



Appeal Decisions

Site visit made on 29 January 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 FEBRUARY 2025

Appeal A Ref: APP/X4725/C/24/3339617

Land at Trinity Lounge, 43 Brook Street, Wakefield, WF1 1QW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mohammed Riaz of Riaz and Co Holdings Ltd against an enforcement notice issued by Wakefield Metropolitan District Council.
 - The notice was issued on 1 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a single storey side extension to form a covered seating on the Land.
 - The requirements of the notice are to (i) demolish the single storey side extension and seating area, and (ii) remove all demolition materials and debris from the Land.
 - The period for compliance with the requirements is six 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.
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Appeal B Ref: APP/X4725/W/24/3338732

Trinity Lounge, 43 Brook Street, Wakefield, WF1 1QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Smith against the decision of Wakefield Metropolitan District Council.
 - The application Ref is 23/02132/FUL.
 - The development proposed is a single storey side extension to form covered seating area (retrospective).
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Decisions

Appeal A Ref: APP/X4725/C/24/3339617

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.

Appeal B Ref: APP/X4725/W/24/3338732

2. The appeal is dismissed.

Preliminary Matters

3. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of the identified main issues below. It has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

4. The Council adopted the Wakefield District Local Plan 2036 on 24 January 2024 (WDLP). This post-dates the Council's refusal of planning application 23/02132/FUL dated 16 January 2024 being considered under Appeal B. At my request, the Council has confirmed that the only relevant development plan in respect of Appeals A and B is the WDLP. I afforded the appellant an opportunity to comment on the implications of the relevant policies in the WDLP as part of the consideration of the two appeals.

Appeals A and B - Ground (a) appeal and the s.78 appeal

Main Issues

5. I have considered the reasons for refusal of planning permission and the reasons for issuing the notice. The main issues are the same for both appeals and are (i) the effect of the development on the character and appearance of the area, and (ii), whether the development obstructs access to the passageway between Brook Street and Smallpage Yard and/or causes harm to public safety.

Character and Appearance

6. The unauthorised structure has been built on land which was previously open. It has enclosed the land and is being used for outside seating purposes in association with a café/bar known as Trinity Lounge. There is a pleasing design consistency to this town centre location including the use of grey brick pavements, stone flags and steel bollards within the street, and the existence of complementary stone and brick buildings on either side of Brook Street. Prior to the structure being erected, the open land provided some welcome relief to the long terrace of properties in Brook Street. Moreover, the evidence is that it was used as a walking route for those wishing to gain convenient access to and from Smallpage Yard.
7. The structure occupies a significant amount of the former open land. It has a white rendered finish to its side, the roof is made of wood with plastic sheeting, and there are black coloured wooden gate panels to the front elevation facing Brook Street. When experienced against the surrounding buildings in this part of Brook Street, the structure does not assimilate well. It fails to reflect the more traditional and high-quality materials that prevail amongst the surrounding buildings, and, in this regard, appears as an incongruous addition in the street-scene causing material harm to the character and appearance of the area.
8. While some form of outside seating facility may be acceptable on part of this land, the subject development has a very enclosing feel and, in my judgement, does not provide the sort of open and inviting environment within this town centre environment that one might expect to see when walking down Brook Street. Put another way, in visual terms it does not offer the same positive or vibrant impact within the street-scene when, for example, compared to the use of unenclosed shop frontage tables and chairs that are in situ elsewhere within the town centre.
9. For the above reasons, I conclude that the development constitutes poor design. I find that material harm has been caused to the character and appearance of the area. Therefore, the development does not accord with the design, character and appearance requirements of policies SP23 and LP56 of the WDLP, and chapter 12 of the 2024 Framework.

