

MEMO

FROM: Madelaine Clavey
OUR REF: 22/00238/WKS
TO: Head of Legal Services
DATE: June 2023
RE: Proposed enforcement action at 2 Calpe Yard, St Thomas Street, Winchester, Hampshire, SO23 9HE: Unauthorised structure (catio).

Please find attached a draft Enforcement Notice in respect of the above breach of planning control.

Would you please arrange to serve the notice as set out in the draft or in terms you consider appropriate ASAP.

1.0 INTRODUCTION

- 1.1 A complaint was made to the enforcement team on 03 August 2022, stating that a wooden pergola had been erected on the roof of one of the properties at Calpe Yard.
- 1.2 A site visit was undertaken by an enforcement officer on 09 February 2023, photos from this visit are attached at Appendix A. The owner has constructed a structure designed to contain his cats. It is similar to a wooden pergola, but uses fence panels at the side, and “transparent plastic mesh” (as stated by the owner in his email dated 23/02/23 to Olivia Gill) over the top and front. It is constructed to fit the space and sits partly on the existing roof terrace walls, and partly on the roof terrace, supported by its wooden posts.
- 1.3 The structure was constructed In July 2022 as confirmed by the owner in his email dated 07/02/23 to Olivia Gill. It is therefore not considered to be immune from enforcement action.
- 1.4 The property has had certain Permitted Development rights removed under the original planning permission; specifically, there can be “no building, structure, walls or fences, of any kind” (condition 6 of planning permission 82/00982/OLD) constructed without express planning permission.
- 1.5 The owner initially engaged with the Council to try and seek a remedy, however they were not satisfied with the request to remove the structure in its entirety and have not since replied.

2.0 BACKGROUND

2.1 HISTORY

82/00982/OLD - Erection of 7 dwellings, 2 flats and 2 shops, conversion of existing buildings into 5 dwellings and a flat and offices together with car parking and garage accommodation. PERMIT 29/06/1982

Condition 6 states that:

Notwithstanding the provisions of the Town and Country Planning General Development Order 1977 no building, structure, walls or fences, of any kind shall be erected without the prior written consent of the Local Planning Authority.

2.2 The structure is considered to breach the above condition, as a structure, which is also considered to be a building, has been erected without prior permission.

2.3 The above condition is considered to meet the six tests as set out in the National Planning Policy Framework:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

2.4 BUILDING

Using the three criteria identified in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd [1949] 1 KB 485, the structure is considered to be a building due to its size and degree of permanence. The structure is designed in such a way that it could not be used, or fit anywhere else. It has been made to exactly fit the roof terrace area to ensure the owners cats don't escape. The materials used are of considerable weight and could not be moved with any ease in one piece. The structure would need to be deconstructed in order to be moved elsewhere.

2.5 PERMITTED DEVELOPMENT

Even if the property retained its permitted development rights, the structure would still require express planning permission as it does not meet the conditions or limitations as set out under Schedule 2, Part 1, Class A of the General Permitted Development Order 2015.

Class A

(e) The enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse.

2.6 In this case, the principal elevation is not where the front door is, but rather the side that fronts the main street. It encompasses the main design features

of the property and is for all intents a purposes the most important elevation of the building. The original dwellinghouse principal elevation steps back at the top level to include an outdoor space; the wall that contains the entrance/exit to the roof terrace is considered to be part of the principal elevation and the structure protrudes from this.

(i) The enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.

2.7 The structure is located immediately next to the curtilage of the dwellinghouse, and the height of the eaves, when measured from the natural ground level (the ground floor) massively exceeds 3 metres in height as it is located on the third floor of the property.

(k) It would consist of or include –

(i) the construction or provision of a verandah

2.8 The structure could be considered the construction of a verandah.

2.10 In addition to not meeting the above limitations, the conditions state that:

(a) The materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

The materials used are a light wood and the dwellinghouse is mostly dark and red brick with plain render. Therefore they are not of similar appearance.

3.0 PLANNING POLICY

3.1 The following policies are considered relevant to this development.

Policy CP20 - Heritage and Landscape Character

The Local Planning Authority will continue to conserve and enhance the historic environment through the preparation of Conservation Area Appraisals and Management Plans and/or other strategies, and will support new development which recognises, protects and enhances the District's distinctive landscape and heritage assets and their settings. These may be designated or undesignated and include natural and man made assets associated with existing landscape and townscape character, conservation areas, scheduled ancient monuments, historic parks and gardens, listed buildings, historic attlefields and archaeology.

