

WRITTEN REPRESENTATIONS APPEAL STATEMENT
(APPEAL MADE AGAINST THE ISSUE OF AN ENFORCEMENT NOTICE)

APPELLANT : SHU JIE LIMITED OF FLAT 322 WEST CARRIAGE ROYAL
CARRIAGE MEWS, LONDON, SE18 6GB

SITE : 25-26 RED LION STREET, LONDON, WC1R 4PS

DEVELOPMENT : ERECTION OF A GLAZED ROOFED REAR CANOPY

LPA REFERENCE : EN18/0487

NOTICE DATE : 21 DECEMBER 2018

DATE : 7 JANUARY 2019

Prepared by:

OPS Chartered Surveyors

17 Garvin Avenue, Beaconsfield, Buckinghamshire, HP9 1RD

M: 07881 457903 | E: info@ops-surveyors.co.uk



1. Introduction

a. This Appeal Statement has been prepared by OPS Chartered Limited on behalf of Shu Jie Limited to support an appeal under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against the issue of an enforcement notice.

b. The Enforcement Notice (with reference EN18/0487) was issued by London Borough of Camden on 21 December 2018, and the breach of planning control as alleged on the notice is: *Without planning permission, the erection of a glazed roofed rear canopy*. A copy of the notice is appended with this statement as 'Appendix 1'.

c. The reasons specified by the Council for issuing the enforcement notice are as follows:

- i. It appears to the Council that the above breach of planning control has occurred within the last 4 years.
- ii. The canopy, by reason of its design, size, siting, material and insubordinate relationship with the host building, is considered to be harmful to the character and appearance of the host building, the open nature of its rear garden, and the character and appearance of this part of the Bloomsbury Conservation Area, contrary to policies D1 (Design), D2 (Heritage) and A2 (Open space) of the London Borough of Camden Local Plan 2017.
- iii. The canopy, by reason of its location, scale and design, creating an extension of the restaurant use at the rear of the site results in unacceptable harm to the amenity of surrounding residential occupiers, contrary to policies A1 (Managing the impact of development), A4 (Noise and vibration) and TC4 (Town centre uses) of the London Borough of Camden Local Plan 2017.

d. The requirements of the notice are as follows:

- i. Totally remove the canopy structure, including all associated fixtures and fittings;
- ii. Make good any damage caused as a result of the above works.

e. The notice was to take effect on 31 January 2019 in the event that this appeal was not made against it beforehand. The period of compliance is three months from the date it takes effect.

f. This appeal is been made on grounds (f) and (g) as set out in Section 174(2) of the 1990 Act.

2. Site Description and History

a. The appeal site (No.25/26) is located on the eastern side of Red Lion Street close to its intersection with Princeton Street. The site comprises two x four-storey (with basement) mid-terraced buildings, with the basement and grounds floors being in use as an established lawful Class A3 restaurant. The restaurant element forms the subject property of this appeal. The upper floors are occupied as Class A3 residential accommodation. The surrounding area within which the site is located is characterised by a mixture of retail, commercial and residential uses. The site is located within the Bloomsbury Conservation Area.

b. An 8.5 metres by 6 metres canopy structure with maximum 3 metre height is erected mainly within the rear courtyard garden of the 'No. 26' half of the appeal property. The canopy structure, which is the subject of this appeal, features a ridge roof with timber beams and perspex sheeting construction, and which drops to a relatively low eaves height of 2.2 metres. This eaves height is such that it does not project above the boundary wall on the northern side of the rear courtyard garden. The canopy structure encloses a timber decking and ancillary rear garden seating/dining area for patrons accessing the host restaurant.

c. The appellant sought the retention of the canopy structure by way of a retrospective planning application (with reference 2018/4645/P) back in September 2018. The Council subsequently refused to grant planning permission for the application on 13 December 2018 and warned of enforcement action to be taken in respect of the canopy structure. Copies of the decision notice and Officer delegated report for the refused planning application are appended with this statement as 'Appendix 2' and 'Appendix 3'. The Council subsequently issued the enforcement notice on 21 December 2018.

3. Case for the Appellant – Ground (f)

a. A ground (f) appeal seeks to establish that the requirements of the Enforcement Notice exceed what is necessary to remedy the alleged breach of planning control.

b. Even though the appellant is not pleading ground (a) for this appeal against the enforcement notice, the appellant respectfully brings it to the attention of the Inspector that the notice alleges the enclosure of the rear garden seating/dining area by the subject canopy structure only as an ‘operational development’. It does not allege any material change of use of the rear courtyard garden as a result of utilising it as a seating/dining area ancillary to the established host restaurant. This, the appellant submits, informs why the Council has not expressed an objection to the principle of siting a canopy structure in the rear garden. Indeed, as the Inspector will note from paragraph 4.3 of the Officer delegated report for the refused retrospective planning application, Council records do show that the rear garden area had on previous occasions been used for associated outside seating with a number of removable canopies. In this regard therefore, it is important to assert that the notice does not require the cessation of the use of the rear courtyard garden as an outside seating/dining area ancillary to the host restaurant; the notice requires only that the canopy structure be removed.

