



Appeal Decision

Site visit made on 16 April 2024

by **Alexander O'Doherty LLB (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/B1605/W/23/3328010

Rotunda Tavern, 3 Montpellier Street, Cheltenham GL50 1SX

- 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 Mr Chris Shiel against the decision of Cheltenham Borough Council.
 - The application Ref is 22/01681/FUL.
 - The development proposed is described on the application form as, "Retention of temporary tented structure for two years".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Differing to the description of development in the banner heading above, the Council's decision notice accurately describes the development as shown on the supporting plans as, "Retention of temporary canopy structure for two years". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.
3. The proposed development is already in place and I shall deal with the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the development on the settings of nearby listed buildings; and
 - whether the development preserves or enhances the character or appearance of Cheltenham's Central Conservation Area.

Reasons

Listed buildings

5. The appeal site comprises a canopy structure which is associated with the Rotunda Tavern which is located at 3 Montpellier Street in Cheltenham. The canopy facilitates sheltered outdoor seating for the patrons of the Rotunda Tavern. The canopy structure is situated amongst an area of otherwise largely open footway found to the east of the Rotunda Tavern and to the south of 1-3 Montpellier Exchange. This open area is described in the submitted Heritage Statement as a small plaza.
6. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s66(1) that in considering whether to grant planning permission for

development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

7. In this regard, as noted in the Heritage Statement, the 3 Grade II listed buildings in close proximity to the site¹ are principally significant for their architectural interest as Regency and early Victorian, urban, commercial buildings. I observed that they exhibit a broadly similar architectural style in terms of their fenestration arrangements and their predominantly uncluttered, formal facades.
8. The canopy presently in-situ within the small plaza is not visible from much of Montpellier Walk, and views of the canopy from Montpellier Gardens are obscured by trees and shrubbery even in the winter (as shown in Plate 9 in the Heritage Statement). The canopy is however clearly visible in views from the south and the east, including in long views from Montpellier Terrace across the nearby roundabout. Hence, the canopy is located in a prominent position in the street scene.
9. The colour of the canopy (described as 'buff' in the Heritage Statement) blends well with the stucco of the Rotunda Tavern and the ashlar of 1-3 Montpellier Exchange. I note that the canopy partially blocks views of part of the ground floor of both the Rotunda Tavern and 1-3 Montpellier Exchange, which have been subject to alterations in the past.
10. Nevertheless, its design as a whole appears generic, and although it facilitates a commercial use which is congruent with that undertaken at the listed buildings referred to above, it notably lacks the refined elegance that emanates from these 3 listed buildings which immediately surround it. In particular, its irregular shape gives a rather sprawling impression with a makeshift appearance which undermines the ability to appreciate the polite and formal facades of these listed buildings.
11. The Montpellier Rotunda (a Grade I listed building²) is located a short distance from the site. It has similar proportions and external design to the second-century Pantheon in Rome. Its significance lies primarily in its grand architectural style, including a Doric colonnade, and its association with Cheltenham's historic role as a spa town. When viewed in conjunction with the canopy, particularly from nearby parts of Montpellier Terrace, the informality of the design of the canopy and its undulating shape detracts from the ability to appreciate the austere design and harmonious proportions of the Montpellier Rotunda.
12. The 2 sets of terraces immediately opposite the site to the south and south-east³ are notable for their architectural and historic interest, including their clearly-articulated Regency architecture. The generic appearance of the canopy and its undulating shape detracts from the ability to appreciate the grand architectural statement exhibited by these listed buildings.

¹ Statutory Addresses: Rotunda Buildings, Montpelleir Street; Numbers 2 to 8 and Ormond House, 2 to 8, Montpellier Street; Barclays Bank, Montpellier Exchange

² Statutory Address 1: Montpellier Rotunda (Lloyds Bank), Montpellier Walk

³ Statutory Addresses: 1-9, Montpellier Terrace, Cheltenham, GL50 1US; Numbers 11 and 15 to 41 and attached area railings to Numbers 11, 15, 17, 25 to 29, 37, 39 and 41, 11 and 15 to 41, Montpellier Terrace

