The Planning Inspectorate

Appeal Decisions

Site visit made on 21 June 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal A Ref: APP/W2465/C/22/3304313
Appeal B Ref: APP/W2465/C/22/3304314
Land at 360 London Road, Leicester LE2 2PL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeals are made by Mr Dharmesh Mistry (3304313) and Ms Neelu Sharma (3304314) against an enforcement notice issued by Leicester City Council.
- The notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the construction of a structure 2.5 meters tall constructed with wooden posts and a wooden slatted roof fixed to the ground with bolts ("the Wooden Structure") on the Property, the location of which is shown outlined in blue on the plan attached to this notice as Plan 1.
- The requirements of the notice are to:
  5.1 Remove the Wooden Structure
  5.2 Remove from the Property any debris/material generated through compliance with 5.1.
- The period for compliance with the requirements is:
  3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) of the Act. 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

Appeals A and B

1. The appeals are 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 Act.

Appeals on ground (e)

2. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172(2) of the Act. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities. It has been alleged that the notice was left at the public reception area, not handed to the owners in person and promotional flyers were left covering the notice. The Council state that the notice was left at the reception desk of the hotel in a prominent position as there was no secure way of delivering them and no means of calling for a staff member to take delivery of the notice.

3. Effective service in compliance with section 172(2)(b) of the Act can take place by leaving the notice at an address, where an address for service has been given by that person, as provided by section 329(1)(b) of the Act. There is no indication that the address for service was provided by a person, although the notice was left at the address where the development has taken place. Effective service

compliance, as detailed in Section 329(2)(b)(ii) of the Act can also be delivering the notice to some person on those premises or is affixed conspicuously to some object on those premises. The Council confirm that it was not delivered to a person and there is no confirmation that it was affixed conspicuously to an object at the premises.

4. Even if I find that there was a failure to properly serve the notice, section 176(5) of the Act allows me to disregard that if neither the appellant nor any person who should have been served, but was not, has been substantially prejudiced. The appellants have not actually identified anyone upon whom the notice should have been served but was not. Additionally, the appellants cannot have been prejudiced themselves since they were not prevented from making their appeals and arguing their case.

5. The appeals on ground (e) fails.

Appeals on ground (b)

6. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities

7. The appellant describe the wooden structure as light weight, being 3.5 metres from the boundary of the site with no roof providing a degree of shade that has green ivy entwined around it. The wooden structure was visible at the appeal site when I undertook my site visit and there is no evidence before me that the wooden structure was erected after the notice was issued.

8. The appellant argues that the structure is not detrimental to the character and appearance of the Stoneygate Conservation Area (SCA). I deal with this in the appeals under ground (a).

9. From the evidence before me, I am satisfied, on the balance of probability, that the structure was erected on site as alleged in the notice as a matter of fact. The appeals on ground (b) therefore fail.

Appeals on ground (c)

10. An appeal on this ground is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.

11. The wooden structure is fixed to the ground with bolts and is therefore the carrying out of a building as described in section 55 of the Act.

12. The appellant argues that the wooden structure is a moveable structure that would fall within Schedule 2, Part 4, Class BB of the Town and Country Planning (General Permitted Development)(England) Order (GPDO). Class BB allows for the provision of one moveable structure within the curtilage of (a) a listed building or (b) a historic visitor attraction. A historic visitor attraction is interpretated in paragraph BB.4. of the GPDO as meaning a listed building accessible by members of the public (whether or not for an entry fee) for the purposes of promoting their enjoyment, and advancing their knowledge, of the building. Since the appeal site

is not a listed building Class BB of the GPDO does not apply to the wooden structure.

13. I have no compelling evidence indicating that the wooden structure benefits from any planning permission nor does it fall within Class BB of the GPDO. It therefore constitutes a breach of planning control.

14. The appeals on ground (c) fail.

Appeals on ground (a)

15. The ground of appeal is that planning permission should be granted for the wooden structure.

Main issue

16. The main issue is whether the wooden structure preserves or enhances the character or appearance of the SCA.

Reasons

Conservation Area

17. The appeal site lies within the SCA. In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Moreover, paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

18. The character of the SCA, particularly in the immediate locality of the appeal site, is suburban with buildings set back from the main roads with generous front garden spaces featuring landscaping including trees and hedgerows. It is this set back of built development from the main road with open front garden aspects that contributes to the character of the SCA, especially within close proximity to the appeal site.

19. The wooden structure is a large incongruous feature that is not sympathetic with the appearance of the surrounding locality. There are some high fences in the area however, the design of the structure is not a common feature within the immediate area and it detracts from the open aspect feel between the built development and London Road.

20. The wooden structure, due to its scale and design, is not a simple, elegant or aesthetically pleasing feature and its presence provides a cluttered arrangement between the main appeal building and the road. It is noted that lighting has been removed from the structure nevertheless any form of lighting is likely to draw attention to the structure adding to its prominence. Evergreen and Jasmine planting has been introduced with the appellant indicating there is a willingness to plant a hedgerow. The wooden structure would still remain highly visible, particularly from close proximity, even if a hedgerow was introduced. The wooden structure is a discordant feature that compromises the character and appearance of the SCA and surrounding area.

21. It has been described that a seating patio area for guests to eat and drink was previously located in this location, which was cluttered with large branded

parasols/umbrellas, patio heaters, tables and chairs. I also note that it would remain the intention for guests to continue to eat and drink at this patio area. This matter, however, does not alter my findings with regards to the wooden structure.

22. My attention has been drawn to other structures in the area with photographic evidence including a shed at 341 London Road, two pergolas at the Dovecote, bins at 50 Stoneygate Road, a structure at Age UK premises as well as photographs of fencing in the locality and also coloured lighting at the Star Hotel. I do not consider these directly comparable to the wooden structure subject of this appeal, particularly given these examples are not within close distance to the appeal site and therefore have different relationships in terms of effects on the SCA.

23. The wooden structure does not preserve or enhance the character or appearance of the SCA. The structure does not comply with Policy CS03 and CS18 of the Leicester City Local Development Framework Core Strategy 2014 which seeks development to respond positively to the surroundings and be appropriate to the local setting and, protect and enhance the historic environment.

24. The wooden structure is harmful to the SCA and thereby the significance of the heritage asset. Nevertheless, I consider the harm is less than substantial and in accordance with paragraph 202 of the Framework, that harm should be weighed against any public benefit.

25. The appellant has argued that the wooden structure is important to the local community by enhancing and improving the vitality of the live frontage and the viability of the appeal business and other local businesses. It is described that the structure offers a sense of purpose allowing a relaxed area for guests to sit, being more enclosed from busy traffic and providing a safe area for vulnerable people with an active frontage therefore promoting public safety. Whilst the seating patio area may offer some of these benefits described, I am unconvinced that the wooden structure itself makes a substantial contribution, and on that basis, I attribute limited weight to these benefits. This public benefit does not outweigh the considerable harm to the SCA which I have identified above.

26. The wooden structure, therefore, fails to sustain or enhance the setting, and thereby the significance of, the designated heritage asset. It does not accord with the policies of the Framework which seek to conserve and enhance the historic environment.

Other matters

27. The appellant has been critical of the Council, indicating that Officers have refused to co-operate and that there have been discrepancies in correspondence including reference to an unauthorised building, timings relating to lighting and completion of the structure, as well as the distance of the structure from the boundary. The appellant has also indicated that trees covered by Tree Preservation Orders have not been affected, a section of the front of the structure has been taken down and that there is a petition in support of the structure. These matters do not alter my findings above and the harm identified with regards to the effect on the SCA.

Conclusion on ground (a)

28. For all the above reasons, I conclude that the wooden structure does not preserve or enhance the character or appearance of the SCA. As such, the structure conflicts with the requirements of the previously referred development plan policies and the Framework.

29. The appeals on ground (a) therefore fail.

Appeals on ground (f)

30. This ground of appeal is that the steps required to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged in the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Since the notice requires the complete removal of the structure it is clear that the purpose of the notice is to remedy the breach of planning control.

31. Having regard to the notice, I consider that the requirement goes no further than requiring the removal of the wooden structure. This would be the minimum necessary in order to remedy the breach of planning control.

32. Therefore the requirements as detailed in the notice are not excessive. The appeals on ground (f) therefore fail.

Chris Baxter

INSPECTOR