Particular emphasis should be given to conserving:

- recognised built form and designed or natural landscapes that include features and elements of natural beauty, cultural or historic importance;
- local distinctiveness, especially in terms of characteristic materials, trees, built form and layout, tranquillity, sense of place and setting.

Policy DM15 – Local Distinctiveness

Developments should respect the qualities, features and characteristics that contribute to the distinctiveness of the local area. Proposals which accord with the Development Plan will be permitted where they conserve or enhance:

- i. the landscape and townscape framework, including the 'key characteristics' identified in local Character Assessments and adopted Design Statements;
- ii. open areas and green spaces that contribute to the special qualities of the townscape or the setting of buildings, including heritage assets;
- iii. recognised public views, features or skylines;
- iv. the special qualities of Conservation Areas and historic landscapes;
- v. trees, hedgerows, water features and corridors which contribute to local distinctiveness.

Regard will be had to the cumulative effects of development on the character of an area.

Policy DM16 – Site Design Criteria

Development which accords with the Development Plan will be permitted provided it:

- i. responds positively to the character, appearance and variety of the local environment, within and surrounding the site, in terms of its design, scale and layout;
- ii. maintains permeability and access throughout the site and improves connections within the public realm;
- iii. designs any service areas, including parking provision, cycle storage and bins, as an integral part of the scheme, ensuring it does not dominate the site or the surrounding area;
- iv. provides boundary treatments that respond positively to the local context around the site and between different elements within the site of larger schemes;
- v. uses an appropriate ratio between hard and soft landscaping, having regard to the character of the area;
- vi. uses high quality materials that are attractive and durable and appropriate to the context and the proposed design;
- vii. utilises the principles of energy efficient design, by means of layout, orientation, passive solar gain, and the design of buildings and spaces, as far as is compatible with the character of the area.

Policy DM27 – Development in Conservation Areas

Within Conservation Areas, development proposals which conserve or enhance the character, appearance or special architectural or historic interest of the area, and accord with the Development Plan, will be permitted provided:

For new buildings they:

- i. respond sympathetically to the historic settlement pattern, views, plot sizes and plot widths, open spaces, townscape, roofscape, trees and landscape features;

- ii. are of a height, massing, materials, plan form, roofscape and grouping of buildings in scale and harmony with adjoining buildings and the area as a whole. The proportions of features and design details should relate well to each other and to adjoining buildings;
- iii. include good quality building materials appropriate to the locality and sympathetic in colour, profile and texture;
- iv. ensure that walls, gates and fences are, as far as possible, of a kind traditionally used in the locality.

For extensions and alterations they:

- (a) respect the character, scale, massing and plan form of the original building and do not dominate principal elevations;
- (b) use appropriate materials and detailing and do not result in the loss of features that contribute to the character or appearance of the Conservation Area, which may include original architectural details, natural features, trees, hedges, walls, fences, open areas, ground surfaces and archaeological sites, as well as buildings and groups of buildings;
- (c) do not involve the erosion of character, such as the unsympathetic use of windows, doors or conservatories made of non-traditional materials or the replacement of traditional roofing materials with inappropriate ones;
- (d) incorporate any energy efficiency or energy generation measures into the design of the proposals in a manner that has an acceptable impact on character.

3.2 Historic Environment were consulted and provided the following comments:

On the basis of a brief review, the HET would not be able to support the retention of this unauthorised development.

It appears that this structure is an incongruous feature, with an insubstantial 'ad-hoc' character, rather than a considered conscious design feature. By virtue of its projection above the parapet is visible from the public realm. I consider that it causes harm to the character and appearance of this part of the Winchester City Conservation Area.

We would therefore support the serving of an enforcement notice to secure the removal of this development.

3.3 The structure is visible from the main Winchester High Street, particularly when looking south down Little Minster Street. The footway between the buildings is a key viewpoint and the structure affects how you experience the heritage of the area; the structure looks very out of place as it is obtrusive, not in keeping and due to its high position, confusing. Please see photo of this view below.



3.4 This view is gained from immediately next to a number of Listed Buildings, a Listed Postbox, and a prominent scheduled monument (City Cross or 'Butter Cross'). The map below highlights all Listed Buildings (highlighted red and marked 'LB'), Butter Cross (crosshatched purple), and pin points the viewpoint (red pin) of the photograph above for clarity. The site is marked with a red flag. Therefore the site is within the setting of a great number of historic buildings, and is within the core of the Winchester City Conservation Area, a location with a very high degree of heritage significance and considerable historic character.



3.5 The proliferation of historic buildings and structures on the High Street, listed and non-designated, its location within the conservation area, as well as its wider development over at least the last 1500 years, means that the High Street is a key contributor to the significance, character and appearance of the Winchester City Conservation Area and as such, is worthy of preservation and conservation as a whole and not only for its individual parts. The views gained of the structure from the High Street are considered have an impact on the amenity of the area.

