



Appeal Decision

Site visit made on 15 August 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/J4423/C/22/3311860

115-117 Chesterfield Road, Sheffield S8 0RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Fadil Siula against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 3 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of an extension at the front of the property facing Chesterfield Road.
- The requirements of the notice are:
 - 5(i) Remove the extension at the front of the property shown in the attached photograph and make good any damage done to the property; and
 - 5(ii) Remove from the land any materials including waste which arise from the works.
- The period for compliance with the requirements is:
6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.

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

Formal Decision

1. It is directed that the enforcement notice is varied by:
 - 1) The deletion of the words '6 months from the date this notice takes effect' in section 6. of the notice and their substitution with the words '9 months from the date this notice takes effect' instead.
2. 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.

Preliminary Matters

3. The notice, at section 2, refers to the appeal site as being 'also known as Café La Kasbah' in addition to the address details set out in the banner heading, above. The application forms submitted to accompany earlier applications for planning permission^{1&2} for a front extension at the appeal property refer instead to 'Casa Italia' at the above address. This was the name displayed at the appeal site at the time of my visit. However, in the interests of consistency I have adopted the address set out in the banner heading as that is consistent throughout the notice, appeal and application forms and appeal submissions.

4. An application for planning permission was approved by the Council in 2020¹ (the 2020 scheme) for the provision of an external seating area at the front of the restaurant. The approved scheme also included a retractable cover which was designed to roll down over the roof frame and front elevation in inclement weather. The structure was otherwise essentially an open frame with low glass balustrades at ground level, with a centrally positioned gap to serve as an entrance, and within which seating would be provided.
5. A subsequent scheme² (the 2021 scheme) sought to revise the approved scheme, with the submitted plans showing alterations to the design and form of the front extension and the replacement of the retractable awning with a solid polycarbonate roof. During the Council's consideration of the 2021 scheme, the Council note that what had been built did not align with the submitted plans, particularly noting solid panelled lower sides. The application was refused, and the structure enforced against, as cross-referenced in the notice with a photograph of the structure, closely resembles the extension as I observed it during my visit to the site. I have determined the appeal accordingly.
6. As part of the appellant's appeal submissions, a further alternative scheme has been put forward which seeks to reposition the entrance to the extension from the pavement. Like the formal submissions previously made, the alternative scheme also proposes glazed balustrades in the lower portion of the extension's front and side elevations and a flat, smoked-polycarbonate roof.
7. The powers available under an appeal made on ground (a) allow me to consider under section 177(1)(a) of the Act, granting planning permission in relation to the whole or any part of those matters. In order to give proper consideration to the alternative scheme set out by the appellant I will deal with this within the ground (a) appeal.
8. The reasons for issuing the notice specify policies from the Sheffield Core Strategy (2009) (CS) and the Unitary Development Plan (1998) (UDP). Although these documents and their policies are now of some age, I am satisfied that their aims in terms of seeking to secure high quality design are consistent with those of the National Planning Policy Framework (the Framework) and I have determined the appeal accordingly.

The appeal on ground (a)

Main Issues

9. The main issues are the effects of the extension upon:
 - The character and appearance of the appeal property and the surrounding streetscene; and
 - Access

¹ LPA Ref No: 20/03261/FUL – approved 1 December 2020

² LPA Ref No: 21/05004/FUL

Reasons

Character and appearance

10. The appeal property lies in a mid-terrace location within a traditional two storey, brick-built terrace that rises steadily from north to south along the eastern side of Chesterfield Road. A mix of commercial uses occupy the ground floors of the units within the terraced block and are set back behind a reasonably wide pavement. Shopfront designs along the terrace are something of a mixed bag, but generally retain little, if anything, of traditional shopfront design features. The terrace's frontage is, however, consistently aligned along its length, albeit with the exception of the extended appeal property.
11. The Council have previously considered a partially covered outdoor seating area to be acceptable, having approved the 2020 scheme. However, what has been constructed, and that which the notice seeks to attack, is a significantly more substantial and bulky addition to the front of the appeal premises than previously proposed versions.
12. Thus, rather than a relatively lightweight frame with clear glazed lower-level balustrades, the extension is a substantial and visually intrusive box-like structure at the front of the premises. Instead of glazed balustrade panels, the lower levels of the extension's front and northern side elevations are faced with solid, horizontally hung cladding panels, with bi-fold window units above. Furthermore, although ostensibly still featuring a shallow-pitched roof, a deep fascia board atop the extension encloses the three sides of the extension roof and adds further height and bulk to an already bulky and cumbersome extension. As a consequence, the extension is incongruously conspicuous within the terraced block, thereby harmfully disrupting the flat frontages and gradually stepped flow of the terrace along Chesterfield Road.
13. CS Policy CS74 sets out the Council's design principles where high quality design will be expected and which would, amongst other things, respect and enhance distinctive features of the city, its districts, and its neighbours. UDP Policies BE5 and H14 together seek to secure good design in new and refurbished buildings, and extensions. A range of principles are set out, including that extensions should complement the scale, form and architectural style of buildings, and respect the scale, form, detail and materials of the original building in order to ensure that proposals do not lead to an unsatisfactory living environment for local residents.
14. For the reasons set out above, the front extension as built and as attacked by the notice is not in accordance with the provisions, aims and principles of these policies and is thus contrary to CS Policy CS74 and UDP Policies BE5 and H14, as well as the aims and principles of the Framework. Whilst the notice refers specifically to CS Policy CS74(b) the principles of good design are not limited to that section and are instead reflected across the range of criteria set out within that Policy as a whole.

