



Appeal Decision

Site visit made on 12 December 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/A5270/C/23/3314799

39 High Street, Acton, London W3 6ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr. Donovan Christian against an enforcement notice issued by London Borough of Ealing.
- The notice, numbered 20EN0577(1), was issued on 29 November 2022.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use by incorporation of the front forecourt area into the restaurant.
- The requirements of the notice are to:
 1. Cease the use of the front forecourt as restaurant;
 2. Remove the retractable canopy extension;
 3. Remove the plastic sheeting and timber platform in its entirety;
 4. Make good any damage to the frontage and public highway.
- The period for compliance with the requirements is:
Three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 in the terms set out below in the Formal Decision.

Formal Decision

1. 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.

Procedural Matters

2. The Government published a new version of the National Planning Policy Framework (the Framework) on 19 December 2023. With the exception of paragraph numbering, the parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal on ground (a) accordingly.

The appeal on ground (a)

Main Issues

3. The main issues are the effects of the development upon:
 - The character and appearance of the appeal property and the surrounding area; and
 - The movement of pedestrians.

Reasons

Character and appearance

4. The Council do not object to the principle of the area outside the café that is the subject of the notice being used for additional dining space in connection with the food and drink offering at the appeal premises. Indeed, during my visit to the site I saw there to be a number of other commercial properties within this particular frontage block as well as the wider High Street, where additional use is made of similar outside space.
5. Thus, additional semi-formal outside dining spaces for patrons at a variety of coffee shop, café and restaurant locations along High Street are not uncommon. Unlike the appeal property however, they typically tend to take the form of a small number of chairs and tables placed on the pavement and forecourt directly in front of a unit. Or, as in the case of the nearby grocery store, a display of goods for sale placed on temporary tables or shelves which, the Council advise me, are taken in outside business hours. Whilst my visit to the site was only a snapshot in time¹, and was notably not outside typical trading hours, there was nothing about the arrangements at the front of this neighbouring premises that suggested that the displays could not, or are not, removed when not open.
6. The appeal property did not appear to be open at the time of my visit. However, the canopy was extended, the clear plastic sheeting to front and both sides was in place, and the timber platform and seating areas within it appeared to be present. The appellant describes the platform as 'solid' and 'robust', despite later suggesting that the platform is no more permanent than other pavement cafes with chairs and table outside, presumably the latter in an attempt to draw similarities with those cafés where chairs and tables are just placed on the pavement and forecourts.
7. However, the presence of the features that the notice seeks to attack at a point at which the premises did not appear open to patrons suggests either an inability, or the very least an unwillingness due to their robust and solid nature, to move these features in a manner akin to the more informal placement of chairs and tables, as seen elsewhere. As such, these elements suggest that the use of the frontage area is of a more permanent intent going beyond when the unit itself is open.
8. Nor are these features, when taken together, particularly attractive. The nature of the timber platform and the visible elements of it at pavement level, and the clear plastic sheets draped from the canopy, give the frontage area an untidy and somewhat unkempt appearance. Whilst I do not doubt the appellant's best intentions with regard to the quality of the fixtures and fittings within this area, the overall impression given is not of high-quality development that is responsive to the local context, character, appearance and materials.
9. There is nothing particularly uncommon or exceptional with the presence of a projecting shopfront canopy at the front of a shop unit. In this respect, I do not agree with the Council's assessment of its appearance, and such features are often seen as a traditional feature of an active commercial town centre, and

¹ Midweek mid-afternoon timeslot

which can enliven frontages. In isolation, I see no particular harm with the appellant's canopy. Rather, it is the use that the area covered by the canopy is being put to, compounded by the nature of its enclosure and construction, that presents an unsympathetic presence at the front of the appeal site and results in a use and structures that add undue clutter to the public realm.

10. The appeal site lies towards the eastern end of the Acton Town Centre Conservation Area (the CA), within the 'High Street and Marpet Place' sub-area¹². The High Street is noted as having a lively and varied character due to its mix of activities, as well as varied architecture but the CACA also notes the threats posed by, amongst other things, poorly designed shopfronts and the clutter present within the public realm.
11. For the reasons I have set out above, the use of the forecourt area for additional seating and tables for patrons, facilitated by the timber platform, clear plastic sheets and shopfront canopy cause harm to the character and appearance of the appeal property and surrounding area. As such, the appeal scheme fails to preserve or enhance the character or appearance of the CA, noting particularly the CACA's concerns regarding the threat posed by poorly designed shopfronts and clutter. It also goes on to state that the transition from public realm to private forecourts are often poorly resolved, untidy and poorly maintained.
12. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. As the proposal neither preserves nor enhances the character or appearance of the CA harm arises from the appeal scheme, albeit that that harm is less than substantial. The Framework states that in such instances this harm should be weighed against the public benefits of the development.
13. I have not been presented with any public benefits of the appeal scheme and, as such, there are no public benefits to be weighed against the harm to the CA that I have found in this instance. In this respect, I find the development conflicts with London Plan (LP)(2021) Policies D3(D)(1), (D)(11) and (D)(12) and GG1(B) and (E) and Policies 7B and 7.4 of Ealing's '*Development Management Development Plan Document*' (DMDPD)(2013), as well as the aims and principles of the National Planning Policy Framework in respect of the historic environment and designated heritage assets. Together, these policies seek to secure high quality design that complements the character and appearance of existing built areas and provides a high standard of amenity for users.

Pedestrian movement

14. The pavement width directly outside the appeal property is limited somewhat by a row of what were formerly car parking spaces, but which have since been repurposed with cycle stands, benches and planters. Within the pavement itself, there is a streetlight column, a further cycle stand and a tree, all of which present further incursions into the pavement's width.

² As identified by the Council's 'Acton Town Centre Conservation Area Character Appraisal' (2009) (CACA)

15. Forecourt displays, outside seating and projecting shopfront canopies are not unusual features along the street as a whole, or indeed in the vicinity of the appeal site in the street frontage block in which it lies. The appeal property is, however, somewhat unfortunate in respect of its position relative to the various obstructions within the pavement area. Whilst the presence of the canopy itself is not particularly restrictive to the free flow of pedestrians along the pavement, the clear plastic sheeting that hangs down from it to shelter patrons and the timber kickboard at the base of the timber platform present a more immediate impediment to the pavement's width at this point.
16. Whilst some, or all, of the features that the notice seeks to attack are present elsewhere in various locations along the High Street, the specific circumstances of the appeal site's position relative to particular items of street furniture are such that the use of the forecourt in the manner set out in the notice does impede, to an extent, the free flow of pedestrians along the pavement. Those factors combine to create a particular pinch-point at the appeal site.
17. The appellant has cited other examples of incursions at the front of other nearby commercial units along High Street. However, from my observations of the surrounding area during my visit to the site those nearby within the same frontage block as the appeal site are not directly comparable. Either they are located in areas where the pavement is wider or items of street furniture are positioned more favourably to maintaining as wide as possible a pavement width, or I am advised that the outside seating or shelving is removed when not in use. Or indeed both. The manner of the appellant's use of the area at the front of the appeal site and the way in which it has been laid out mean that this is less likely, however.
18. Taken together therefore, the nature of the appellant's use of the area at the front of the appeal premises and the manner in which the use has been facilitated with the plastic sheeting around the canopy and the timber platform, are such that the matters alleged in the notice cause an unacceptable further intrusion into, and narrowing of, the pavement. LP Policy D8 seeks, amongst other matters, at (E) to ensure that the movement function of the public realm and that its function as a place are provided for, and balanced to reflect the characteristics of the area. Whilst I have not been provided with any indications of desire lines in this particular locality, I am satisfied from my observations of the site and its surroundings and, having experienced the public realm at this location during my visit, that the use of the area in the manner carried out by the appellant further restricts pavement width, and thus the free flow of pedestrians, at this point. As such it fails to strike an appropriate balance as required by LP Policy D8(E) and is therefore contrary to its provisions.

Other Matters

19. The appellant has referred to a range of other matters in his appeal submissions. I have determined the appeal on its planning merits and matters of licensing are not material considerations to which I have given any significant weight. Reference has been made to an invalid application but, according to the Council's submission that is for a matter unrelated to the matters before me. Whilst I have some sympathy with the appellant if communications between Council and appellant have been difficult, this is not a matter to which I attribute any weight in the planning balance.

Conclusion

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

G Robbie

INSPECTOR