
Appeal Decision

Site visit made on 17 February 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 02 March 2022

Appeal Ref: APP/B4215/C/21/3287262

260 Wilmslow Road, Manchester M14 6JR

- 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 WWF (Fallowfield) Limited (trading as Wimpy Foods) against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 21 October 2021.
- The breach of planning control as alleged in the notice is the erection of a canopy to the front.
- The requirements of the notice are:
 1. Dismantle and remove the canopy, as identified in a blue box on photograph ENF/01, making good the front elevation and the forecourt using materials that are similar to the existing.
 2. Remove all building materials, rubble, waste, etc, arising from carrying out the above step.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

The appeal on ground (a)

1. The ground of appeal is that planning permission should be granted. In this case the main issue is the effect on the character and appearance of the area.
2. The appeal property is situated in a mixed commercial and residential area close to the junction of Wilmslow Road and Wilbraham Road in Fallowfield. It comprises a part two and part three storey modern red brick building which has commercial use at ground floor with residential above. The ground floor use is a supermarket. There is a deep pavement to the front of the property, part of which is used for the display of goods sold at the supermarket, including fresh fruit and vegetables.
3. There is a variety of different uses in the vicinity of the site including shops, bars, restaurants and a wide range of residential accommodation including student halls of residence. Buildings in the vicinity are varied, incorporating different materials, designs and appearances.
4. A mono-pitch cantilevered canopy has been installed across the frontage of the ground floor supermarket. It is constructed of white painted metal supports, corrugated roof sheeting and black plastic rainwater goods. The canopy is a substantial structure which dominates the frontage. It has been constructed of poor quality materials and has a flimsy, makeshift appearance that pays little

attention to the host building and its surroundings. It is visually prominent and constitutes a visually intrusive feature within the street scene and is at odds with the character of the mixed commercial and residential area. The extent of visual harm is exacerbated by the site's prominent location in the street scene close to a major road junction.

5. The roof has a pale colouring and the appellant suggests that painting the canopy either black or dark green would improve the appearance of the structure, the street scene and the wider area. However, painting it would not alter the unsuitable materials used or the overall design. Even if it was to be painted it would remain an incongruous feature in the street scene and, furthermore, the paint would be likely to weather and degrade over time and, unless well-maintained, would result in an even more shoddy and intrusive development.
6. The appellant admits that the canopy was installed quickly and the only metal available was white. This accounts for the poor visual appearance of the development but does not provide justification for the erection of such a poor quality development.
7. Therefore, I conclude that the development has a harmful effect on the character and appearance of the area. As such it conflicts with Policies SP1, DM1 and EN1 of Manchester's Local Development Framework – Core Strategy Development Plan Document Adopted 11 July 2012 (the CS), Saved Policy DC14.1 of the Unitary Development Plan for the City of Manchester Adopted 21 July 1995 (the UDP) and the National Planning Policy Framework. Among other objectives these seek to ensure that all developments in the City make a positive contribution to neighbourhoods of choice including creating well-designed places, all development should have regard to appropriate materials and design and all development is expected to take opportunities for good design to enhance the overall image of the City. Shop fronts, canopies and awnings should be in keeping with the character of the building and adjoining buildings and the area within which the premises are located.
8. The appellant contends that due to limited internal space there is a need to provide a large amount of space for fresh produce which is displayed externally. That may be the case, but I am not satisfied that the canopy that has been erected is only solution to the issue raised. I have also taken account of the appellant's comments regarding the differences between the previous operation of the supermarket and the specific requirements of the existing business. My attention has also been drawn to examples of other canopies in the area. However, I have determined the appeal on ground (a) on its own merits and have found that it is harmful to the character and appearance of the area and contrary to the development plan as a whole.

The appeal on ground (f)

9. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires dismantling and removing the canopy, the purpose is clearly to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In this respect, the appeal on ground (f) fails.

10. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. I have considered the alternative solution presented by the appellant to paint the canopy a different colour. However, as set out above that would not be an acceptable remedy to the breach of planning control.

The appeal on ground (g)

11. The ground of appeal is that the time given to comply with the requirements is too short. The one month given would be barely sufficient to remove the canopy and remove all building materials, rubble, waste etc. from the land. The appellant has suggested that the time for compliance is extended to nine months, but then goes on to state that he may not be in a position to replace the canopy with a new one for another year. The period suggested by the appellant would be excessive given the ongoing harm caused by the canopy. However, I consider the period should be extended to enable the appellant, should he wish to do so, to explore with the Council whether an alternative development might be possible, to obtain planning permission, order an alternative and install it. In this respect I consider six months would strike an appropriate balance and would not place a disproportionate burden on the appellant. Therefore, to this limited extent the appeal on ground (g) succeeds.

Formal Decision

12. I direct that the enforcement notice shall be varied by the deletion from paragraph 6 of the words "one month" and the substitution therefore of the words "six months" as the time for compliance with the requirements.
13. Subject to this 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 1990 Act as amended.

A A Phillips

INSPECTOR