
Appeal Decisions

Site visit made on 29 September 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Refs: APP/D3125/C/22/3304100, 3304101, 3304102 and 3304103

Land at 1 High Street, Woodstock, Oxfordshire OX20 1TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Mevlan Karaj, Mr Giacomo Castagnino, Mrs Marjeta Karaj and Mr Brothertons of Woodstock Limited against an enforcement notice issued by West Oxfordshire District Council.
 - The enforcement notice, numbered 2022/18, was issued on 6 July 2022.
 - The breach of planning control as alleged in the notice is the unauthorised siting of two awnings on the front elevation of 1 High Street, Woodstock.
 - The requirements of the notice are to permanently remove the awnings and associated fittings from the front elevation of the building.
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. In relation to the appeal by Mr Mevlan Karaj only, since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
-

Summary Decision: the appeals are dismissed and the enforcement notice is upheld with corrections and variations as set out in the Formal Decision below

Procedural Matters

1. The appeal property is a grade II listed building within the Woodstock Conservation Area. In determining these appeals, in accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses and paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

The Enforcement Notice

2. In enforcement notices issued pursuant to section 172(1) of the 1990 Act, it is the convention to prefix the address to which the notice relates with the words 'Land at'. I will correct the notice to follow that convention.
3. The breach of planning control as alleged in the notice is the unauthorised siting of two awnings on the front elevation 1 High Street, Woodstock. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice

should therefore refer to the siting of the awnings 'without planning permission' rather than an 'unauthorised' siting as stated in the notice. I shall correct the noticed accordingly.

4. The notice alleges the siting of the awnings. To my mind, the term 'siting' connotes a geographical or spatial dimension. I recognise that the notice also refers to siting of two awnings on the front elevation of the building. Nevertheless, in my view the term 'installation' would more accurately describe the breach of planning control that has occurred. I shall correct the notice accordingly.
5. The requirements at paragraph 5(l) of the notice include the word 'permanently.' Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary in this context. I shall therefore delete it.
6. I am satisfied that no injustice would arise from correcting and varying the notice in these respects.

The appeal on ground (a) and the deemed planning application

7. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the following main issues are raised:
 - whether the development preserves a Grade II listed building, or any of the features of special architectural or historic interest that it possesses, and
 - whether the development preserves or enhances the character or appearance of the Woodstock Conservation Area.

Reasons

Special interest and significance: listed building

8. The List Description indicates the building was constructed as a house in or around 1760 with early C19 alterations¹. The building is constructed from Limestone ashlar with a gabled stone slate roof, hipped to left, with ridge stacks of stone finished in brick and brick end stacks. The building has two storeys with a 5-window range overall. The 2-window range to the right has timber lintels over a C19 six-pane window above tall 16-pane window with late C17 carving of man on horseback set in tympanum. The 3-window range to the left features raised storey bands, with a stone lintel over a C20 door with decorative overlight flanked by C19 shop windows with bracketed cornices.
9. The special interest and significance of the listed building, insofar as relevant to this appeal, are largely derived from its age and the materials used in its construction, specifically the archetypically Cotswolds oolitic limestone ashlar and stone slate roof. The building is therefore representative of its period. The special interest and significance of the listed building also derives, in part, from its distinctive architectural features, including its fenestration, and in particular (but not exclusively) those features referred to in the list description.

¹ Statutory Address: Brothertons Restaurant, 1, High Street List Entry Number: 1203653

Special interest and significance: conservation area

10. The special interest and significance of the Woodstock Conservation Area, insofar as relevant to this appeal, are that it includes many historically important listed and non-listed buildings, especially those clustered within the tightly packed streets that form its historic core based around the triangle formed by Oxford Street, High Street/Park Street and Market Street/Market Place. Collectively, these buildings (and therefore the conservation area as a whole) chart the development of Woodstock as a historic Oxfordshire town that dates back many centuries.
11. The appeal property is a good example of the type of building from which the special interest of the Woodstock Conservation Area is in part derived, particularly given its position in relation to the listed Town Hall at the apex of the triangle where the aforementioned historic streets meet and which acts as a focus point for the conservation area. The listed building therefore makes a positive contribution to the character and appearance of the conservation area as a whole and therefore to its significance as a designated heritage asset.

