



Appeal Decisions

Site visit made on 13 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal A Ref: APP/T5150/C/21/3269469

373-375, Church Lane, London NW9 8JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Anglo Asian Cash and Carry, Anglo Asian Group against an enforcement notice issued by the Council for the London Borough of Brent.
 - The notice was issued on 28 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a canopy extension and wooden display boxes to the front of the premises. ("the unauthorised development").
 - The requirements of the notice are:
 - STEP 1 Remove the unauthorised canopy extension to the front of the premises.
 - STEP 2 Remove the unauthorised wooden display boxes to the front of the premises.
 - STEP 3 Remove all items and debris arising from that removal and remove all materials associated with the unauthorised development from the premises
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/T5150/X/21/3284026

373-375 Church Lane, London, NW9 8JB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Anglo Asian Cash and Carry, Anglo Group against the decision of the Council for the London Borough of Brent.
 - The application ref 21/0618, dated 22 February 2021, was refused by notice dated 12 April 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as a "canopy extension and wooden display boxes to the front of the premises."
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Appeal A Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the plan attached to the enforcement notice.
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B Decision

3. The appeal is dismissed.

Procedural Matters

4. The appellant company within their final comments on the appeals have pointed out that the plan attached to the notice (Appeal A) and the decision notice for the LDC (Appeal B), did not show the site correctly. Specifically, the red-line on those plans is shown around the property although not the fore-court of the premises including the position of the canopy and display boxes. The appellants also appear to have made a mistake on the appeal form by referring to Church Road rather than Church Lane but they have submitted supporting information that relates to the site and the development enforced against. All parties are aware of what property the enforcement notice and the LDC decision relate to.
5. With respect to the notice in particular, regulation 4(c) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 states that an inaccurate plan can be deleted without offending regulation 4(c) so long as the site is or can be precisely be described in words alone. The appellant is fully aware of what site the notice relates to and also that it relates to development that is at the front of the premises. They have understood the terms of the notice and have lodged this appeal. I will therefore delete the plan and the notice will then by way of using the correct address make it clear what property it relates to. The description of the allegation makes it clear that the development has occurred at the front of that property. I can undertake this correction under the provisions of s176(1)(a) as it would not cause injustice to the appellant or the Council.
6. With respect to the appellant's point that the development as alleged are separate entities, that does not prevent them validly being specified on the same notice. I will go on to consider the grounds of appeal with respect to both elements of the development.
7. With respect to the LDC refusal (Appeal B), the reason for refusal does not explicitly refer to the wooden display boxes. The decision also refers to 10 years and the Council acknowledge that this should have been 4 years (which they did state correctly on the enforcement notice), the time limit for taking enforcement action against operational development. However, although there are errors, it is clear that the application has been refused entirely and a certificate was not issued for any part of the development. I will go on to consider the lawfulness with respect to the development as described within the application which is similar to that as alleged on the enforcement notice I am considering in Appeal A.

Appeal A on grounds (b) and (c)

8. From limited information provided by the appellant it appears that as well as claiming that the development has not occurred as a matter of fact under ground (b) it is also suggested, albeit briefly, that it also has not involved a breach of planning control. This appears to me to also therefore involve a hidden appeal on ground (c). It is incumbent on the appellant to demonstrate these matters on the balance of probabilities. I will consider both of these grounds together. I carried out an unaccompanied site visit but could clearly see the development from the footpath in front of the property.
9. The appellant claims that the canopy and display boxes have grown organically over the last 14 years. Photographs have been provided which the appellant

states were taken in September 2007. These show a fabric canopy extending over the forecourt and which at that time was propped up at its further extent by narrow poles. These photographs show that the canopy on the northern unit was retracted at times.

10. This is in clear contrast to the present situation whereby a solid roof constructed of timber, with a felt top-surface is propped up at its further extent by 3 solid posts and which are braced to help support the substantial roof. This permanently covers both of the shop-fronts. The posts are secured to the concrete slabs forming the forecourt by small metal right-angled brackets. The southern end of the canopy is enclosed by wooden shelving which also appears to be fixed to the ground or at least is a substantial, permanent structure retained by reason of its own weight. The Council's photographs show some of the boxes under construction. Other similarly constructed wooden display boxes are also positioned towards the front and rear of the area covered by the canopy. The development has replaced the previous canopy and is much more substantial, constructed of very different materials with different attributes.
11. The September 2007 image provided by the appellant shows that there were some display boxes or shelves along the very front of one of the shop units, to the rear of the area covered by the fabric canopy that existed at that time. The quality of the photographs is poor with the area by the shop-front in particular being dark. However, from what I can interpret from those images, those boxes do not look the same as those that are presently in place. It seems to me that the previously those boxes extended further out than the present ones. I have insufficient evidence to demonstrate that the development as exists now are materially the same as existed at that time.
12. The development as alleged has taken place and so the appeal on ground (b) fails. Furthermore, the canopy and boxes constitute building or other operations which are therefore development within the meaning of s55 of the Act. There is no suggestion that planning permission has been given for these developments and therefore the appeal under ground (c) also fails.

The Appeal on ground (d) (Appeal A) and the LDC (Appeal B)

13. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development. In this case, operational development has taken place and the relevant period as defined by s171B(1) of the Act, is 4 years beginning with the date on which the operations were substantially completed.
14. The letters in support of the appellant's case refer to a history of trading at the shop with wooden boxes and under "various" canopies since trading here in 2002. However, it appears from the photographs provided by the Council that the canopy has been in its present form since sometime between May 2019 and December 2020. The appellant's own evidence refers to the evolution of the canopy and the display boxes. I have referred above to the existence of some boxes or shelves along the shop-front in 2007 but they do not appear from the evidence before me, to be the same as have been installed since.
15. On the balance of probabilities, based upon the evidence provided, it appears that the development as alleged was not substantially complete in its present form 4 years prior to the issuing of the notice. The appeal on ground (d) in

appeal A fails and it the Council's decision to refuse the LDC as considered in Appeal B was well founded and that appeal fails as well.

Conclusion – Appeal A

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Conclusion – Appeal B

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of canopy extension and wooden display boxes to the front of the premises was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/T5150/C/21/3269469	Anglo Asian Cash and Carry
Appeal B	APP/T5150/X/21/3284026	Anglo Asian Cash and Carry