Passageway Access

10. The structure has been built on land which the evidence indicates has been historically used as an access or passageway between Brook Street and Smallpage Yard. The Council states that the passageway is not a designated or recorded public right of way. However, the Council's Public Rights of Way Officer considers that an application could be made to claim a Public Right of Way due to it being established through the passage of time.
11. On the evidence that is before me, I cannot conclude that members of the public have a right of passage through the subject land. The appellant states that '*no legal right of way exists and that the area forms part of the site curtilage*'. I acknowledge that the structure has taken up a significant amount of the land, which was previously open, but it is noteworthy that while relatively narrow, it is still possible to walk from Brook Street to Smallpage Yard, and vice-versa, given the retention of a passageway gap to the side of the appeal structure.
12. While the resultant passageway gap is much narrower than it was previously, and hence may lead to some inconvenience for members of the public when there are other oncoming pedestrians, I do not find that it could reasonably be said that this arrangement has meant that it is no longer possible for members of the public to reach Brook Street or Smallpage Yard. In reaching this view, I am cognisant that the evidence indicates that the resultant passageway is narrower than it was previously. In this regard, for some it may offer an otherwise less convenient or favourable route than existed before. Nonetheless, it is still possible for pedestrians to choose to reach Brook Street from Smallpage Yard, using alternative walking routes, and without having to use the passageway, albeit that I accept that walking times would be slightly longer.
13. On the evidence that is before me, I do not know, with certainty, whether an application would be made for a claim for a Public Right of Way on the land, or indeed whether any such application would be approved. Moreover, I do not know whether the appellant has full control and ownership of the whole of the land and hence whether he could, in any event, prohibit public access.
14. Notwithstanding the above, the resultant passageway/access from Brook Street to Smallpage Yard is now very narrow. There is nothing in place physically to prevent members of the public from using this route and I was able to use it freely as part of my site visit. However, for those using this pedestrian route, particularly in the evening, I find that it would constitute a dark, narrow, and threatening environment. Moreover, and, given its relatively concealed nature away from the more open and visible Brook Street and Smallpage Yard, I find that it is likely to be a magnet for anti-social behaviour.
15. While my site visit was only a snapshot in time, I noticed that there was a lot of litter within the passageway including discarded bottles and cans. In addition, and owing to the width of the passageway, I find that it would be difficult to pass on-coming pedestrians in relative comfort and safety. Given the above matters, I do not find that the resultant passageway has resulted in a safe pedestrian route or environment for members of the public.
16. For the above reasons, I therefore conclude that the resultant passageway causes harm to the safety of pedestrians. In this regard, the development does not accord

with the public safety and convenience requirements of policy LP27 of the WDLP, and paragraph 102 of the 2024 Framework.

Other Considerations

17. I acknowledge that the outside seating area offers some additional choice for customers and is likely to have had some economic benefits for Trinity Lounge. These are positive matters that need to be weighed in the overall planning balance.
18. I have considered representations made by other interested parties, most of which have been addressed in my reasoning above. It is alleged that the land was previously used as an area for consuming alcoholic drinks, taking drugs or urinating. I have no reason to doubt the appellant's comments about this which includes submitted photographs. However, I do not know the frequency and extent of any such anti-social activity.
19. Even if there were previously frequent anti-social activities occurring on the land, it may have been possible for the appellant to have explored the potential for other security and/or crime reduction options (e.g., the use of CCTV) and without opting for the erection of an out of keeping structure on the land. Moreover, the evidence is that the structure has resulted in the retention of a narrow and more enclosed passageway between Brook Street and Smallpage Yard. This has the potential to also attract the sort of anti-social behaviour that has been mentioned by other interested parties and the appellant.

Planning Balance and Conclusion

20. The development has caused material harm to the character and appearance of the area and constitutes poor design. On the evidence that is before me, the development has not obstructed a designated Public Right of Way. Nonetheless, the development has resulted in the creation of a very narrow passageway between Brook Street and Smallpage Yard which has the potential to be a magnet for anti-social activity and, in its current form, would not be conducive to a safe and convenient pedestrian route, particularly at night.
21. Collectively, the above matters hold significant weight in the overall planning balance and the identified other material considerations are not sufficiently weighty to outweigh the planning harms identified. Even if the appellant had suitably demonstrated or proven that members of the public did not have permissive rights of access over the land, and hence that they would be prohibited from using the resultant passageway, my conclusion in respect of the character and appearance main issue would have been a matter of overriding concern and hence would still have justified a refusal of planning permission.
22. I therefore conclude the ground (a) appeal fails, and Appeal B should be dismissed.

Appeal A - ground (g) appeal

23. The appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the 1990 Act (as amended) falls short of what should reasonably be allowed.
24. The compliance period is six months. The appellant has not provided any reasons why the compliance period falls short of what should reasonably be

allowed. On the evidence that is before me, I conclude that the six-months compliance period is reasonable. Therefore, the ground (g) appeal fails.

Overall Conclusions

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25. 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).

Appeal B Ref: APP/X4725/W/24/3338732

26. For the reasons given above, the appeal should be dismissed.

D Hartley

INSPECTOR