Effects of the development: listed building

12. Paragraph 199 of the National Planning Policy Framework (Framework) advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. The paragraph goes on to explain that this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
13. The essence of the appellant's case is that the awnings add visual interest to the listed building and do not detract in any significant way from its appearance. The appellant points out that, since their installation, the awnings have weathered and that in a year or so they would be replaced in any event. Thus, the appellant explains, they are a temporary feature and will not detract from the features that make up the external face of this building in the long-term. The appellant also points out that the awnings are of a type that is typical and prevalent in other locations within Woodstock, but those are not challenged by the Council.
14. The points made by the appellant are, for the most part, generic in nature. However, I have a statutory duty to consider whether the development preserves this Grade II listed building, and any of the features of special architectural or historic interest that it possesses. That duty, by definition, requires looking at the effect of this development on this particular building. It follows that, for example, the presence of awnings on other buildings within Woodstock is entirely irrelevant to that consideration². It further follows that whilst the awnings themselves may be temporary, the harm to the historic fabric of the listed building in terms of the intervention into the stone/mortar resulting from the mounting brackets is permanent. That is a consideration that I must take into account, however minimal that intervention may be.

² But is a matter that I will return to in relation to whether the development would preserve or enhance the character or appearance of the Woodstock Conservation Area.

15. The awnings that have been installed obscure some of the historical architectural features of the listed building and severely restrict views of the detail of the building. For example, the awning over the widow adjoining the door opening obscures the moulded detail directly above the widow itself, and sits directly below the raised storey band identified in the listing description. The presence of the awning detracts from the contribution made by those features to the special interest of the listed building.
16. Similarly, the awning that bisects the tall 16-pane window with the late C17 carving of man on horseback set in tympanum obscures the transom that divides the two eight pane elements that combine to form the window. This detracts significantly from this unique feature of the building, and one that makes an important contribution to the special interest of the listed building.
17. Furthermore, the openings in this particular building were not designed to take awnings. Both awnings subject to the notice are significantly wider than the windows they are associated with, and are set at different heights to one another. As a consequence, the awnings appear as arbitrary additions that are not coordinated with the facade of the building, whilst at the same time obscuring key features of the building.
18. At the time of my site visit, the awnings above the window adjoining the door was extended. That bisecting the tall 16 pane window was retracted. Having regard to the photographs of the building before the awnings were installed provided in the Council's evidence, even when retracted, the awnings obscure some of the details on the listed building and bisect the tall 16-pane window. The retracted awnings similarly appear as arbitrary additions to the building, lacking any logical relationship with the building's facade. The awnings therefore cause harm the special interest of the building even when retracted.
19. Furthermore, whether extended or retracted, the uncovered and very rudimentary fixed metal brackets are unduly obvious modern additions which are crudely attached to the building to hold the awnings in place. These jar with the appearance of the listed building, and have caused physical damage to the building's historic fabric.

Effects of the development: conservation area

20. The awnings are highly visible from the public domain. The awnings cause intrinsic harm to a listed building of a type from which the special interest and significance of the Woodstock Conservation Area as a whole is derived. It follows that the awnings fail to preserve or enhance the character or appearance of the conservation area.
21. In reaching that conclusion, I recognise that several other buildings within Woodstock feature awnings that are equally visible from the public domain. However, I have not been advised of the planning history of those awnings: for example, whether those awnings have the benefit of planning permission and listed building consent and, if so, what material considerations did the decision maker take into account in granting those permissions. Furthermore, given the lack of evidence before me, I cannot discount the possibility that the awnings present on other buildings in Woodstock do not have the benefit of planning permission and are unlawful in planning terms. I am therefore not able to reach any firm conclusions as to whether awnings are an established characteristic of the Woodstock Conservation Area. For that reason, I attach

very limited weight to the presence of awnings on other buildings in Woodstock.