13. It is clear, then, that although the canopy is situated in a mixed use town centre area and it facilitates a commercially-orientated use, its presence harms the settings of the above-mentioned listed buildings, which negatively impacts on the ability to appreciate their significance.
14. To the south-west of 1-9 Montpellier Terrace is Montpellier House (a Grade II listed building⁴), which is attached to a terrace which includes 3 and 4 Suffolk Place (also a Grade II listed building⁵). The significance of these listed buildings resides mainly in their historic period of construction, the largely uniform nature of their facades, and their impressive iron railings and balconies. Whilst there is some intervisibility between the canopy and these listed buildings, this is limited due to intervening buildings. Considering this, the limited size of the canopy, and its distance from these listed buildings, the canopy does not adversely affect the settings of these particular listed buildings. This does not however alter the harms identified above.
15. The Edward VII drinking fountain (a Grade II listed structure⁶) and the Gordon Lamp (also a Grade II listed structure⁷) are within walking distance of the canopy. Their significance lies primarily in their historic interest through their association with the past lives of historic figures, and their artistic interest through their decoration and craftsmanship. Due to the distance of the canopy from these structures and the limited size of the canopy, it also does not harm the settings of these particular listed buildings. This does not however alter the harms identified above.
16. I therefore find that the development has an unacceptable and harmful effect on the settings of nearby listed buildings. It conflicts with Policies SD4 and SD8 of the Joint Core Strategy⁸ which collectively provide that, amongst other things, development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment, and with Policy D1 of the Cheltenham Plan (adopted 2020) which provides that, amongst other things, development will only be permitted where it complements and respects neighbouring development and the character of the locality.
17. The development also conflicts with chapter 16 of the National Planning Policy Framework (the Framework) which seeks to, amongst other things, conserve and enhance the historic environment. For the same reasons, the canopy fails to comply with the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), referred to above.
18. Given the limited size of the canopy in its context and that it would only be in-situ for a further 2 years, the harm to the significance of each of these designated heritage assets is less than substantial using the terminology found in the Framework. Even so, each individual incidence of harm is of considerable importance and weight. The Framework requires that these harms are weighed against the public benefits of the scheme including, where appropriate, securing its optimum viable use. This is a matter to which I return to below.

⁴ Statutory Address: Montpellier House and attached railings, Suffolk Place

⁵ Statutory Address: Barrowby House (Number 3) Suffolk Court (Number 4) and attached railings, 3 and 4, Suffolk Place

⁶ Statutory Address: Edward VII drinking fountain approximately 20 metres SW of Montpellier Rotunda, Montpellier Walk

⁷ Statutory Address: The Gordon Lamp, Lansdown Road

⁸ Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (adopted 2017)

Conservation area

19. The site is located within Cheltenham's Central Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
20. As explained in the Character Appraisal⁹, the significance of the conservation area derives in part from its predominantly Regency buildings with the presence of many complete and uniform formal terraces, large villas set within spacious grounds and Royal Crescent which may be regarded as the town's first major piece of Regency architecture. Additionally, the conservation area contains numerous listed and landmark buildings, including those associated with Cheltenham's historic role as a spa town, high quality areas of public open space, and the Promenade (which the Character Appraisal describes as being one of the town's most visually striking streets), all of which contributes to the significance of the conservation area.
21. The canopy, with its generic design, bears little aesthetic association with its grand surroundings. In this respect, although it facilitates a use which is in keeping with the vibrant commercially-orientated nature of the area, due to its irregular shape and sprawling appearance it does not adequately reinforce the key characteristics of the conservation area, and as it serves to undermine the ability to appreciate the presence of period architecture within the conservation area, it harms its significance.
22. I therefore find that the development does not preserve the character or appearance of the conservation area. It conflicts with Policies SD4 and SD8 of the Joint Core Strategy which collectively provide that, amongst other things, designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place, and with Policy D1 of the Cheltenham Plan which provides that, amongst other things, development will only be permitted where it complements and respects neighbouring development and the character of the locality.
23. The development also conflicts with chapter 16 of the Framework which seeks to, amongst other things, conserve and enhance the historic environment. For the same reasons, the canopy fails to comply with the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), referred to above.
24. Given the limited size of the canopy in its context and that it would only be in-situ for a further 2 years, the degree of harm caused to the significance of the conservation area is less than substantial using the terminology found in the Framework, but this harm is nevertheless of considerable importance and weight. The Framework requires that such harm is weighed against the public benefits of the scheme including, where appropriate, securing its optimum viable use. This is a matter to which I return to below.

⁹ Central Conservation Area: Montpellier character area appraisal and management plan (adopted 2007)

Other Matters

25. I observed other canopies / structures present at nearby business premises, including those around the roundabout adjacent to the site, at Coffee#1 at Montpellier Gardens, and at 15 Montpellier Street. These examples are however more restrained in their visual impacts, including by way of having simple and coherent shapes. Consequently, they are not directly comparable with the canopy, and they do not change my findings on both main issues above.