3.6 The Central Winchester – the walled town Conservation Area Appraisal describes the area in which the site sits as an almost direct legacy from the medieval period, with Parchment Street and St Thomas' Street representing the narrow and intimate nature of many of the other intramural streets. The largely unbroken building frontages open occasionally to accommodate small gardens, or routes through to rear courtyards.

3.7 The unauthorised development would, by virtue of its form, insubstantial materials and 'ad-hoc' character, fail to preserve the character and appearance of this part of the Winchester City Conservation Area. It's projection above the

parapet of this building would erode the simple form and recessive character of the host building, increasing its prominence in the streetscene, to the detriment of an appreciation of the historic character and significance of nearby listed buildings, in particular nos. 8, 21 and 23 Little Minster Street

3.8 Paragraph 199 of the NPPF advises that great weight should be given to the conservation of a heritage asset in considering the impact of a proposal on its significance (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 goes on to confirm that any harm to the significance of a designated heritage asset from development within its setting should require clear and convincing justification.

3.9 Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. There are no obvious identified public benefits of this development.

3.10 This development does not have a clear and convincing justification that would outweigh its impact on the surrounding area, nor does it have any perceived public benefit. It is a structure made specifically for keeping the owners cat(s) on the roof terrace, whilst providing them with outdoor space; a personal benefit to the owner and cat(s), with no apparent consideration to its design and context within the conservation area and proximity to a number of heritage assets.

4.0 EXPEDIENCY

4.1 The reasons for taking enforcement action are set out in section 4 of the attached draft enforcement notice and noted below for information:

The development is contrary to Policy CP20 of the Winchester District Local Plan Part 1 - Joint Core Strategy, and Policy DM15, DM16, and DM27 of the Winchester District Local Plan Part 2 – Development Management and Site Allocations as it is considered an incongruous feature, with an insubstantial ‘ad-hoc’ character, rather than a considered conscious design feature. By virtue of its projection above the parapet is visible from the public realm of Winchester High Street and the surrounding area. It is therefore not considered to conserve or enhance the Winchester City Conservation Area and its special character.

4.2 The Council does not consider that planning permission should be granted. Planning conditions would not overcome these objections to the development.

4.3 Either a Breach of Conditions Notice (BCN), or an Enforcement Notice (EN) could be served. Due to the age of the condition, it is deemed more appropriate to seek remedy via an EN.

5.0 HUMAN RIGHTS

5.1 The Human Rights Act 1998 makes it unlawful for the Council to act in a way incompatible with any of the Convention rights protected by the Act unless it could not have acted otherwise. In arriving at the recommendation to take enforcement action, careful consideration has been given to the rights set out in the European Convention of Human Rights including Article 6 (right to a fair trial), Article 8 (right to respect for private family life), Article 14 (prohibition of discrimination in enjoyment of convention rights) and Article 1 of the first protocol (the right to peaceful enjoyment of possessions). It is considered that where there is an interference with the rights of the recipient of an enforcement notice, such interference is considered necessary for the following reasons: the protection of the environment and the rights and freedoms of others. It is also considered that such action is proportional to the legitimate aim and in the public interest.

6.0 SERVICE

6.1 I have attached a draft enforcement notice and plan and a copy of the Land Registry documents.

6.2 Notices to be served on:

Owner/Occupier

- ALASTAIR PETER DRUMMOND SCOTT of 2 Calpe Yard, St. Thomas Street, Winchester, SO23 9HE and of Flat 4, Paternoster House, Colebrook Street, Winchester, SO23 9LG.

Charge

- BANK OF SCOTLAND PLC (Scot. Co. Regn. No.SC327000) of Halifax Division, 1 Lovell Park Road, Leeds LS1 1NS.

6.3 A copy of the notice needs to be displayed on site.

6.4 Notice to be served by hand.

6.5 The deemed application fee is £412 (£206 x 2 (Householder applications)).

7.0 ENCLOSED:

- *Draft enforcement notice*
- *Draft enforcement notice plan*
- *Land Registry documents*

8.0 DELEGATED AUTHORITY

I, Lorna Hutchings, being duly authorised to act for and on behalf of Winchester City Council with the powers delegated to me as Planning Delivery and Implementation

Manager, do hereby authorise the proposed enforcement action in accordance with the above report and attached draft enforcement notice.



Date: 23.06.2023

.....
Lorna Hutchings
Planning Delivery and Implementation Manager
Build Environment
Winchester City Council