



Appeal Decisions

Site visit made on 5 August 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal A: APP/A0665/C/22/3293037

The property and associated land at Boujee, Unit R2, 33 Pepper Street, Chester CH1 1DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Cliff of Boujee Restaurant and Bar Ltd against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice was issued on 19 January 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey structure to the front elevation of unit R2.
- The requirements of the notice are:
 - 1) Remove the single storey structure in its entirety from the land;
 - 2) Remove all resulting materials from the land;
 - 3) Restore the front elevation including the land of unit R2 to its previous condition.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B: APP/A0665/W/22/3293057

Boujee Restaurant and Bar, Unit 2, Pepper Street, Chester CH1 1DF

- The appeal is made under section 78 of the 1990 Act as amended against a refusal to grant planning permission.
- The appeal is made by Mr Stephen Cliff of Boujee Restaurant and Bar Ltd against the decision of Cheshire West & Chester Council.
- The application Ref 21/03430/FUL, dated 6 August 2021, was refused by notice dated 14 December 2021.
- The development proposed is described as "new retractable canopy and adjustable side screen".

Summary of Decision: The appeal is dismissed.

Appeal C: APP/A0665/H/22/3292359

Boujee Restaurant and Bar, Unit 2, Pepper Street, Chester CH1 1DF

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Mr Stephen Cliff of Boujee Restaurant and Bar Ltd against the decision of Cheshire West & Chester Council.
- The application Ref 21/03428/ADV, dated 6 August 2021, was refused by notice dated 15 December 2021.
- The advertisements proposed are illuminated and non-illuminated signage.

Summary of Decision: The appeal is allowed and express consent is granted for the display of the advertisements.

Appeal A: Ground (a) and the deemed planning application; Appeal B

Background and Main Issue

1. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for the erection of a single-storey structure to the front of the appeal premises. Appeal B is against the refusal of planning permission for a new retractable canopy and adjustable side screen. Despite the differing descriptions, the plans submitted with the application show the same development enforced against. Consequently, I have dealt with Appeals A and B together.
2. The main issue is the effect of the development on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed buildings, the former Methodist Chapel and The Newgate, and the extent to which it would preserve or enhance the character or appearance of the Chester City Conservation Area.

Reasons

3. The appeal premises forms one of four restaurant units located on a relatively busy thoroughfare within Chester City centre. The premises lies adjacent to the grade II listed former Methodist Chapel, which has retained the form of its historic frontage. To the east of the site lies The Newgate, which forms part of the City Walls and is listed grade II in its own right. The premises is within the Chester City Conservation Area.
4. The development comprises a flat roofed, metal framed and glazed structure, which extends to the front elevation of the restaurant and encloses a formerly open seating area. I saw that the frame is powder coated/coloured in grey with pink detailing, which reflects the business branding. The main building is set back from the pavement and has a modern, glazed frontage. The entrance to the restaurant is beneath a high-level canopy, also coloured pink and grey.
5. The Chester City Conservation Area covers an area encompassing the commercial centre within and beyond the historic city walls. It is famed for its medieval layout and buildings, alongside black and white Victorian restorations and Georgian townhouses, nineteenth century civic buildings and a wealth of archaeological remains. The Pepper Street area has been subject to change over the years and it contains relatively modern development, including a shopping centre. I find that the significance of the Conservation Area, insofar as it relates to these appeals, to be primarily associated with the historic streetscape and architectural detailing of individual historic buildings which make a positive contribution to the area.
6. The former Methodist Chapel dates from the mid-nineteenth century and reflects the classical style of architecture. I consider the special interest of the listed building to be primarily associated with its former use, its architectural style and the detailing of the restored frontage.
7. The Newgate comprises a red sandstone archway, which occupies the site of a former gateway carrying the city wall over Pepper Street. It dates from the twentieth century. Its special interest lies in its historic associations, its architecture and its function.

8. The host building is modern in design and reflects other similar development along Pepper Street. The unauthorised extension is similarly of a contemporary design with large areas of glazing and framing, coloured to match the pink and grey of the host building. However, the structure is highly visible and prominent in the street scene due to its size and position at the front of the building. The bulk of the extension is focussed at street level, in contrast to the adjoining high level canopy. While the canopy is relatively large, its thin columns and roof level positioning enable views of the frontage and an appreciation of the buildings either side. The single-storey front extension is bulky and dominates the front elevation. In addition, the unauthorised extension competes with the canopy and creates an unbalanced appearance to the host building.
9. The unauthorised extension is seen in the context of the listed former Methodist Chapel. It sits forward of the building line and detracts from views towards the frontage of the listed building. The design of the extension does not respect the proportions of the former Chapel frontage and appears as an obtrusive feature that fails to respect its historic surroundings.
10. The Newgate can be seen from Pepper Street, when standing in front of the building, but it is located some distance away. The busy road, and intervening buildings, mean that the development does not affect the setting of The Newgate, which is seen in the context of the city walls and historic development beyond. Nonetheless, I consider that the unauthorised development had an adverse effect on the streetscape of this part of the Conservation Area, and it dominates and detracts from the frontage of the former Methodist Chapel. Thus, it harms the significance of designated heritage assets. The impact is relatively localised and I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
11. It is argued that the screens are retractable and the space within would be largely open, as it was the time of my site visit. However, the frame is of a substantial nature which is prominently sited. The open windows have little effect on reducing the bulk of the structure in views from the street. It is also argued that there is a fallback position derived from 'permitted development' rights for moveable structures in the curtilage of restaurants. A moveable structure would, by nature, be less bulky and its impact would be reduced. As such, I give this fallback position limited weight.
12. The National Planning Policy Framework (the Framework) advises that harm to the significance of designated heritage assets should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal would be beneficial because the development introduces economic opportunities to the area and provides direct employment for 10 staff, while boosting the recovery of the business following the COVID-19 pandemic. However, the continued viable use of the appeal property is not shown to be dependent on the development. The additional employment of 10 staff is a positive benefit which carries moderate weight. However, this would not outweigh the considerable weight given to the harm to designated heritage assets.

Conclusion

13. Given the above and in the absence of any significant public benefit, I conclude that, on balance, the proposal would fail to preserve the setting of the Grade II listed building, the former Methodist Chapel, and the character and appearance of the Chester City Conservation Area. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 197 of the Framework and conflict with Policies ENV5 and ENV6 of Cheshire West and Chester Local Plan: Part 1 (2015) and Policies CH5, DM3, DM46 and DM47 of Cheshire West and Chester Local Plan: Part 2 (2019), that seek, among other things, to ensure the protection of heritage assets and to promote high quality design. As a result, the proposal would not be in accordance with the development plan.

Appeal A: Ground (g)

14. The ground (g) appeal is that the time for compliance with the requirements of the notice falls short of what should reasonably be allowed. I accept that it may be difficult to find suitable contractors to undertake the work in the timescale given by the Council. However, there is little justification for extending compliance for 12 months, as sought, which would amount to a temporary planning permission. I shall vary the compliance period to four months, which I consider to be reasonable and proportionate in the circumstances.
15. The ground (g) appeal succeeds to this limited extent.

Conclusions

Appeals A and B

16. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

Preliminary Matter

17. The Council was concerned that the plans did not accurately show the advertisements as they have been installed. The appellant, in response, has submitted amended plans¹ which, the Council agrees, clarify the matters at issue. I am satisfied I can accept these plans without prejudice to any interested people since the changes are relatively minor. For the avoidance of doubt, I have determined the appeal as shown on the revised plans.

Main Issue

18. The main issue is the effect of the advertisements on visual amenity, having regard to the desirability to preserve or enhance the character or appearance of the Chester City Conservation Area.

¹ Proposed Front Elevation 21_013_02_002_Rev B and Proposed Side Elevation 21_013_02_003_Rev B.

Reasons

19. The application sought consent for: (i) a 920mm high, non-illuminated pink sign, 'It's Boujee Baby', over the entrance; (ii) a 400mm high, illuminated sign in pink lettering 'Restaurant and Bar'; (iii) a 1250mm high, non-illuminated sign in pink lettering, 'Boujee'; and (iv) a 400mm high, illuminated sign in pink lettering 'Boujee' on the canopy of the side elevation.
20. The Council has no objections to the advertisements around the entrance door and on the front elevation (i), (ii) and (iii) above. However, it considers the high-level, internally illuminated lettering on the entrance canopy (iv) to be a visually intrusive addition to the street scene, which has an adverse effect on the amenity of the area.
21. The entrance canopy is sited at roof level and supported on slender posts. It is not overly dominant in the street scene due to its design and positioning. In addition, the canopy allows views across the frontage of the development and enables an appreciation of the adjoining listed building. The advertisement is visible and the contrasting pink lettering makes it stand out against the background of the canopy. However, I do not consider it to be overly prominent or conspicuous due to its siting on the side of the canopy, and the size and style of the lettering. The street scene is preserved, therefore.
22. I appreciate that the Council has resisted signage on the canopy and at similar locations across the Conservation Area. However, the advertisement is of a considered design that respects the business branding. In this particular case, and having regard to the site-specific circumstances, it does not harm the setting of the adjoining listed building, the former Methodist Chapel, nor that of The Newgate and The City Walls, which are some distance away.

Conclusion

23. For the reasons given above, I conclude that the display of the advertisements would not be detrimental to the interests of amenity and they would preserve the character and appearance of the Chester City Conservation Area. I have taken into account Policy DM 17 of the Local Plan: Part 2, which seeks to protect amenity and so is material in this case. Given I have concluded that the advertisements would not harm amenity, their installation does not conflict with this policy.

Formal Decisions

Appeal A

24. It is directed that the enforcement notice is varied by the substitution of four months as the period for compliance in paragraph 6 of the notice. 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 1990 Act as amended.

Appeal B

25. The appeal is dismissed.

Appeal C

26. The appeal is allowed and express consent is granted for the display of the advertisements as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional condition:

- 1) The advertisements hereby permitted shall be carried out in accordance with the following plans: Proposed Side Elevations - 21 013_02_003 Rev B (07.02.22) and Proposed Front Elevation - 21 013_02_002 Rev B (07.02.22).

Debbie Moore

Inspector