
Appeal Decisions

Site visit made on 9 September 2015

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 September 2015

Appeal A - Ref: APP/B1605/F/14/2220863

Vanilla Brasserie, 9-10 Cambray Place, Cheltenham, Gloucestershire GL50 1JS

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Martin Charalambous against a listed building enforcement notice issued by Cheltenham Borough Council.
 - The Council's reference is 13/00158/DCUA.
 - The notice was issued on 23 May 2014.
 - The contravention of listed building control alleged in the notice is: to erect two pram style entrance door canopies on the front elevation of the Grade II listed building.
 - The requirements of the notice are to remove the two canopies and any supporting brackets fixed to the building and make good any damage to the fabric of the building.
 - The period for compliance with the requirements is four calendar months.
 - The appeal is made on grounds (c), (e) and (f) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Appeal B - Ref: APP/B1605/E/14/2221866

Vanilla Brasserie, 9-10 Cambray Place, Cheltenham, Gloucestershire GL50 1JS

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Martin Charalambous against the decision of Cheltenham Borough Council.
 - The application Ref 14/00071/LBC, dated 18 January 2014 was refused by notice dated 20 March 2014.
 - The works proposed are 'Retrospective consent for two entrance door canopies'.
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Decisions

1. Both Appeals A and B are dismissed (see formal decisions below).

Matters of clarification and background information

2. The Regency appeal buildings which are located within the Cheltenham Central Conservation Area (CCCA) were listed in Grade II on 12 March 1955, as part of the terrace of 6 houses. The list description specifically refers, amongst other things, to the front entrance doors including the pilaster strips and the wide fanlights with batwing and circle glazing.
3. There is photographic evidence to indicate that a straight projecting canvas blind awning was previously fitted above the front door to No 10 from around 1945 and that, in 1990, the blind over the front door was also a straight canvas type with a wooden blind box and side arm supports. In 2012 a 'Google' street view image shows a straight canvas blind above one front door with no other window or door blinds in place.

4. Four external window blinds were then fitted above the ground floor windows, together with the two pram hood canopies which are the subject of these appeals. The four window blinds were granted retrospective listed building consent on 6 November 2013, subject to a condition that the pram-style blinds were removed. These were not removed and a further retrospective application for their retention was refused as indicated above on 20 March 2014.

Appeal A on ground (f)

5. It is contended that the notice was not served as required by section 38(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) because it was not served in person on the owner of No 9 Cambray Place. However, the notice was served upon the appellant, Mr Martin Charalambous, who clearly has an interest in the listed buildings and made the retrospective applications and then appealed the Council's decision and the listed building enforcement notice (LBEN).

6. However, even if a LBEN is not served correctly, section 41 (5) of the PLBCAA allows for this fact to be disregarded if there has been no substantial prejudice to an appellant. In this case the appellant was clear about what was being enforced against and has had every opportunity to appeal the notice. This is clear from the submissions. Thus, even though the owner might not have been served with the notice, I do not consider that the appellant has been prejudiced in any way.

7. In accordance with section 41(5), I therefore disregard the fact that the owner of No 9 Cambray Place was not served with a copy of the notice. Appeal A fails on ground (f).

Appeal A on ground (c)

8. To be successful on this ground of appeal it must be conclusively shown that the works carried out (the two pram style canopies) do not constitute a contravention of the PLBCAA. This might be because the blinds already have consent or that there were similar canopies were in place at the time of listing.

9. I acknowledge that there was some form of blind over the entrance door to No 10 in around 1945 prior to listing and that there is also evidence to indicate that there was one in place in 1990. If the pram style canopies had been in place at the time of listing, an appeal on this ground would be successful. However, the previous blinds were of a completely different type of blind to the canopies now being enforced against.

10. If any works to a listed building affect its character as a building of special architectural or historic interest, then listed building consent is required. Having seen the appeal canopies it is my view that, irrespective of whether the impact is found to be negative or positive, the works have affected the architectural and historic character of Nos 9 and 10. There is no consent in place for these pram style canopies; a contravention has occurred and the appeal fails on ground (c).

Appeal A on ground (e) and Appeal B

11. The main issues in both appeals are, firstly the effect that the two pram style entrance door canopies have had on the listed building, on its setting and on its special features of architectural and historic interest and, secondly, their effect on the character and appearance of the CCCA.

12. In reaching my conclusions in these appeals I have had special regard to the requirements of section 16(2) of the PLBCAA and have paid special attention to the requirements of section 72 of the same Act. I have taken into account section 12 of the National Planning Policy Framework (NPPF) which relates to the conservation

and enhancement of the historic environment. In particular I have considered paragraphs 128, 132 and 134 of the NPPF. The most relevant development plan policy is saved policy BE9 of the Cheltenham Borough Local Plan which accords with the aims and objectives of the NPPF in protecting historic assets.

13. Having seen the pram type canopies from both near and distant viewpoints and having seen the doorways the pilasters and the fanlights, I share the Council's concerns about their effect on the listed buildings and on the character and appearance of this part of the CCCA.

14. In my view they are perceived as obtrusive and visually harmful additions to these fine listed entrances. Unlike the previous historic blinds (and the blinds which were granted consent), they are far from traditional in terms of their design and appearance. I agree with the Council that the curved form of the canopies has resulted in jarring and alien shapes in relation to the Regency detailing and proportions of the front elevation of the buildings.

15. Despite being in a cul-de-sac the buildings are in a prominent location within the CCCA and, in my view, these most inappropriate additions to the front elevations detrimentally affect the setting of the whole of the listed terrace. In addition they are also harmful to the special architectural and historical features of these fine doorways. When in the down position they completely obscure the tops of the pilasters and the ornate fanlights. I do not accept the argument that they only temporarily cover these features and, in any case, even when in the up position they still detract from the character of the building. Furthermore, the major function appears to be one of advertising the premises rather than protecting the interior of the hallways from excessive sunlight.

16. In terms of the harm caused, I do not consider that it is substantial but there are no public benefits of the works, as would be required by paragraph 134 of the NPPF. I find that these unattractive canopies are contrary to saved policy BE9 of the local plan as well as to policies set out in section 12 of the NPPF. I consider that the Council made a correct and sound decision when it refused listed building consent for the retention of canopies.

17. It follows that, in my view, the character and appearance of the CCCA is neither preserved nor enhanced by these particular canopies. I do not consider that listed building consent should be granted and thus both appeals fail.

Other Matters

18. In reaching my conclusions in both appeals I have taken into account all of the other matters raised by the Council and by the appellant. These include the full planning history; the detailed references to Regency architecture in Cheltenham; the historic use of blinds to doorways and windows; the comments of the parties on their respective cases and their detailed final comments.

19. However, none of these factors alter my conclusions on either of the appeals and nor is any other matter of such significance so as to change my decisions that both appeals should fail.

Formal Decisions

20. Appeal A is dismissed; the LBEN is upheld and listed building consent is refused for the works carried out in contravention of section 9 of the PLBCAA.

21. Appeal B is dismissed.

Anthony J Wharton

Inspector