Access

15. The approved 2020 scheme made provision for a centrally located door within the roadside front elevation. However, as built, the doorway entrance to the extension is on the side-facing elevation adjacent to the main building's façade.

As such, the doorway currently provides its point of access / egress directly in front of the doorway to the neighbouring commercial premises.

16. The location of the door on the side elevation is not, in isolation, objectionable. Indeed, it is, given the appellant's desire to minimise the size of the step from sloping pavement level to internal level and to provide a ramped access to bridge the difference between internal and external levels, understandable. However, the placing of a ramp at this point introduces an unnecessary and inconvenient trip hazard directly outside the entrance to the adjacent premises. As such, this element of the extension is contrary to the aims and provisions of the Framework in seeking to achieve well-designed places, and particular paragraph 130 which seeks, amongst other matters, to ensure that developments function well, add to the overall quality of the area and are inclusive and accessible.
17. I have no evidence before me, from either main party, as to the status of the pavement (or forecourt) where the access is currently located, or where that of the neighbouring property is sited. Whether or not the access in this location is taken from, or across, 3rd party land is a private matter between those involved and has not been determinative in my consideration of this matter. For the reasons set out above, the appeal on ground (a) fails for the extension as built and enforced against.

The alternative scheme

Character and appearance

18. The alternative scheme³ put forward as part of the appellant's appeal submission would result in an extension and outdoor seating area broadly similar to that of the previous approved 2020 scheme. Whilst the form of the roof would differ, and the retractable awning would be replaced by a fixed polycarbonate roof, crucially, the alternative scheme's submitted plans and elevations show a return to the glazed balustrade panels at a lower level, open sides to the elevations within the extension's overall framework and a simple, slim-line roof profile.
19. The changes set out in the alternative scheme would result in a less visually intrusive structure, and one in which the lightweight framework becomes its defining feature, rather than the solid-sided, glazed extension with top-heavy fascia board above, as built. As a consequence, it would be a far less intrusive intervention into the terraced façade of buildings along this particular part of Chesterfield Road.
20. The alternative scheme would still fall within the scope of the description of the alleged unauthorised works and would occupy the same footprint area as it. As such, I am satisfied that the end development would still be capable of being considered as part of the matters enforced against. I am also satisfied that the alternative scheme would avoid the harm I have identified above, align more closely with that which the Council previously found to be acceptable, and would avoid conflict with the provisions of CS Policy CS74 and UDP Policies BE5 and H14. There would be no harm arising in terms of its effect on the character and appearance of the appeal property or of the surrounding area.

³ Drwg Nos: HP-CR-01(Proposed external seating area to existing restaurant Plans – Nov 2022) and HP-CR-02 (Proposed external seating area to existing restaurant Elevations – Nov 2022)

Access

21. The alternative scheme would incorporate a doorway entrance within the front facing elevation and, in so doing, would avoid the unnecessary trip-hazard and risk presented by the as-built extension's access. As with the existing extension, it is clearly the appellant's intention to minimise any difference between internal and external levels by situating the doorway towards the righthand side of the front elevation.
22. However, it is not clear how the alternative scheme would fully address the difference in levels, particularly given the relatively restricted width of the pavement between the extension's façade and roadside bollards at this point. Whilst the extension provides sufficient space internally to mitigate any difference in levels inside, rather than outside, the extension, the alternative scheme's submitted plans do not indicate how this matter would be resolved.
23. Therefore, although I do not have sufficient detail to allow me to approve the alternative scheme, there would be sufficient justification to lengthen the time period for compliance to allow these matters to be explored with the Council within an appropriate timescale. However, because the detail of the scheme is insufficient at present to persuade me that it would adequately resolve the matter of access in an inclusive and accessible manner, as set out by Framework paragraph 130, the ground (a) appeal fails with regard to the alternative scheme before me.

