



Appeal Decisions

Site visit made on 12 March 2026

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 March 2026

Appeal A Ref: APP/X5990/W/25/3364634

28-32 St. Martin's Court, London WC2N 4AL

- 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 Caprice Holdings Limited against the decision of City of Westminster Council.
- The application Ref is 20/06556/FULL.
- The development proposed is installation of covered structure to enclose existing external seating area, with the installation of 5 no. vinyl signs applied to planters.

Summary Decision: The appeal is dismissed.

Appeal B Ref: APP/X5990/C/25/3367344

28-32 St. Martin's Court, London WC2N 4AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Caprice Holdings Limited against an enforcement notice issued by City of Westminster Council.
- The notice was issued on 13 May 2025.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years, the installation of:
 - a timber framed and Perspex glazed enclosure with windows and doors, shown outlined by yellow lines on Photographs A to C¹,
 - metal-framed and Perspex glazed side panels shown outlined by yellow lines on Photographs D and E, and
 - raised seating platforms and ramps within the external seating enclosure, shown highlighted by yellow arrows on Photographs F and G.
- The requirements of the notice are to:
 1. Remove the timber-framed and Perspex glazed enclosure including all windows and doors, shown outlined by yellow lines on Photographs A to C;
 2. Remove the metal-framed and Perspex glazed side panels shown outlined by yellow lines on Photographs D and E;
 3. Remove the raised seating platforms and ramps within the external seating enclosure, shown highlighted by yellow arrows on Photographs F and G; and
 4. Repair and make good any damage caused to the building by the installation or removal of the works referred to in Steps 1 to 3, and remove from the land any debris resulting from compliance with these requirements.
- The period for compliance with the requirements is within 3 months of the notice taking effect.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

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

Procedural matters

1. An enclosed seating area has been created to the front of the restaurant at the appeal site, that is targeted by the enforcement notice ("the Notice") subject to Appeal B. There are some very minor differences between this structure and the

¹ Reference here to photographs is a reference to photographs attached to the enforcement notice

plans submitted with Appeal A which, in essence, is seeking planning permission for the same thing.

2. While the description of development on the application form is for the structure, the Council's preferred description, as well as the application and appeal documents, describe how the proposal is for it to be erected primarily during the winter months. Two sets of plans are provided, with the glazed panels and raised deck area only present in the 'winter' scheme. Regardless of the detail included in the description of development any control over timing – whether that were for specified months or a more flexible maximum time within any given year – would need to be controlled by planning conditions.
3. Nevertheless, whatever the terms of any final restriction, the proposal subject to Appeal A is, essentially, that the seating area is enclosed by the structure for up to 7 months of the year, primarily through the winter months. It is, on that basis, that I have considered Appeal A.
4. While Appeal B is not proceeding on ground (a) – that planning permission ought be granted for the matters alleged in the Notice, evidence has been provided as to the planning merits. I have considered all evidence available to me in determining these appeals.

Appeal A, against the refusal of planning permission

5. The main issues are the effect of the development on the character and appearance of the Covent Garden Conservation Area ("CA"); and the effect on highway safety and maintenance.

Conservation area

6. The CA has experienced organic change since its medieval origins, most significantly during the 19th century. Much of the fabric and plan-form evident today dates from the 17th to 19th centuries, such that there is an eclectic mix of buildings, constructed from a variety of materials. Its significance, in part, is derived from the survival of the historic buildings and spaces that demonstrate the area's evolution towards what is now a major tourism and retail destination. The CA now is a vibrant mix of predominantly retail, entertainment, restaurant, office and residential uses.
7. St. Martin's Court is a secondary street, such that views along it, and of the appeal site, are limited to relatively close proximity. The host building is of mansion block architecture, with ground floor commercial uses in vertically defined 'bays'. 8 out of 10 of the ground floor bays are now given over to the single restaurant use associated with the appeal development. The development spans all 8 bays, but the structure is subservient to the building and the majority of architectural detailing, including that defining the bays, remains visible above it. The contribution that the building makes to understanding the historic evolution of the CA has, therefore, not been affected to any great extent.
8. Outdoor seating has been permitted at the appeal site since 2008. Planters defining the area have often been left in situ, even when tables and chairs have been cleared, at times that the restaurant is closed. That has resulted in some clutter in the street, and items on the footway in the same location as the present glazed structure.

9. A great many of the numerous restaurant, casual dining and drinking uses within the CA have outdoor seating areas. Many have roll- or fold-away awnings, but I am not aware of any that have fully enclosed seating areas projecting from the main façade of the buildings. This gives the area an al-fresco dining/drinking character, with strong street activity, that contributes to the vibrancy of the area an understanding of the CA as a social place.
10. Conversely, the structure at the appeal site would fully enclose the outdoor seating area with solid, glazed walls for up to 7 months of the year. The 'wall' panels stand wholly within the area previously defined by the awning and planters. Those planters soften the elevations to some extent, and together the various items read as a single cohesive structure, rather than clutter in the street.
11. However, while the extensive glazing allows some visibility through the structure, such that it appears as an obvious addition to the building, its enclosed nature within the street confines undermines the general al-fresco character of the area, and its appearance is at odds with other similar premises in the vicinity. That situation would prevail for over half of the year. I, therefore, find that the proposal fails to preserve the character and appearance of the CA and its significance. Given the localised effect, the harm to significance would be less than substantial, and at the lower end of that scale.
12. Customers at restaurants are likely to linger for longer than they might at pubs, cafes and the like. The enclosed space clearly provides extra seating for the restaurant, protected from the weather. I understand that it was valuable in aiding the restaurant's recovery from the Covid-19 pandemic, but I have no substantive evidence that it is still required for ongoing business viability, or any other functional reason. I understand that the decked floor might improve accessibility by providing a more level surface, but it appears that the area functioned perfectly well without it for around 12 years and, moreover, is intended to continue doing so in the summer months.
13. During the time that the structure has been in place, there is said to have been a reduction in rough sleeping in St, Martin's Court. I can see how the substantial canopies on the theatres opposite the site might encourage such behaviour in this location, but the role that the structure has played in reducing it, or whether the two things are fundamentally linked, is wholly unclear.
14. I also understand that upper floor residents have experienced reduced noise disturbance, but given that the proposal is to return to an open structure during the summer months, when windows are more likely to be open, I am unconvinced that this would continue to be appreciated to the same degree if permission were granted in the terms requested.
15. Whatever the level of harm identified, the conservation of heritage assets must be given great weight. For the reasons given above, I find that the suggested benefits associated with the development do not outweigh the harm identified to the CA. While I find no conflict with those aims of Policy 43 of the Westminster City Plan 2021 ("CP") that seek to control visual clutter in the public realm, my overall conclusions in respect of this issue mean that the development is contrary to those aims of Policy HC1 of the London Plan 2021, and CP Policies 39 and 40 that seek to preserve the character of townscapes generally, and the character, appearance and significance of conservation areas specifically.

Highway matters

16. The Westminster Way – Public realm strategy 2011, provides guidance on the use of footways. The space beneath the theatre canopies provides available footway such that less than half of it is taken up with the development and there remains adequate width for pedestrians. Moreover, temporary permissions have been granted for a number of years for the use of the same area of footway. While there would be times where items were cleared away, it must have been deemed an appropriate footway width during restaurant opening hours.
17. While the structure is in situ, it is not possible to clean the street beneath it. Nevertheless, it is unclear why that would be required, given that the majority of the enclosed area is decked and it would be in the restaurant's interest to keep the dining area clean in any case. The remaining area of footway, outside the structure, could be cleaned as normal. It could all be removed relatively quickly in the event of any need for street maintenance.
18. I, therefore, find that the development presents no highway safety problems nor does it prevent highway cleaning or maintenance. I find no conflict with those aims of CP Policies 25, 28 or 43 that seek to resist the loss of highway land, promote walking, and retain a safe and accessible public realm.

Other matter

19. The development is within the setting of the Grade II Listed Noel Coward Theatre and Grade II* Listed Wyndhams Theatre. The canopies along their side elevations are very close to the appeal structure. Nevertheless, the evidence before me and my observations suggest that their significance is mainly derived from their function, and the ornate architecture of their main facades and interiors.
20. The side canopies are a clear part of the theatres' architectural style, but, despite its proximity, the appeal structure does not interfere with the ability to appreciate the overall grandeur of the buildings, nor any understanding of their role or function. I note that the Council did not refuse planning permission for reasons associated with the settings of listed buildings and, while mentioned in the reasons for issuing the Notice, no substantive reasons – other than a general proximity – are given for the alleged harm. I, therefore, find that their settings are preserved and significance unharmed.

Conclusion

21. While I have found no harm to highway safety or the ability to maintain it, the harm to the conservation area has not been shown to be outweighed by the public benefits of the development. This results in conflict with the development plan read as a whole and material considerations have not been shown to warrant a decision otherwise than in accordance with it. Therefore, I conclude that planning permission should not be granted.

Appeal B, against the enforcement notice, on ground (f)

22. The Notice seeks to remedy the breach of planning control. In this context, ground (f) is that the steps required to be taken exceed what is necessary to remedy the alleged breach of planning control.

23. The steps specified are required to secure the removal of the structure. Whether or not any injury to amenity could be remedied through changes to the structure, or the retention of only part of it, that would not remedy the breach of planning control. No lesser steps have been suggested that would achieve that, which is the purpose of the Notice.

24. Therefore, the appeal on ground (f) should fail.

Formal Decision – Appeal A

25. The appeal is dismissed.

Formal Decision – Appeal B

26. The appeal is dismissed and the enforcement notice is upheld.

M Bale

INSPECTOR