Conclusion on the effects of the development to the listed building and conservation area

22. I conclude that the development fails to preserve a Grade II listed building and any features of special architectural or historic interest that it possesses, especially considering its distinctive and historic roof form, and fails to preserve or enhance the character or appearance of the Woodstock Conservation Area. On that basis, the proposal fails to meet the requirements of sections 66(1) and 72(1) of the Act. I give this harm considerable importance and weight in the planning balance. That harm is intrinsic within the development and could not be overcome or mitigated through the imposition of conditions.
23. This harm does not result in a total loss of the significance of the listed building. As such, the harm is less than substantial in terms of the Framework in this instance but, nevertheless, is of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.
24. Given the extent and nature of the development, I consider that the harm to the significance of the Woodstock Conservation Area is less than substantial in terms of the Framework. Nevertheless, this harm carries considerable importance and weight.
25. The appellant explains that the reason for the installation of these awnings was to help support the viability of this long-established business. I can fully understand why the installation of these awnings increases the attractiveness of the offer to customers, especially in the summer months. However, I have been provided with no evidence to show that the removal of these awnings would result in a loss of revenue such that the business would cease trading: for example, I have been provided with no comparison of revenue before and after the installation of the awnings. There is therefore no evidence before me to suggest that the retention of the awnings is essential to secure the optimum viable use of this designated heritage asset.
26. I fully accept that the securing the continued viability of the restaurant would be a public benefit in terms of the economic and social contribution that the restaurant makes to the town, not least in terms of maintaining Woodstock's status as a major tourist destination in its own right as well as in association with Blenheim Palace, a UNESCO World Heritage Site. There is no evidence before me to suggest that the removal of the awnings would put that status at risk. Consequently, overall I attach only limited weight to the public benefits arising from this development.

Other matters

27. The appellant indicates that community support for the retention of the awnings is, to adopt his term, 'huge'. In that context, I recognise that a six-page petition containing nearly 100 signatures has been submitted in support of the retention of the awnings. In addition, one individual representation has been received, expressing the view that awnings outside help maintain the character of the building and are a much better arrangement than placing

parasols, etc on the pavement. These representations all weigh in favour of the development and I have taken them into account.

28. The appellant also indicates that there is support from the Town Council for the retention of the awnings. However, there is no representation from the Town Council before me and I am therefore not able to take that into account.
29. The appeal site is located in proximity to other listed buildings, including the Town Hall. Pursuant to the statutory duty set out in s66(1) of the Act, I have had special regard to the desirability of preserving the setting of those buildings. The historic built surroundings of these buildings, of which the appeal property forms part, positively contribute to their significance. Nevertheless, given the extent of the development, I consider that the awnings preserve the settings of these listed buildings and the contribution they make to the significance of these designated heritage assets. I note that the Council raised no concerns in this regard either.

Conclusion on ground (a) and the deemed planning application

30. I conclude that, on balance, the development fails to preserve the special historic interest of the Grade II listed building or any features of special architectural or historic interest which it possesses and the character or appearance of the Woodstock Conservation Area. This fails to satisfy the requirements of the Act as well as conflicting with the provisions within the Framework. Overall, the weight that I ascribe to the public benefits that accrue from the development, is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.
31. In addition, the proposed development does not accord with Policies OS2, OS4, EH9, EH10 and EH11 of the West Oxfordshire Plan to 2031. Amongst other things, these policies state that proposals which would harm the significance of a designated asset will not be approved, unless there is a clear and convincing justification in the form of substantive tangible public benefits that clearly and convincingly outweigh that the harm. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
32. The appellant has specifically requested that, in the event that I found one of the awnings was not detracting from the listed building, I indicate accordingly in my decision letter. Section 177(1) of the 1990 Act provides that where an appeal against an enforcement notice is brought under section 174 of that Act, planning permission may be granted in relation to the whole *or any part of* those matters (emphasis added). Consequently, rather than indicate that one awning might be acceptable, it would be open to me to grant planning permission for that one awning if I was so minded.
33. The appellant has not indicated which of the awnings that he would prefer to be retained. However, for the reasons set out above, both awnings either obscure and/or detract from key features of the listed building that make an important contribution to its special interest and significance. Accordingly, the retention of either would continue to harm the special interest and significance of this listed building and would fail to preserve or enhance the character or appearance of the Woodstock Conservation Area. That harm would be less than substantial in terms of the Framework but, nevertheless, of considerable

importance and weight. Even though the harm resulting from the retention of just one of the awnings would be reduced in relation to existing situation, the public benefits arising would not justify that harm. For the same reasons as set out above, the retention of just one awning would also not accord with the development plan. I therefore conclude that it is not open to me to grant planning permission for either of the awnings in isolation.

34. I conclude that planning permission ought not to be granted for the matters stated in the notice, either in whole or in part. Accordingly, the appeal on ground (a) fails.

The appeals on ground (g)

35. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months. The appellant requests a period of compliance of at least six months.
36. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject to the notice. The appellant's case on this ground of appeal is that requiring a deadline for the removal of the awnings in early December meant that any help in supporting the business during the festive holidays (one of its busiest times for the business) would be taken away.
37. The appellants' case is made on the basis of the date on which the enforcement notice was issued. The notice would have taken effect on 10 August 2022 had the appeal not been lodged, and this would have meant that the awnings would have been required to be removed just at the start of the festive holidays. I am not entirely persuaded that the removal of the awnings in the winter months would have had a significant effect on trade but, in any event, the timetable for this appeal will mean that the awnings will not have to be removed until well after the festive period for 2023 even if the period of compliance remains unaltered. The appellants' argument therefore completely falls away in this respect.
38. The removal of the metal brackets on which the awnings are mounted is not a difficult task that requires specialist contractors or equipment, albeit care will need to be taken to ensure that the historic fabric of the building is not damaged. The appellants have provided no technical evidence to show that compliance with the requirements could not be achieved within the four months stated in the notice, even taking into account any extra time needed to ensure that the listed building is not damaged in the process.
39. However, I am advised that the proprietor of the business is seeking the option of installing smaller awnings via the local District Councillor and others who are supportive of their retention. I have found that the existing awnings fail to preserve the special historic interest of the Grade II listed building and the character or appearance of the Woodstock Conservation Area. Nevertheless, I must not fetter the judgment of the local planning authority in relation to whether smaller awnings might be acceptable. It is only fair and reasonable that the appellants have the opportunity to explore with the Council whether the existing awnings could be directly replaced with smaller versions.

Moreover, the appellants are entitled to anticipate succeeding on the appeal on ground (a), such that this could not have been done sooner.

40. The additional two months requested by the appellants over and above the period of compliance stated in the notice would not be significant in relation to the public interest in having the awnings removed but would enable applications for planning permission/listed building consent for smaller awnings to be submitted to and determined by the Council.
41. The appeals on ground (g) succeed to that extent, and I will vary the notice accordingly.

Conclusion

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

Formal Decision

43. It is directed that the enforcement notice is corrected by:
- in paragraph 2 of the notice, inserting the words 'Land at' before the address of the land affected
 - in paragraph 3 of the notice, deleting the words 'Unauthorised siting' and substituting there the words 'Without planning permission, the installation of'
44. It is directed that the enforcement notice is varied by:
- in paragraph 5 of the notice, deleting the number '4' and substituting there the word 'six(6)'
 - in paragraph 5(l) of the notice, deleting the word 'Permanently'.
45. Subject to the corrections and variations, 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 1990 Act as amended.

Paul Freer
INSPECTOR