c. Following on from the above consideration therefore, the appellant refutes the Council’s submission that the erection of the present canopy structure as a permanent development will have made the rear garden area more attractive for customer occupation in a wider range of climatic conditions, resulting in more customers and longer duration of use, to the detriment of the amenity of neighbouring residential occupiers. In this regard, the appellant submits that the erection of the canopy structure as a permanent form of development is not sufficient in and of itself to facilitate the use of the rear garden area as an ancillary seating/dining area. The use of the rear garden as a wholly ‘open-air’ seating area is all that is needed, given that such use would not be restricted by any planning controls. It follows therefore that the complete removal of the canopy structure would do nothing to preclude the continued use of the rear garden area as an ‘open-air’ seating/dining area with associated ‘at-table’ cooking and provision of furniture such as lightning, tables, heaters, etc.

c. The Council submits that the near total coverage of the rear garden area, particularly of No.26 by the present canopy structure is such that its overall scale and size detracts significantly from the character and appearance of the host property, the open nature of the rear garden and that part of the Bloomsbury Conservation Area. In this regard, it is instructive for the Inspector to note from paragraph 4.2 of the Officer delegated report for the refused planning application, the relatively low eaves height of 2.2 metres in line with the boundary walls is such that the canopy does not cause any unacceptable harm to neighbouring privacy or daylight. The canopy structure projects only 0.8 metres above the enclosing boundary walls of the rear of the site. Whilst the extensive depth of the structure and its near coverage of that section of the rear garden is noted, the appellant respectfully brings to the attention of the Inspector the fact that a structure or building of that size is not uncommon at sites comprising commercial or indeed retail properties. Furthermore, the overall four-storey height of the appeal buildings is such that it adequately offsets

the visual impact arising from the extensive depth of the single storey canopy structure. It is also the appellant's contention that the mainly timber exterior of the canopy structure is such that it does not appear significantly at odds with the landscaped appearance of the rear garden area. Given that the Council has not expressed any objection to the principle of erecting a structure – albeit a permanent one – in the rear garden of the appeal property, the appellant submits that they are willing to pursue the option of submitting a planning application to the Council to seek permission for the retention of a modified and reduced size of the canopy structure.

d. Given the above considerations therefore, the appellant respectfully contends that completely removing the present canopy structure does nothing to remedy the alleged breach and this requirement is not necessary. If the Inspector is minded to uphold the Notice, the appellant respectfully requests that the notice be altered so that the requirements numbered (i) and (ii) be omitted, and that temporary consent (for a period of up to six months) be granted for the appeal development, so as to allow the appellant sufficient time to submit a planning application to the Council, which proposes satisfactory modifications to the size of the present canopy structure.

4. Case for the Appellant – Ground (g)

- a. A ground (g) appeal seeks to establish that the period granted for complying with the requirements of the Notice is unreasonably short.
- b. The Enforcement Notice requires that the appellant remove completely the present canopy structure in the rear garden within three months of the Notice taking effect.
- c. The appellant submits that the host restaurant, which forms the appeal property, experiences a high level of patronage and custom. Whilst this is a desirable outcome for the appellant, implementing and carrying out works to remove the canopy structure within a relatively short time period of three months is such that it would introduce significant disruption to the economic activity and viability of the restaurant.
- e. Organising and implementing the building works required by the Notice will also take time. As the economy has improved it has proven more difficult to find reliable builders, and some firms take several weeks to provide a quotation and a further period to start work and remove the structure safely from the site.
- f. It is not practical that the preparation for the works as well as the carrying out of the works could all be achieved in a period of only three months, and the appellant respectfully requests that a period of nine (9) months is given to comply.

5. Conclusions

a. The appellant's ground (f) appeal points out that the Enforcement Notice's requirement that the present canopy structure be completely removed contradicts the Council's case that the canopy structure results in the extended rear garden area having a detrimental impact on the visual and residential amenities of the surrounding area. The canopy structure in and of itself does not wholly facilitate the use of the host rear garden area as an ancillary and extended seating/dining area for the lawfully established use of the appeal property as a Class A3 restaurant, and therefore, the requirement that it be removed is considered excessive.

6. Appendices

Appendix 1 – Enforcement Notice (Ref EN18/0487)

Appendix 2 – Decision Notice for Refused Planning Application (Ref 2018/4645/P)

Appendix 3 – Delegated Report for Refused Planning Application (Ref 2018/4645/P)

Appendix 3 – Planning Application Drawings (Ref 2018/4645/P)