fylde Borough Council.
- The notice was issued on 1 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, a timber framed canopy has been erected on the Land, to the front of the building.
- The requirements of the notice are:
 - 1) Dismantle and remove from the Land the unauthorised wooden canopy that has been erected at the front of the building.
 - 2) Remove from the Land all of the associated materials used in the construction of the wooden canopy.
- The period for compliance with the requirements is three months after this notice takes effect.
- The appeal is proceeding on ground (a) as set out in section 174(2)(a) of the 1990 Act.

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

Ground (a) and the deemed application for planning permission

Main Issue and Reasons

1. The main issues are:
 - a) the effect of the canopy on the character and appearance of the host building, street scene and Lytham Town Centre Conservation Area (CA); and
 - b) the safety and accessibility of pedestrian routes in the vicinity.

Character and appearance

2. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special attention to the desirability of preserving or enhancing the character or appearance of CAs when considering the grant of planning permission.
 3. The appeal relates to a two-storey mid-terraced property in the designated town centre and the CA, in use as a restaurant and forming part of a busy parade of mixed uses on Clifton Street, the main retail area in the town. Several canopies are found in the vicinity, particularly along Clifton Street. They mostly display historic and local vernacular features and contribute
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- positively to the character of the town and the CA. In particular the lightweight and open structure of such canopies contribute to the quality of the open spaces and public realm of Clifton Street, as a key characteristic of the CA.
4. A timber framed canopy has been erected to the front of the appeal premises following refusal of planning permission for its retention. The canopy provides a covered outdoor seating area with planters and screens to the sides.
 5. An approved scheme, Ref 18/0034, shows a lightweight, metal framed canopy with two vertical structural supports at each corner and a horizontal support connecting them with the glazed roof. The approval establishes the principle of a glazed canopy structure and its extension into the street scene with a width and projection similar to the structure in situ.
 6. "Canopies and Glazed Extensions on Commercial Forecourts – A Design Note" provides guidance to establish if a glazed extension or forward extension is an appropriate development, and if so guidance on its form. I agree with the appellant that the guidance allows for some flexibility in design, but the additional support columns toward the centre, although they may provide stability, make it appear significantly more bulky. The posts also reduce the openness of the canopy and the approved clear side panels between the roof and horizontal support structure are now covered over, adding to the bulk.
 7. The use of stained wood in the construction of the canopy is not prevalent locally. The built structure has planters to the sides and front which although on castors, are permanently in position, creating a closed frontage to the ground floor of the premises. Although providing shelter for customers, the clear screens attached to the planters further enclose the structure. The overall result is an unsympathetic design that, far from blending with the host building as suggested, is overly dominant and incongruous, and undermines the wider character and appearance of the street scene and the CA.

Safety and accessibility of pedestrian routes

8. The approved scheme has a condition requiring the canopy to stay open on all sides to allow free movement of pedestrians in the interests of highway safety. Whether the canopy projects over the existing highway or solely a privately-owned forecourt is not clear from the statements. Indeed the enforcement notice refers to the "area of private highway" which the canopy encloses, a contradiction in terms. If by using that phrase, the Council means to refer to privately-owned land over which public rights of passage exist, it should say so.
9. The Council will be aware of the recent decision in *Swindon Borough Council v Secretary of State for Housing Communities and Local Government & Anor* [2019] EWHC 1677 (Admin) where the court said that "The Council has made itself clear because it has used a word [highway] which anyone would naturally understand to mean a public road, and which is never used to mean a private one." (Paragraph [70]).
10. The phrase "private highway" in the notice appears in the reasons for issue, rather than the description of the breach or the steps required to be taken. The misnomer appears, somewhat surprisingly, to stem from the comments of the highway authority itself as referred to in the Council's report. The comments refer to evidence of "use of the footway for decades", but this evidence is not submitted and the precise position on the ground is unclear.

11. The ambiguity and lack of robust evidence over the highway status of the forecourt area of the appeal site, diminishes the Council's case on this point. For the avoidance of doubt the validity of the notice itself is unaffected in my judgment, given its clarity as to the breach of control and steps to be taken.
12. On the broader issue then, of pedestrian safety and access I note the nearby tree and a zebra crossing. However the width of the footpath to the front of the canopy is generally consistent with other sites where canopies appear along the street, and pedestrians do not have to walk in the carriageway. It was difficult to conclude from my inspection of the site on a sunny day, whether roof water would discharge onto the footway or, as suggested by the appellant into the base of the tree at the edge of the forecourt.
13. In the circumstances I find on the evidence available to me in this appeal that the development does not unduly interfere with the aims of Policy GD7 of the Fylde Local Plan 2018 (LP), in particular sub-paragraph q) to ensure pedestrian safety, and the efficient and convenient movement of all highway users.

Conclusion on ground (a)

14. The unauthorised development results in a substantially bulky structure that encloses the space of the forecourt, producing a dominant and incongruous effect on its host. Its design, including its scale, materials, form and detailing, departs from the prevailing style of canopies in the area, and is a harmful influence on the character and appearance of the street scene, undermining this part of the CA.
15. The harm is contrary to LP Policy GD7 whose aims include securing in development a design, including massing, scale, materials and architectural character, that relates well to the surrounding context. The harm caused is also contrary to LP Policy ENV5 in failing to conserve or enhance the built and historic environment in terms of the design of the canopy, including its setting, scale and physical characteristics.
16. The National Planning Policy Framework (NPPF) requires great weight to be given to conservation of a designated heritage asset such as the CA when considering the impact of development on its significance. The harm identified is less than "substantial" in terms of the NPPF but considerable importance and weight must still be attached to such harm when paying special attention to the desirability of preserving or enhancing the character or appearance of a CA.

Overall Conclusion

17. 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

18. 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.

Grahame Kean

INSPECTOR