Other Considerations

26. Policy SD8 of the Joint Core Strategy stresses that consideration should be given to the contribution made by heritage assets to supporting sustainable communities and the local economy, and Policy SD2 of the Joint Core Strategy provides that, amongst other things, new retail, leisure, culture, tourism, and community facilities that contribute to the vitality and viability of designated centres will be promoted and supported.
27. Similarly, the Planning Practice Guidance (PPG) highlights that a wide range of complementary uses can, if suitably located, help to support the vitality of town centres, and that evening and night-time activities have the potential to increase economic activity within town centres and provide additional employment opportunities¹⁰, and paragraph 90 of the Framework provides that, amongst other things, planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Paragraph 17.12 of the Cheltenham Plan also refers to the aim of creating and maintaining vibrant and sustainable places to spend leisure time.
28. The Rotunda Tavern has been in use as a public house (pub) for many years. The appellant has asserted that this is its optimum viable use, and I have no substantive evidence to indicate otherwise. The canopy facilitates an extended trading area which supports the optimum viable use of the Rotunda Tavern, and which serves to advertise the presence of the business in the face of competition from other nearby businesses which have established outdoor seating areas.
29. The appellant has stated that the canopy has increased the potential maximum capacity of the pub by approximately 40 to 50 people, thereby almost doubling the capacity of the pub, providing a monthly revenue of almost approximately £10,000 per month. Approximately 10% of the total revenue is dedicated to staff wages.
30. I recognise the difficulties faced by the hospitality industry in general, including in relation to inflation and the knock-on effects of the cost of living crisis, and I note that it has been stated that prior to the coronavirus (COVID-19) pandemic the business was breaking even / making a small profit each quarter. However, specific financial information (such as a profit and loss statement, for example) has not been provided which demonstrates that the removal of the canopy would either jeopardise the viability of the business and / or lead to job losses. Nor has the scale of any potential job losses been quantified.

¹⁰ Paragraph 2b-001-20190722

31. It is noted that some customers may be concerned to socialise indoors with a large number of people, and would prefer a well-ventilated environment. Of relevance here is Strategic Objective 9 of the Joint Core Strategy which seeks to, amongst other things, create stronger communities by reducing inequality and social exclusion, and paragraph 96 of the Framework which provides that, amongst other things, planning decisions should aim to achieve healthy, inclusive and safe places. In this particular case however, I observed that the existing seating is tightly-packed under the canopy within a fairly small space, which limits the usefulness of the space in terms of social distancing. Thus, the benefits in relation to public safety, and health and well-being in this respect are in all likelihood not significant.
32. Although the canopy facilities year-round external seating, evidence has not been provided to substantiate the assertion that the mere presence of this seating encourages greater numbers of people to visit Cheltenham town centre or that it meaningfully acts to ease pressure on queues at other establishments. Moreover, few details have been provided to demonstrate the extent of any economic impact which the canopy might be generating towards the local economy via increased spending, including towards the evening and night-time economies. It is not my role to speculate on these matters.
33. Reference has been made to the potential exercise of permitted development rights in relation to the erection of a moveable structure for 120 days in a 12-month period. However, Class BB of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) is subject to a prior approval procedure which entails the consideration of criteria, including in relation to the siting of the moveable structure.
34. Given the Council's strong concerns in relation to the canopy currently in-situ, it is far from certain that prior approval would be granted under Class BB for a moveable structure intended to be placed in a similar location to the canopy. Considering this uncertainty, there is not a greater than a theoretical possibility that the right could be exercised. Additionally, no evidence of a prior approval application has been provided.
35. Taking all of the above into account, including the policy support for uses which support the vitality of town centres and the evening and night-time economies, and noting in particular the lack of substantive supporting evidence to back-up the appellant's assertions regarding the financial benefits of the canopy to the business, moderate weight is given to the public benefits arising from the canopy.

Heritage and Planning Balance

36. As explained in detail above, the canopy harms the settings of several nearby listed buildings, including one Grade I listed building. Furthermore, it does not preserve the character or appearance of the conservation area. Whilst, taking account of the relevant guidance given in the PPG¹¹, the extent of the harm in each case is not excessive, planning law requires that each individual incidence of harm to a designated heritage asset must be given considerable importance and weight. As such, very great weight is given to the collective adverse impacts of the canopy in heritage terms.

¹¹ Paragraph 18a-018-20190723

37. It follows that the moderate weight arising from the public benefits of the canopy do not outweigh the adverse impacts identified.

38. Overall, I find that none of the other considerations, including the provisions of the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.

Conclusion

39. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations including the representations of local residents, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR