
Appeal Decision

Site visit made on 5 March 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/J4423/C/23/3333128

Amici & Bici, 220 Abbeydale Road, Sheffield S7 1FL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Julian Gjini against an enforcement notice issued by Sheffield City Council.
- The enforcement notice was issued on 17 October 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a canopy structure to the rear of 220 Abbeydale Road, Sheffield.*
- The requirements of the notice are to (1) demolish and remove the rear canopy structure to the rear of the land; remove from the land any materials arising from compliance with paragraph (i); and make good any damage to the land as a result of compliance with paragraph (i).
- The period for compliance with the requirements is four 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.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld.

Main Issues

1. The main issues for consideration are the effects of the canopy structure on the Nether Edge Conservation Area and its effects on neighbouring living conditions.

Reasons

Effects on the Nether Edge Conservation Area

2. The appeal property lies at the eastern extremity of the Nether Edge Conservation Area, immediately beyond its boundary. The Conservation Area is characterised by historic residential properties, and the side of the appeal site faces onto Chippinghouse Road which leads from the commercial thoroughfare of Abbeydale Road, one of the main arterial routes into the city, westwards towards the historic core of Nether Edge. On the appeal site's immediate boundary on Chippinghouse Road is a purpose-built block of flats of undistinguished appearance although lying within the Conservation Area. More historic, stone or yellow-bricked, residences lie elsewhere on Chippinghouse Road on both sides.
3. Those residences (and the block of flats) are characterised by being set some distance back from the Chippinghouse Road thoroughfare with a distinct building line on both sides. Boundary treatments are typically hedges or low stone walls. The properties thus benefit from relatively spacious front gardens with an absence of built form beyond the frontages of the dwellinghouses

giving the street an open aspect. Beyond the property boundaries, on both sides, the footways are characterised by established trees interspersed with telegraph poles and attractive street lights.

4. The rear canopy structure that has been erected at the appeal site provides an abrupt change to the building line at the bottom of the street, with the canopy immediately abutting the footway and thus protruding well forward of the established building line of the street. This distinctly diminishes the open character of the street at this point, with the appeal site now almost entirely enclosed by buildings.
5. Although the 'glass and steel' construction of the canopy (and the accompanying, permitted, canopy attached to the principal building: the 'front' canopy) goes some way to mitigating this enclosing effect, the use of such materials is itself highly uncharacteristic of the adjoining area. Whilst the 'front' canopy, now permitted by the Council, would itself have the effect of disturbing the building line on Chippinghouse Road, the front canopy is built at a much lower level and takes on the commercial characteristics of Abbeydale Road without such a jarring effect on the adjoining Conservation Area. The topography of Chippinghouse Road, rising as it does to the west, means that the impression of openness resulting from the building line would be largely retained with the 'front' canopy alone. The addition of the rear canopy is however a significant interference.
6. The Local Plan, specifically UDP Policy BE16, is consistent with national policy ('the Framework') insofar as it requires development proposals to preserve or enhance the character or appearance of Conservation Areas. Although the appeal site does not lie within the Conservation Area, the Framework is clear that the significance of any heritage asset may be affected by development within its setting. Here, the ability to appreciate the built form of Chippinghouse Road is adversely affected by the construction of the rear canopy by abruptly interrupting the vista along the street. In terms of the Framework this results in 'less than substantial harm' which should be weighed against the public benefits of the proposal.
7. The main public benefits of the proposal proffered by the appellants concern the ability of the canopy to enable more customer seating capacity thus resulting in a positive contribution to the local economy, including by the employment and retention of additional staff, and the sustainability of the business. The potential to recover losses experienced during the pandemic is also cited.
8. No business plan or analysis has been put forward and it is unclear whether the benefits to this business of increased customer capacity would arise from customer displacement elsewhere in the vicinity. The need for the additional canopy area in order to secure the sustainability of the business is not demonstrated. Whilst accepting the general point that any increased seating capacity creates the possibility to secure an increased income, the lack of particular detail here means I am unable to attribute more than little weight to these benefits. In particular, they do not overcome the harm caused to the character and appearance of the area and specifically of the Conservation Area. The canopy is thus contrary to the requirements of policy BE16 and of the development plan for the area.

Effect on living conditions

9. Some complaints have been received about the effects of the development on car parking in the area; however there appears no reason why the area now covered by the canopy should be given over to customer car parking. The canopy itself does not appear to be built on the public highway.
10. The notice refers to UDP Policy S10 requiring new developments to avoid harm to living conditions, but does not itself identify any specific harm caused. The Council's officer report identifies customer noise as an issue. The appellants submit that no detriment to neighbours would be likely to result, given the current operating hours of the business. They say that the front garden to the adjoining block of flats is in reality not used and thus overlooking is not a concern.
11. If the present operating hours are to be maintained then I accept that noise is unlikely to arise in the evenings, but that the use of the canopy area at weekends will increase the noise impacts felt by the neighbours. The proximity of the canopy to the front garden of the flats is likely to result in overlooking of the garden area to the flats and potentially into the ground floor flat itself. The outlook of the occupiers of that ground floor flat appears significantly affected by the structure itself which is over 3m high in very close proximity to their front window. Overall I find these effects cumulatively to result in unsatisfactory living conditions for the occupiers of the ground floor flat and contrary to policy S10 and of the development plan for the area.

Conclusion

12. 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 deemed application.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR