



Appeal Decision

Site visit made on 21 March 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2026

Appeal Ref: APP/B0230/C/23/3333530

10 Marsh Road Luton LU3 2NH

- 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 "Act").
- The appeal is made by Mr Edward Doherty on behalf of Cardinal Property Service Limited against an enforcement notice issued by Luton Borough Council.
- The enforcement notice was issued on 11 October 2023.
- The breach of planning control as alleged in the notice is the erection of two external canopies with supporting structures on the land in the approximate positions shown shaded blue on plan number 2 attached to the notice.
- The requirements of the enforcement notice are to: (1) remove the canopies from the land and (2) remove all associated building materials and rubble and waste materials arising from compliance with (1) above from the land.
- The period for compliance with the requirement is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act¹.

Summary of Decision: The enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision.

Ground (a)

1. The issued notice attacks operational development. The terms of the deemed application are derived from the allegation. Planning permission is sought for the erection of two external canopies with supporting structures illustrated shaded blue on the plan attached to the notice. The covered area is used in connection with the host building's use as a restaurant and shisha lounge, but the notice relates to the canopies.
2. A previous application to keep the canopies over outdoor seating was refused planning permission by the Council and dismissed on appeal in July 2021². The appellant explains the current structures differ in that unsightly plastic sheeting has been removed, a down-stand has been added to the structure, and a noise impact assessment is submitted in support.
3. Against that background, the main issue is the effect of the development on: (1) the character and appearance of the area and (2) neighbours' living conditions.

Character and appearance

4. The site is located within a predominantly residential area, but Marsh Road is a busy road and there are flats nearby. The appeal property is of traditional form and appearance and exhibits architectural features adding interest to its external appearance. I too consider that the canopies have a relatively discreet presence upon the site being setback from the site's frontage at single storey height with half-open sides. The canopies are, in part, noticeable from Cuffley Close and the removal of unsympathetic sheeting has significantly reduced their visual effect.

¹ On 14 February 2023, ground (e) was withdrawn by email from the agent.

² Appeal ref APP/B0230/W/21/3270072.

5. The canopies are likely to be appreciable to close by residents and noticeable from nearby properties, especially the flats. That said, they do not form visually intrusive structures when seen in the context of a large detached commercial property. I do not consider the altered design, height and scale of the canopies represent a discordant and over-intensive feature or additions to the site.
6. I am, however, concerned about the use of inappropriate materials on the elevation facing the main road. Although the structure appears as a single storey addition, the utilitarian appearance detracts from the external appearance of the host building given the type of material used on the outer surfaces. Nevertheless, replacing the material used on this part of the canopies would go some way in reducing the visual effect of the entrance to the covered area. The matter can, potentially, be addressed through conditions. Subject to the imposition of suitably worded condition addressing this specific issue, I find the development does not visually appear out-of-keeping with the overall character of the host building or locality.
7. Drawing all the above threads together, subject to conditions which I will return to later, contrary to the Council's arguments, the altered canopies do not have a visually jarring effect on the host building or the street scene.

Living conditions

8. The previous Inspector notes that the appeal property has, historically, operated as a hotel with an ancillary restaurant/bar facility at ground floor offering access to internal and external seating areas. However, in comparison, the covered external area is likely to be intensively used given the aim is to provide outdoor space in connection with the restaurant and shisha lounge. There is also an extraction or ventilation system which, if uncontrolled, could also cause disturbance. Sound omitted by patrons enjoying their time could also generate noise disturb occupiers of the nearby dwellings and flats.
9. The appellant's noise assessment assesses the potential impact of sound on sensitive receptors. The findings suggest that subject to the introduction of a 2-metre-tall acoustic fence, sound omitted from the use of the covered area is likely to be significantly reduced and mitigated. The results also demonstrate that, subject to additional controls over number of seatings or patrons, location of televisions and limit on entertainment or amplified sound above background levels, the use of the canopies for outdoor seating is unlikely to have a materially harmful effect on neighbours' living conditions by reason of noise. In the absence of any evidence to the contrary that undermines the assessment's conclusions, I attach it significant weight.
10. Subject to the imposition of suitably worded conditions, I conclude that the development that is subject of this deemed application does, and would, not have a materially harmful effect on neighbours' living conditions.

Conditions

11. A pragmatic outcome requires consideration of whether suitably worded conditions can be imposed in such circumstances where the development is retrospective. If it cannot, planning permission would have to be refused. In situations where the development has already taken place, it is not feasible to impose a condition precedent or to require that outstanding details be agreed prior to the commencement regardless of the importance of those details. In this case the canopies are erected but conditions could be imposed requiring additional details for the fence.

12. Nonetheless, when a condition is imposed that requires the submission and approval of details or a scheme for development which already exists, it is essential that the condition incorporates a sanction or enforcement mechanism. This is necessary to ensure compliance if the required details are not submitted or approved as stipulated. The key feature of the retrospective condition is that the operational development permitted must be removed if the required detail or scheme is not implemented in accordance with the submitted details within the prescribed timescale.
13. I have carefully thought about imposing suitable conditions, suggested by the appellant, and in my assessment, it is reasonable to require the following details: scaled plans for the acoustic fence and the location of entertainment equipment, and details of any extraction or ventilation systems. In addition, the canopies provide a covered area, and the use should be limited to a maximum of 80 patrons at any one time and amplified sound in the outside seating area to less than LAeq 70dB.
14. I consider that the proposed conditions meet the six tests and will be imposed with an appropriate sanction if there is a failure. Contrary to the Council's statement in the reasons for issuing the notice, conditions can be imposed to make the development acceptable in planning terms at less disruption and is a proportionate outcome.

Overall conclusions

15. In my planning judgment and having regard to all other matters raised, I conclude that planning permission can be granted for the development subject to conditions. The appeal should be allowed on ground (a) and there is no need to consider ground (g).

Formal decision

16. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the development already carried out, namely, the erection of two external canopies with supporting structures, subject to the following conditions:
 - 1) The two external canopies with supporting structures shall be demolished and removed from the land in entirety, and all materials resulting from the removal or demolition shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 4 months of the date of this decision, the following details and specifications, which are hereinafter called "the Scheme", shall have been submitted for the written approval of the local planning authority and the Scheme shall include a timetable for its implementation:
 - a) Details, including height and scaled plans, of the acoustic fence along the boundaries
 - b) details of the 2 television screens located to southern end of the outdoor seating area, and details of any entertainment equipment and their locations, and
 - c) details of any existing or proposed extraction and ventilation system, the design, technical specification and location.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Scheme or any element of the Scheme or fail to give a decision within the

prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
- iv) The approved Scheme shall have been implemented and the development completed in accordance with the approved timetable. Upon implementation of the approved Scheme specified in this condition, that Scheme, in its entirety, shall thereafter be maintained and retained unless otherwise agreed with the local planning authority.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The level of noise emitted from the site shall not exceed LAeq 70dB at any time as measured on the boundary/boundaries of the site.
- 3) Outside seating area is limited to a maximum of 80 patrons at any one time.

A U Ghafoor

INSPECTOR