



Appeal Decision

Site Visit made on 8 April 2025

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th April 2025

Appeal Ref: APP/G2625/C/24/3348157

21-23 Nelson Street, Norwich NR2 4DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Lupa Pizza Ltd against an enforcement notice issued by Norwich City Council (the LPA).
 - The notice was issued on 17 June 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the carrying out of the following operation: the construction of a shelter and fence.
 - The requirements of the notice are:
 1. Remove the canopy structure, the position of which is as shown in green in Appendix 1;
 2. The fence, the position of which is shown by the blue line in Appendix 1, should be either removed or lowered to a height of no more than 1m
 - The period for compliance with the requirements is: 1 year.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words “canopy structure” and their substitution with the word “shelter” in section 5(a) of the notice.
2. Subject to the correction, 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.

The Enforcement Notice

3. The notice alleges a breach of planning control comprising the construction of a shelter and fence whereas it requires the removal of a canopy structure. The notice ought to utilise the same terminology throughout and thus I will correct it, so it requires the removal of the shelter, rather than canopy structure. I can do so without injustice to the appellant or the LPA.

Appeal on ground (a)

4. An appeal on ground (a) is brought on the basis that planning permission should be granted for the breach of planning control as stated in the notice.

Main Issues

5. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

Character and Appearance

6. The Land comprises a two-storey building located on the corner of Nelson Street and West End Street and its forecourt adjoining the footpath. The property is attached on both sides, adjoining 58 West End Street and 25 Nelson Street as part of a continuous terrace.
7. The immediate area is predominantly residential, characterised by two-storey, terraced properties set back from the road with front gardens behind low brick walls and wooden fences. Given the relatively narrow street pattern, this affords the area sufficient openness to not feel unduly constrained or imposing as might otherwise be the case. Moreover, the prevailing palette of materials is defined by a combination of red brick and render with tiled roofs.
8. The development comprises the erection of a canopy structure to the front of the building on its Nelson Street frontage, and the erection of a wooden fence adjacent to the footpath around the entirety of the property's frontage on Nelson Street and West End Street.
9. I note the appellant's submission that wooden structures of this type are typical of covered areas to the front of commercial premises. However, in this case, the character of the area is predominately residential. Moreover, the shelter extends from the building right up to the boundary with the footpath for the entirety of the façade on Nelson Street. Additionally, the fence extends around the entire boundary of the property, save for two small gaps to allow access. The fence is greatly higher than adjacent boundary treatments to the front of neighbouring properties, is closed boarded and is stained in a dark colour.
10. Furthermore, the significant use of timber and the plastic sheeting roof appear out of character with the prevailing use of materials found in the area. Moreover, the fact that the site is located on a corner plot, makes the obtrusiveness of the development highly prominent. As a result, the development as a whole significantly erodes the sense of space which the front gardens of the properties here provide, and it appears wholly at odds to the prevailing character of the street scene.
11. I note The Fat Cat public house opposite contains a similarly designed canopy structure. However, the structure there is much smaller than that before me here. Moreover, the fence on the perimeter of The Fat Cat's boundary is much lower than the one here. Furthermore, it has a post-and-rail fence, in contrast to the close boarded design of the one at No 21-23. Finally, the fence at The Fat Cat is limited to only one side on Nelson Street and does not extend around the full extent of its boundary as is the case here. Thus, the existence of a shelter at The Fat Cat does not justify the harm which arises from the development before me.
12. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. Consequently, it will conflict with Policy

DM3 of the Norwich Local Plan Development Management Policies Plan 2014 (the DMP) which states that development should respect, enhance and respond to the character and local distinctiveness of the area. It will also conflict with Policy 2 of the Greater Norwich Local Plan Document 1 – The Strategy 2004 (the LP) which requires development to create beautiful, well-designed places and buildings which respect the character of the local area. Finally, there is conflict the National Planning Policy Framework which states that planning decisions should ensure that developments are visually attractive and are sympathetic to local character.

Living Conditions

13. As set out above, the Land is located in a predominately residential area. There is a residential flat at the first floor of the property with residential properties either side and opposite.
14. I note the use of the outdoor space for eating and socialising which has been facilitated by the development has the potential to result in adverse noise impacts on the immediate neighbours. The LPA does not specify the potential sources of noise, but I assume it to be from voices and other activities associated with the restaurant use, both from customers and staff. Given the proximity of the outdoor space to adjacent residential properties there is the potential for noise disturbance.
15. However, it seems to me that a condition imposing hours of operation on the use of the outdoor space would ensure that such noise would not arise in the early or later hours of the day when residents would have reasonable expectations for lower background noise levels. Indeed, I note the appellant would accept such a condition and the LPA have suggested a limit to no later than 2200 hours.
16. Moreover, I note that the forecourt was used by the previous occupier for outdoor seating associated with a restaurant use prior to the Covid-19 pandemic. The appellant says no complaints were received and that the licence allows for outdoor seating. Thereafter, the business utilised the outdoor space to facilitate opening during the pandemic again without apparent complaint.
17. I conclude, therefore, that subject to appropriate conditions, the development will not have a harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. As such, the development will not conflict with DMP Policy DM2 insofar as it states development should not result in an unacceptable impact on the living conditions of neighbouring occupants.

Other Matters

18. I note there is a local business presently operating from the building and that has been successful. I also note that the shelter and fence facilitate the use of the premises for the local community. However, such benefits would not outweigh the harm I have identified.

Alternative Scheme

19. The appellant submits that the development could be retained in its current form but with the fence reduced to 1m in height. However, the submitted plans show that this would only be a relatively small reduction in the existing height. Moreover, the fence would be retained to its current extent along the entirety of the boundary. As a result, even with the reduction of the fence to 1m in height, the combination of

the fence and the shelter would result in harm to the character and appearance of the area as I have set out above.

Conclusion

20. Whilst I have found the development will not result in harm to the living conditions of neighbouring residents, I have found harm to the character and appearance of the area. Such harm in respect of character and appearance, outweighs the lack of harm to living conditions. For the reasons given above, I conclude that the appeal on ground (a) should be dismissed and the deemed application for planning permission be refused.

Appeal on ground (f)

21. An appeal on ground (f) is brought on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
22. The notice is directed against the construction of a shelter and a fence. The notice, as corrected, requires the shelter to be removed and the fence to either be removed or lowered to a height of no more than 1m. I am satisfied therefore that the purpose of the notice is to remedy the breach of planning control by restoring the Land to its condition before it takes place.
23. Whilst planning permission granted by Article 3(1) of the Town and Country Planning Act (General Permitted Development) (England) Order 2015 (the GPDO) cannot be obtained retrospectively, the requirement to reduce the fence to 1m in height appears to me to be an obvious alternative that would overcome the planning harm at less cost and disruption to the appellant than complete demolition, particularly since the appellant could erect a new 1m fence of the same height, extent and design following its demolition, under the GPDO.
24. Nonetheless, I find there are no lesser steps beyond those set out in the notice that would remedy the breach of planning control.
25. The appeal on ground (f) therefore fails.

Overall Conclusion

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

J Whitfield

INSPECTOR