
Appeal Decision

Site visit made on 11 January 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2022

Appeal Ref: APP/N4720/C/21/3282516

Romanos, 35 King Street, Drighlington, BRADFORD, BD11 1EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr B Kidger against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 10 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an external canopy on the side and two gazebos.
 - The requirements of the notice are:
 1. Remove the two gazebos, front and rear, and canopy to the side.
 2. Restore the land to its former condition prior to the stationing of the gazebos and canopy.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f), (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.
-

Decision

1. 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.

Preliminary Matter

2. Planning permission has previously been refused to retain the external canopy to the side and the 2 gazebos. The subsequent appeal¹ was also dismissed. While it is evident, from the previous appeal decision, that adjacent residential occupiers objected to the planning application to retain the development set out in the matters alleged, those objections have not been reiterated in respect of this appeal nor have copies of those objections been provided in relation to this s174 appeal.

Appeal on ground (a) and the deemed planning application

3. The **main issues** are the effects on: (i) the character and appearance of the property and street scene; and (ii) the living conditions of adjacent residents, with regards to noise nuisance and odour.

Character and appearance

4. King Street comprises a mix of commercial and residential developments, some located at the back-edge of the footway and others set back behind neatly kept

¹ APP/N4720/W/21/3270753

- gardens. The host building is constructed in stone and has a double fronted appearance and is notable in the street scene due to its age and design.
5. The appeal property has established outside seating areas to the front and rear. It is unclear whether the area to the side was accessible to customers before the external canopy was erected but given the presence of an external access door into the building, it would seem likely. The use of the areas outside the building for purposes ancillary or incidental to the restaurant use would not of itself require planning permission.
 6. The rear gazebo is largely screened from public viewpoints by the host building. The external canopy is of light weight construction and is screened from public viewpoints by the gazebo to the front. The front gazebo stands forward of the host building and can clearly be seen above the willow screening and boundary railings. Added to the various ornamental structures, ovens, adverts and seating, the gazebo significantly compounds the already cluttered and cramped frontage. The presence of the external canopy and rear gazebo extend that visual clutter around the side and rear of the host building. While the external canopy and gazebos provide shelter for customers, the development detracts from the character and appearance of the attractive frontage of the building and is not in keeping with the open and uncluttered character of the wider street scene.
 7. For this reason, the development causes significant harm to the character and appearance of the appeal property and the street scene. The development therefore conflicts with policy P10 of the Leeds City Council Core Strategy (2014) ("the CS") and saved policies BD5, BD6 and GP5 of the Leeds Unitary Development Plan (Review 2006) ("the UDP"). These policies all seek, in various ways, for the size, scale and design of a development to be appropriate to its context and to respect the character and quality of the surrounding buildings, streets and the wider locality.

Living conditions of adjacent residents

8. There is no dispute that the lawful use of the appeal property is as a restaurant. The use of any outside space by customers would be ancillary and incidental to its use as a restaurant. It is also of note that it has been illegal to smoke inside pubs and restaurants since 2007. As such there would be an expectation that outside seating areas would be used by customers for smoking, in addition to general customer use.
9. The locations of the external canopy to the side and the gazebos are in very close proximity to the boundary with the neighbouring dwelling, 1 Winterfell Road. No1 is a family home, and residents would expect to be able to quietly enjoy their garden and allow children to play outdoors with limited supervision. The external canopy and gazebos are likely to result in a greater propensity for people to stay in the outdoor area for longer, with additional associated noise and disturbance occurring as a result. People congregating under these structures could talk loudly and potentially become boisterous, which could be exacerbated depending on what programs are playing on the televisions the gazebos contain.
10. While the restaurant's opening hours are not currently excessive, these are not controlled by condition. Furthermore, the appellant advises that they are going to provide facilities for customers to work remotely at the appeal property,

which will encourage use during the afternoon and early evening. Conditions restricting access to and the times of use for the gazebos and external canopy are suggested. Such conditions would require constant monitoring and the practicality of this when staff are busy serving customers or undertaking other duties may make such conditions difficult to enforce. In any event, even if it was possible, it would not overcome the significant concerns relating to additional noise and disturbance.

11. For these reasons, the development has an unacceptable impact on the living conditions of adjacent residents resulting from additional noise and disturbance. The proposal would therefore conflict with policy P10 of the CS and saved policies BD5 and GP5 of the UDP. These policies all seek, in various ways, to protect the living conditions of residents.

12. The appeal on ground (a) fails

Appeal on ground (f)

13. An appeal on this ground is that the steps required to be taken exceed what is necessary to remedy the breach of planning control or injury to amenity, whichever applies. The notice in this case seeks to remedy the breach of planning control, rather than the injury to amenity. The breach of planning control can only be remedied by returning the land to its condition before the matters alleged occurred.
14. The appellant's ground (f) case relates to the gazebos and not the external canopy. The appellant argues that the 2 gazebos could be relocated to the rear of the car park, which would remove the harm to the street scene and the harm to neighbours' living conditions. S177(1)(a) of the 1990 Act as amended provides for planning permission to be granted in respect of the matters stated in the notice, whether in relation to the whole or any part of those matters.
15. The appellant's alternative would not achieve the purpose behind the notice's requirements. Even if an alternative view is to prevail, other than the provision of an indicative layout plan, the appellant has not shown how the steps could be formulated so as to give effect to that proposal. It would seem likely that detailed building work would be necessary to remove the canopies from their current locations and to re-instate them in the proposed alternative positions. Details of those building works would need submitting to the Council for its approval. This action cannot be required except by a variation to the notice. The latter cannot be rephrased without introducing a significant degree of imprecision. Ambiguity in the notice's terms has the potential to create interpretational issues. That would be unacceptable because of the potential consequences for non-compliance.
16. Nothing short of total compliance would achieve the purpose behind the requirements. The steps required are not therefore excessive and the appeal on ground (f) fails.

Appeal on ground (g)

17. For an appeal on ground (g) to succeed, it must be shown that the compliance period specified in the notice falls short of what should reasonably be allowed.
18. The appellant claims one month is too short to secure suitable tradespeople to remove the structures and a period of 6 months is identified as being

reasonable. While the pandemic may have influenced timescales for getting building works carried out, no substantive evidence has been provided to justify the appellant's claim or to show why 6 months is required. The harms arising from this development are significant and I find that one month is reasonable. The Council can extend the specified period under s173A(1)(b) of the 1990 Act as amended, should the appellant's appointed tradespeople be delayed in removing the external canopy or gazebos.

19. The appeal on ground (g) fails.

Overall 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR