

LDC Report		09/11/2011
Officer		Application Number
Jenna Litherland		2011/4429/P
Application Address		Drawing Numbers
66 Charlotte Street London W1T 4QE		Refer to decision notice
PO 3/4	Area Team Signature	Authorised Officer Signature
Proposal		
Erection of awning structure with grille (not including cover) and newsstand cupboards adjacent to existing shopfront (Class A1).		
Recommendation: Refer to Draft Decision Notice		
Assessment		
<p>Proposal: This application seeks to demonstrate the lawfulness of existing awning structure with grille (not including cover) and newsstand cupboards adjacent to existing shopfront.</p> <p>History: An enforcement notice was served on 11 July 2011 for an unauthorised front extension (the awning and newsstand cupboards) without planning permission. The enforcement notice sought the complete removal of the front extension and all associated fitments. The applicant advises in a letter submitted with the application that an appeal against enforcement notice was submitted, however it was submitted after the notice came into affect and therefore the appeal was not valid.</p> <p>The notice came into effect on the 22 August 2011 and the compliance due date is the 22 February 2012.</p> <p>Discussion: In terms of assessment the onus of proof in a lawful development certificate application lies with the applicant. The relevant test of the evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authority is advised that if it has no evidence of its own to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining such an application.</p> <p>In light of this, the evidence needs to demonstrate that the awning structure and newsstand cupboards have been in place continually for 4 years before enforcement notice was served, i.e. since the 11 July 2007.</p>		

The Applicant's Evidence:

The applicant has submitted the following documentation as part of their application:

- A site location plan outlining the boundary of the site.
- Floor plan, elevation and section show the awning structure.
- An email from KP Engineering Ltd. This email states that they do not hold records for works carried out more than 6 years ago.
- A letter from MMS Ltd. The letter states that Charlotte Street News has remained the same for well over 5 years in terms of its design and functionality. The blinds, canopy and shutters have remained the same in terms of their structural design, with only the branding being changed from the Wall Street Journal to International Herald Tribune, and most recently to Monocle.
- A letter from Monocle Ltd. The letter states that they rebranded Charlotte Street News in 2008 and at that time they replaced the existing fabric (cloth) of the shop with the black Monocle branded one, and used all existing supports and shutters.
- An excerpt from the Financial Times dated 4 September 2006 which shows a photo of the external cupboards within an awning.
- An excerpt from 125 Magazine Issues 8 which the appellant claims is dated 2006 (however, this is not specified on the excerpt). The excerpt shows a photo of the awning and external cupboards.

Assessment:

The submitted plans accord with the awning observed on site on 28/10/2011. These plans identify the land to which the application relates.

The excerpt from the Financial Times does show newsstand cupboards, and it is accepted that these could be the same as the newsstand cupboards currently in place. However, it is likely that the cupboards would have to have been removed in order to install the current awning structure. As stated above, the evidence submitted needs to show that the awning structure and newsstand cupboards have been in place continually for four years. If the cupboards were removed to install the new awning structure this would demonstrate a break in the four year period. Furthermore, the newsstand cupboards are considered to be integral to the structure as they are located within the structure and therefore the structure and newsstand cupboards need to be considered as a whole.

It is considered that the applicant's evidence does not satisfactorily demonstrate that the current awning structure has been in place for at least 4 years. The excerpt from the Financial Times, 125 Magazine and the Council's photographs dating from September 2007 show a more light weight structure than what is currently in place. Furthermore, the Council also have photographic evidence on record dating from May 22nd 2007 which shows a more lightweight structure in place. The structure which is now in place appears to be more solid and permanent as it uses more structural beams/bars around the front 'pillars' of the structure and the pitch of the awning is shallower than the structure in place in the 2007 photograph.

An informative will be attached to the decision advising the applicant that they must comply with the enforcement notice by 22 February 2012.

Conclusion:

The evidence submitted fails to demonstrate that on the balance of probability the awning structure, including the newsstand cupboards have been in place continually for a period of at least four years.

Recommendation: The application for a certificate of lawfulness should be refused.

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