
Appeal Decision

Site visit made on 19 September 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 12 October 2016

Appeal Ref : APP/G5750/C/16/3144801

Land at 83 Leytonstone Road, Stratford, London, E15 1JA.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Angelo Marini against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 22 January 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a structure, composed of a timber frame, wooden decking and Perspex roof.
- The requirements of the notice are either 1. Demolish the structure, composed of a timber frame, wooden decking and Perspex roof (as shown edged in blue on the plan attached to the notice); 2. Remove from the site all debris arising from compliance with the above step or 1. Remove the Perspex roof (as shown edged in yellow on the photograph attached at Appendix 1 of the notice) from the structure; 2 Remove from the site all debris arising from compliance with the above step.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Preliminary Matter

1. The Council's representative was late for the accompanied site visit. The Appellant provided access to the site and I undertook an unaccompanied site visit.

Ground (a) appeal and deemed application

Main Issues

2. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the host property and the surrounding area and (ii) the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance.

Character and appearance

3. The appeal site is a two storey semi-detached property. It has formerly been in use as a public house and at the time of my site visit it was being refurbished. The surrounding area is characterised by 2/3 storey terraced properties with

commercial use on the ground floor and residential use above. There are flats and a school nearby.

4. The development plan (including the London Plan, the Newham Core Strategy and saved policies in the Unitary Development Plan) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for development to be high quality and to respect its surroundings. Policy SP1 of the Core Strategy states that high quality development is expected which enhances the borough and its attractiveness as a place to live, work and stay. My attention is drawn to the Detailed Sites and Policies Development Plan Document but as this is not yet adopted this reduces the weight that I attach to it.
5. The unauthorised structure sits to the rear of the appeal site. Whilst I note the enclosing wall on the boundary of the site the structure is visible from neighbouring properties. The Perspex roof is not insignificant in size and is not sympathetic to the design or materials of the host property. It has enclosed a relatively large part of the rear garden and is visually prominent. It is not sympathetic to its surroundings and conflicts with development plan policies that seek to ensure that new development is of a high quality and urban design. I find that it causes harm to the character and appearance of the host property and the surrounding area contrary to the development plan, including policy SP1 of the Core Strategy.
6. The Appellant refers to a white plastic roof nearby. I do not find similar structures to be characteristic of the area. Any harm caused by other development does not justify further harm in this case. I am also referred to the derelict condition of the adjoining site but it not within my remit to comment on this matter.
7. The Appellant says that the structure is temporary for use by smokers who visit the public house. I recognise the business interest in providing an enclosed area for customers but this does not outweigh the identified harm.
8. I have considered whether conditions could overcome the identified harm. I have taken account of the Planning Practice Guidance. No conditions are suggested by the parties and I find that conditions would not overcome the identified harm.

Living conditions

9. Saved policy EQ45 of the Unitary Development Plan provides that planning permission will be resisted where it would involve unacceptable levels of noise generation beyond the boundary of the site.
10. The enclosure of part of the rear garden facilitates its use by customers. I note that it is intended as a smoking area for customers. Whilst I accept that an area partially protected from adverse weather is likely to increase the potential for customers to congregate in that area there is insufficient evidence to enable me to conclude that this would be likely to create undue harm to the living conditions of nearby residents. I note the objection from a neighbour who describes noise from the use of the public house. But there is no evidence before me to show that noise and disturbance is likely to increase materially by use of the unauthorised structure. I am not persuaded that in the context of this site, including the separation distance between the structure and nearby

residences, that harm by reason of unacceptable generation of noise and disturbance is likely to be caused.

11. My attention is drawn to another appeal decision. I do not know the particular circumstances of that case and determine this appeal on its particular facts.
12. I conclude that the potential for increased use of the rear garden area by virtue of the unauthorised structure does not cause undue harm to the living conditions of occupiers of nearby properties by reason of noise and disturbance and is not contrary to the development plan.

Conclusion

13. Although I have concluded that the development does not harm the living conditions of the occupiers of nearby residential properties by reason of noise and disturbance I have also concluded that the development causes harm to the character and appearance of the host property and surrounding area. This harm outweighs my finding in respect of living conditions. For the reasons given above I conclude that the appeal on ground (a) should be dismissed and planning permission should not be granted.

Formal Decision

14. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector