
Appeal Decision

Site visit made on 1 December 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Appeal Ref: APP/D1780/C/20/3257520

Land at 29 Bedford Place, Southampton SO15 3DG

- 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 Piers Kannangara against an enforcement notice issued by Southampton City Council.
 - The enforcement notice, numbered 19/00573/ENUDEV, was issued on 10 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a decking structure on the forecourt of the land.
 - The requirements of the notice are: (i) Remove the decking structure on the forecourt of the land; and (ii) Remove all material resulting from step (i) from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a decking structure at 29 Bedford Place, Southampton SO15 3DG as shown on the plan attached to the notice.

Procedural Matter

2. Given the nature of the development and the location of the site, the parties were asked whether they felt that an accompanied site visit would be necessary. Both felt that the site visit could be carried out on an unaccompanied basis. Taking these responses into account, and as it would not prejudice either party, I undertook the site visit on an unaccompanied basis.

Ground (a)

Main Issues

3. The main issues are the effect of the development on: the character and appearance of the area, which is within the Carlton Crescent Conservation Area (CCCA); and the safety and convenience of users of the highway.

Reasons

Character and appearance of the CCCA

4. 29 Bedford Place lies close to the city centre in what the Council describes as a secondary shopping frontage. 'XOXO', a restaurant (Use Class A3) that is

located within No 29, lies in an area of the CCCA that is characterised by a mix of uses, including shops, restaurants, pubs and bars, and other entertainment venues. There is a mix of architectural styles running from classical Victorian through to a larger, modern block with a local supermarket at ground floor level with two floors of flats above. It is clearly a vibrant area throughout the day and night. Close by, running west from Bedford Place are streets that are largely residential adding to the overall variety of the CCCA, in which it lies. The CCCA is a designated heritage asset and the statutory duty, in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, sets out that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

5. No 29 is a two-storey property that lies on the junction of Bedford Place that runs north to south and Carlton Place that runs east to west. It has three distinct elements. The ground floor elevations of that on the corner are wholly glazed, whilst its first floor elevations are finished in brick with two traditional sash type windows. Between the two is a deep fascia that has been formed from vertically aligned timber boarding; affixed to this are two 'XOXA' adverts. Beyond this, along Carlton Place, the middle element has something of a residential form, before a markedly modern final element. The whole has been finished in matt grey paint that visually links all three elements.
6. The ground floor elevation onto Bedford Place is, to varying degrees, set back behind that of its first floor, creating a recessed area in front of the restaurant. It has folding windows that open onto this area, which is where the timber structure that forms the subject of the notice has been erected. It projects a little beyond the plane of the first floor. For its most part, it consists of an area of decking, so I shall refer to it generally in that manner. This is raised slightly above the pavement at its northern end, its height increasing in line with the gentle southward fall of Bedford Place. Substantial timbers rise from the decking to form a small enclosed area at the south end of the decking adjacent to the restaurant entrance.
7. To the north of No 29, properties along Bedford Place are characterised by ground floor shopfronts that project forward of the two and three-storey buildings behind. These project out to a degree that is more or less the same as the decking. The result is that it has little prominence in views from that direction and what effect it has is mitigated. When viewed from the south, the decking structure is seen in the context of the background of the projecting shopfronts and the bulk of No 29 itself. As such, its context and small scale ensure that the decking is not prominent in the Bedford Place street scene.
8. The front element of the appeal site is set a slight angle from its other elements on Carlton Place. As such, the decking is little seen from there until one is quite close to it. Given this, and its small scale, it is not a prominent feature when seen from here, either.
9. Raised features and enclosed areas to the front of buildings are not uncommon in this part of the CCCA. Immediately to the south of the appeal site, on the opposite side of Carlton Place, is a pub that has a raised outside seating area adjacent to the pavement that is surrounded by brick walls with a railing on top. Its materials match those of the main building, but I do not find that this is a requirement that has to be followed in all cases. Beyond this, the local

supermarket has an inclined access, raised above the pavement and bounded by steel railings that gives access to the store.

10. In addition, a night club on Carlton Place, which is within the CCCA and seen from the appeal site, had enclosed the area between the public footway and the building with steel railings. Furthermore, although outside the CCCA, a short distance to the south of the night club, a pub in Lower Banister Street had a covered outside drinking/eating space with low walls of a similar timber and a corrugated roof set on timber supports.
11. Wood boarding has been used on the fascia so, although that is painted, the use of wood is not without precedent on the building. Although the wood used in the decking is untreated, I find that it provides a pleasing counterpoint to the otherwise all-pervading grey colour scheme. A variety of materials have been used in the wider street scene and the wood that has been used echoes that used in a number of planters that have been placed on the highway along Bedford Place, close to the site.
12. Overall, I find that the decking is a sympathetic and appropriate addition to the building that sits comfortably on it. It is not incongruous in terms of the building, nor the wider CCCA. It, rather, has a neutral effect on the latter's character and appearance. It therefore passes the statutory test in s72(1) and meets the terms of Policy HE1 of the City of Southampton Local Plan Review (as amended 2015) ('LPR'), which mirror it. As it respects and responds positively to its surroundings, rather than causing harm to it, the development accords with LPR Policies SDP7 and SDP9, as well as Policy CS13 of the Local Development Framework Core Strategy Development Plan Document Partial Review (March 2015) ('LDF').
13. The notice refers to LPR Policy SDP1; however, the evidence before me shows that its part (ii) that would have been relevant to the ground (a) appeal has been withdrawn and replaced by LDF Policy CS13. Similarly, LPR Policy HE2 has played no part in my decision, as it relates to demolition in Conservation Areas and this is not alleged in the notice.

Safety and convenience of users of the highway

14. In its comment on the development, the Council's Highway Development Officer (HDO) acknowledges that the decking has been erected on private land. Therefore, I have taken the comment that "the following comments are purely from a highways perspective" as an acknowledgement that, being private land, there is no highway control as such over the development that has occurred on the land.
15. I acknowledge that the space that seems to have been available to members of the public was greater before the decking was erected. I also understand that since this happened a pinch-point has been created close to the point where pedestrians cross Carlton Place.
16. I note the Council's reference to the historical use of the land, in the notice, but there is nothing in the Council's submissions to allow me to find that some sort of right of way has accrued. From the evidence before me, the use of the land by members of the public could be stopped by the owner at any time. It is not part of the footway, as such. This being the case, I do not find that the decking

has had the effect of “making the width of the footway unsafe”, as claimed in the notice.

17. The HDO states that if the decking is not removed or altered, “other mitigation measures to improve the resulting footway” would be required. I have not been told what these are, but it suggests that there is an alternative within the public highway.
18. My finding on this issue is that, as it has been erected on private land on which the public does not have a right of way, the decking does not make the width of the footway unsafe. Whilst an inconvenience to pedestrians and other users, when compared to the situation before the decking was erected, given the above, I cannot conclude that it causes unacceptable harm to highway safety. Thus, the development accords with paragraph 109 of the National Planning Policy Framework and LDF Policy CS13(i) that seeks to protect the safety of the city’s citizens.

Conditions

19. The Council did not propose any conditions, should the ground (a) have been allowed. Given the nature of the development, and my findings on its merits, I have determined that it is unnecessary to attach conditions to my decision.

Ground (f)

20. Given my findings on the Ground (a) appeal, there is no need for me to assess that made under Ground (f).

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
22. The appeal on ground (f) does not therefore fall to be considered.

Roy Curnow

Inspector