



Appeal Decision

Site visit made on 27 October 2020

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 26 February 2021

Appeal Ref: APP/Z0116/C/20/3253165

Land at 281A, 281B, 281C, 281D and 283A Gloucester Road, Bristol, BS7 8NY

- 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 Milan Hawzin of Lona Grillhouse against an enforcement notice issued by Bristol City Council.
 - The enforcement notice was issued on 23 April 2020.
 - The breach of planning control as alleged in the notice is, without the grant of planning permission the installation of an enclosure and canopy structure to the front of 281-283A Gloucester Road.
 - The requirements of the notice are to remove in its entirety the enclosure and canopy structure located at the front of 281-283A Gloucester Road, and remove all materials from the site.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 28 days and the substitution with six months for the time for compliance.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Preliminary Matters

3. An application for the erection of a canopy and metal glazed enclosure to the existing outdoor seating area to the front of No 281 Gloucester Road was dismissed at appeal on 13 January 2021¹.
4. Given that the proposal was for a similarly designed canopy across part of the width of the current appeal site, I offered the parties opportunity to comment on that decision. The appellant confirmed that he did not wish to provide any comments. No response was received from the Council.

The appeal on Ground (e)

5. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land.

¹ Appeal Ref: APP/Z0116/W/20/3251223

6. The appeal relates to an enclosure and canopy structure to the front of Nos 281-283A Gloucester Road. The appellant explains that he is the leaseholder of Nos 281-283 but is neither the leaseholder nor the freeholder of the neighbouring property at No 283A, which is occupied by a separate tenant. It is argued that two separate enforcement notices should have been issued for the separate leaseholders, relating to the canopy structure in front of their respective units, rather than one notice for the structure in its entirety.
7. However, even if the canopy was constructed at different times, it has the appearance of a single structure/act of development. There is no visible gap, the materials look the same and the dimensions appear to match. It is therefore logical to address the structure in its entirety. The fact that there are differing land interests does not matter, so long as the notice was properly served on everyone who does have an interest.
8. Moreover s176(5) of the 1990 Act provides that any failure to serve may be disregarded if the appellant has not been substantially prejudiced. There is no dispute that the appellant was served with a copy of the enforcement notice and that he was able to make an appeal against the notice, before it came into effect. The appellant does not claim that any other person was not served with a copy of the notice when they ought to have been. I therefore conclude that the appellant has not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeal on ground (e) fails.

The Appeal on Ground (a)

Main Issues

9. The main issues are the effect of the enclosure and canopy structure on the character and appearance of the area and the setting of Horfield Baptist Church, which is a Grade II listed building.

Character and appearance

10. The enclosure and canopy structure provides coverage to the entrance and outdoor seating area of a restaurant and juice bar, occupying Nos 281-283, and the items on display to the front of the grocery shop at No 283A.
11. The premises are positioned at the end of a row of commercial properties which benefit from spacious frontages provided by the forecourts and footway in this part of Gloucester Road town centre. It is not uncommon for the forecourts to be colonised with external seating, and some have relatively low walls enclosing those spaces. Nevertheless, building frontages remain largely open and unobscured.
12. In contrast, the alleged canopy structure stretches across the entire ground floor frontage of Nos 281-283A, and up to the underside of the first floor windows. Consequently, it largely obscures and dominates the front of the buildings, appearing disproportionally large, rather than subservient as suggested. Because of its size and siting forward of the building line, the canopy structure also obscures views along Gloucester Road, as well as compromising the degree of spaciousness.
13. I accept that parts of the structure are obscured by the rendered wall and planting to the front of the external seating area, and that those aspects do not

form part of the alleged development. Nevertheless, a significant extent of the structure remains fully exposed and, because of its size and siting, is highly prominent and visually intrusive. Although the materials are similar to those used at No 260 Gloucester Road, I do not find that they are characteristic of the appeal buildings.

14. I note the appellant's submission that the buildings do not have a traditional shopfront and that is borne out to an extent by the 2012 Google Street View photograph. However, I was able to see part of a fascia and corbel and cornice detail above the small length of canopy that remains unfinished, thereby indicating that such features have been largely obscured.
15. As noted above, an appeal was dismissed in January of this year for the erection of canopy and metal glazed enclosure at No 281. I appreciate that the appellant has requested that the current appeal be treated separately and considered on a without prejudice basis - which I have done. Nevertheless, consistency in the planning process is important and like cases should be decided in a like manner. A previous appeal decision is therefore capable of being a material consideration where the issues are sufficiently closely related that regard should be had to it. That is the case here.
16. The Inspector for the No 281 appeal decision concluded that the proposal would be a dominant and visually intrusive and out of character along this part of Gloucester Road². I find no reason to come to a differing conclusion in respect of the alleged development. Indeed, the harm is greater because the canopy is significantly wider and higher at the point where it meets the buildings.
17. I therefore conclude that the alleged development is harmful to the character and appearance of the area, contrary to Policy BCS21 of the Bristol Development Framework Core Strategy (CS) and Policies DM26, DM27 and DM30 of the Local Plan Site Allocations and Development Management Policies (LP) and Bristol Local Plan Policy Advice Note 8 (PAN 8). These policies and guidelines expect, amongst other things, extensions to existing buildings to respect the siting, scale, form, proportions, materials, details and the overall design and character of the host building, its curtilage and the broader street scene.
18. I note the appellant's submission that greater weight should be given to the Framework and other more recent policy documents than the PAN 8, because of its age. However, the Framework explains³ that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to them, according to their degree of consistency. The appellant has not explained why PAN 8 is inconsistent with the Framework, and in any case, conflict with the development plan would remain.

Setting of Horfield Baptist Church Grade II Listed Building

19. Horfield Baptist Church lies adjacent to the appeal site and the alleged development. It is a Grade II listed building designed in the Perpendicular Revival style dating from 1900. It is constructed from squared Pennant rubble stone with limestone dressing, with arched central feature window and gable

² Paragraph 11

³ Paragraph 213

above, flanked by stone towers. It sits above road level and is significantly taller than other buildings along this part of Gloucester Road, making it a highly prominent feature which makes a very positive contribution to the commercial setting in which it sits. The significance of the building is derived not only from its historic fabric and form, but also from its visual primacy within its setting, both in terms of its size and decoration/interest.

20. Due to its size and siting forward of the building line of the street, the canopy structure obscures views of parts of the principal elevation of the listed building in approaching views from the north, including the main entrance and parts of the central feature window. I accept that the Church remains dominant overall, because of its substantial size. However, the canopy structure acts to undermine that dominance and visual primacy and how the Church is appreciated and experienced in the area in front of its entrance and commercial setting.
21. Given I have already found the canopy structure to be harmful to the appeal buildings and street scene, it follows that when viewed alongside the Church, it appears intrusive. Again, because its size and siting, it is prominently so, attracting undue attention in the street scene. That harm is compounded by the large bus shelter in front of the site, which adds to the visual clutter.
22. I appreciate views of the Church are partially obscured by the mature street trees. However, those trees add to the overall visual amenity of the street scene, rather than detract from it, as is the case with the alleged development. The harm arising is not materially alleviated by the planting within the site and in front of the Church.
23. I therefore conclude that the alleged development fails to preserve the setting of the listed building, the desirability of which is anticipated by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, CS Policy BCS22 and LP Policy DM31. I also find conflict with LP Policy DM26 which states, amongst other things, that the design of development proposals will be expected to contribute towards local character and distinctiveness by responding appropriately to historic assets. Such conclusions were similarly reached by the Inspector for the appeal at No 281.
24. In accord with section 16 of the Framework it is for the decision maker, having identified harm to the designated heritage asset, to consider the magnitude of that harm. In this case I conclude that the alleged matters lead to less than substantial harm to the setting of the listed Church. In such circumstances the Framework⁴ requires that any identified harm is weighed against any public benefits the development might secure.
25. In this regard, I recognise that the canopy structure provides social and economic benefits to two existing businesses. I also have a great deal of sympathy with the appellant regarding the impact of Covid-19 on his business and acknowledge that the external seating area provides more space/capacity for dealing with social-distancing requirements. However, the enforcement notice does not attack the external seating area per se, which would remain. Nevertheless, the canopy does facilitate year-round use, rather than just periods of suitable weather, and provides cover for the outdoor area of the adjacent shop.

⁴ Paragraph 196

26. I accept that the canopy is likely to have some noise attenuation benefit to occupants of the first floor of the building(s) from activities arising from the use of the 'outdoor' seating area. However, any benefits are likely to be nullified given that the canopy allows the space to be used for longer periods throughout the year. Moreover, any privacy gains to first floor residential accommodation are unlikely to be significant given the viewing angles. Consequently, I find the effect on living conditions, and any compliance with CS Policy BCS23, to be a neutral matter that does not weigh in favour of the alleged development.
27. In overall terms, I do not consider the arguments advanced in favour of the alleged development, amount to public benefits that would outweigh the great weight I must attach to the designated heritage asset's conservation⁵.

Other Matters and Conclusion

28. Given that the front of the restaurant is largely obscured by the canopy, its removal is likely to provide a more active frontage, as envisaged by CS Policy BCS 7, rather than detract from the vitality of the street scene.
29. The appellant has drawn my attention to other existing canopy enclosures which the Council considers acceptable, including No 260, The Gallimaufry, No 1 The Promenade and the Souk Kitchen. However, the alleged canopy is significantly larger than all those I've been referred to, and, crucially, I have not been made aware that any are adjacent to a listed building. Those examples do not therefore serve to justify granting planning permission in the particular circumstances of this case, which I have determined on its own merits.
30. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should fail on ground (a) and the deemed planning application should be dismissed.

The Appeal on Ground (g)

31. The appellant considers that the 28 days given to comply with the notice is too short on the basis that the restaurant and juice bar trades seven days a week and that the works would significantly impact on business viability, given the use of the space within the structure for seating. It is further argued that there is significant uncertainty around securing contractors, given the major disruption caused by the Covid-19 pandemic. The appellant considers that a period of six months to be a more appropriate timeframe.
32. I agree. Extending the period for compliance to six months would in my view strike a reasonable and proportionate balance between the business needs of the appellant and any difficulties he may encounter in the current pandemic, and the public interest in this case.
33. I shall therefore vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR

⁵ Paragraph 193 of the Framework