Other Matters

24. A number of examples of outdoor seating area structures have been cited by the appellant in support of the appeal scheme. The information I have before me of those schemes is varied, as is the planning status of those structures. Nevertheless, from the evidence I have been provided with, the examples at 233 Abbeydale Road and 20 Abbey Lane are more akin to the lighter, framework style of the 2020 and alternative schemes at the appeal site than that which is before me and being enforced against. As such, they do not persuade me as to the acceptability of the appeal scheme.
25. The example at 223-225 Abbeydale Road is a more substantial structure, appearing to incorporate solid timber to the lower elevation with timber framework above and retractable canopies over. Whilst I accept that it is located in a prominent position and has the benefit of planning permission, the plans for that scheme do not fully reflect the photographic example that I have been provided with. As such, I am cautious of affording it significant weight in support of the appeal scheme in terms of character and appearance, or the alternative scheme in terms of access. As such, I give it only limited weight in support of either the appeal scheme or the alternative scheme and it does not outweigh the concerns that remain regarding inclusive and accessible access to the extension and appeal property.
26. The after-effects of COVID-19 induced lockdowns on the hospitality industry are noted. I am also mindful of the appellant's comments regarding the role of the business in the local community and the benefits of the covered seating area to the business in providing more flexible and increased levels of accommodation in the manner provided for by the appeal scheme and the alternative scheme. These matters weigh modestly in support of the appeal scheme and the alternative scheme as put forward.

27. The permitted development rights cited by the appellant⁴, introduced to provide support to the hospitality industry, are accepted by the appellant not to be relevant in this particular case and so have not been determinative in this matter. I have also been mindful of the planning status of the previously approved 2020 scheme, which remains extant for the time being at least, in reaching my conclusions on the ground (a) appeal in respect of both the appeal and alternative schemes. My decision in respect of the appeal and alternative schemes does not affect the 2020 scheme.

Conclusion in respect of ground (a)

28. For the reasons set out, the appeal under ground (a) in respect of the scheme attacked by the notice is unsuccessful by virtue of its harmful effect on the character and appearance of the appeal property and the surrounding area, and its failure to provide inclusive and accessible access as a result of the development. The ground (a) appeal fails in respect of the extension as enforced against.
29. I am satisfied that the alternative scheme set out by the appellant can reasonably be regarded as part of the scheme that constitutes the breach of planning control and in terms of its effect on character and appearance in the terms set out in the main issues, it would be acceptable. Furthermore, whilst the relocation of the doorway entrance to the right-hand side of the front elevation is welcomed, I am not persuaded that the alternative scheme adequately resolves the matter of being able to provide an inclusive and accessible access given the differences in levels I saw when I visited the site. Thus, whilst the general design of the alternative scheme would be acceptable in principle, the matter of an inclusive and accessible access has not been fully resolved and thus, the appeal on ground (a) fails. The other material considerations set out above are not sufficient to persuade me otherwise and, in reaching this conclusion, I have also had due regard to the Public Sector and Equality Duty.

The appeal on ground (g)

30. The notice sets out a period for compliance of 6 months. The appellant seeks a longer period of 1 year in which to carry out the required works.
31. The appellant has not set out specific justification for the longer compliance period of 1 year that the appeal under ground (g) seeks. However, having regard to the material considerations set out by the appellant in relation to the appeal on ground (a), I am mindful of the prospects afforded by the alternative scheme, the need for business continuity for the appellant at a time when the hospitality industry is seeking to recover from the after-effects of COVID-19 induced lockdowns and the role of the appellant's business in the local community. Thus, a longer period of compliance would provide a reasonable opportunity for the appellant to make a planning application to the Council for an alternative scheme, and for any amendments to be made, should any such application prove successful.
32. Whilst I consider a period longer than 6 months to be reasonable, in the absence of a specific and detailed justification from the appellant for a period of 1 year, a period of 9 months would provide sufficient and reasonable time for

⁴ Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 (SI 2021/467)

the submission of an application for planning permission and the making of any amendments should the application prove to be successful. The appeal on ground (g) succeeds to this extent and I shall vary the notice accordingly.

Conclusion

33. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission for the application deemed to have been made.

G Robbie

INSPECTOR