



Appeal Decision

Site visit made on 19 September 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/U5360/C/16/3144388

Land at 25 Blackstock Road (Arsenal Cafe), London N4 2JF

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Hasan Kurt against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 6 January 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of an outbuilding in the rear garden of the property.
 - The requirements of the notice are:
 - I. Remove the unauthorised outbuilding from the Property.
 - II. Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the Property to the condition they were before the outbuilding was erected.
 - III. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in s174(2)(a) and (c) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected, in paragraph 2, by deletion of "hatched" and substitution of "shaded dark grey". Subject to this correction the appeal is dismissed and the enforcement notice is upheld; and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Matter concerning the enforcement notice

2. At paragraph 2 the land is identified as being shown edged black and "hatched" on the enforcement notice plan. However, on the plan the land appears to be shaded dark grey rather than "hatched". I shall correct the notice in this regard under the powers of s176(1)(a) of the Act. No injustice will arise to either party in me so doing.

The appeal on ground (c)

3. An appeal on ground (c) is that the matter alleged does not constitute a breach of planning control. The burden of proof is upon the appellant.
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4. The appellant has argued that the outbuilding has improved the condition of the rear garden area. However, that is a matter more relevant to the appeal on ground (a) where the planning merits of the development can be considered. It has no bearing upon this legal ground of appeal.
5. There is no suggestion that the erection of the outbuilding was other than an act of development. I am not aware of any permitted development rights¹ for the erection of such a building. Neither has the need for planning permission been called into question for any other reason. It has not been proved, on balance of probability, that the matter alleged does not amount to a breach of planning control.
6. For all these reasons the appeal on ground (c) fails.

The appeal on ground (a) and the deemed application

Planning policies and statutory requirement

7. The development plan policies to which I have been referred comprise Policy 24 of the Hackney Local Development Framework Core Strategy, DM1 and DM2 of the Development Management Local Plan and policies 7.4 and 7.6 of the London Plan. Taken together these policies seek to ensure that development is of high quality design that contributes positively to local distinctiveness and which does not result in significant adverse impacts.
8. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise².
9. Reference has also been made to the National Planning Policy Framework [hereafter "the Framework"] which sets out the Government's planning policies for England and how it expects these to be applied at local level. Section 7 of the Framework is concerned with requiring good design. It states (amongst other things) that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. Section 1 of the Framework, which is concerned with building a strong, competitive economy, encourages a proactive approach to meet the development needs of business and to support sustainable economic growth. The Framework is an important material consideration for this appeal.
10. The development plan policies referred to above are in general conformity with the Framework.

Main issue

11. Having regard to the planning policies and submissions made by the parties I consider the main issue in this appeal to be the effect of the outbuilding upon the visual amenity of the area.

Effect upon visual amenity

12. The outbuilding covers the whole of the rear garden area to the property. It is of timber frame construction utilising the existing boundary structures for its

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) sets out various types of development that can be carried out as "permitted development" and, thus, without the need for express planning permission.

² S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

sides with a timber floor and sheeted roof. Whilst not visible from the public realm, it can be viewed from the rear yards and gardens and upper floor windows of neighbouring properties and is also experienced by customers who use the outbuilding as a dining facility.

13. Its materials and design do not accord with the solid brickwork, tiled roofs and traditional built form of the terrace and other buildings in the surroundings. Neither do the materials of construction have the robust and durable qualities of brickwork and tiling which defines the character and appearance of the area. The building does not reinforce or compliment local distinctiveness or help to create a positive sense of place.
14. I find, on this first main issue, that the outbuilding has a harmful effect upon the visual amenity of the area and, thus, fails to accord with the cited policies of the development plan.

Other matters

15. The Council argue that the use of the outbuilding as an additional dining area has had an adverse effect upon the living conditions of nearby residents with regard to noise and disturbance. The outbuilding has partially open sides which, together with its lightweight construction, could mean that noise from within it (in particular that arising from the conversation and merriment of customers) is audible beyond the site.
16. However, the appeal property is within a terrace of other commercial properties alongside a busy main road. The occupiers of residential premises above the shops and businesses are likely, already, to experience some noise from their surroundings. Whilst the road to the rear has a quieter character, the residential properties here are positioned some distance away from the outbuilding. In these overall circumstances I do not find the issue of noise and disturbance to be a decisive one when taking into account also that planning conditions, to limit the hours of use for example, could also be considered.
17. I acknowledge that the additional dining area provides for increased trade throughout the year and contributes to the viability of this small business. However, the interests of business growth are not overriding and the quality of the built environment that goes with it must also be taken into account. This economic consideration does not outweigh the harm which arises from the shortcomings of the outbuilding's design.
18. Whilst the garden area (which was previously in a poor condition) has been cleared and brought into use, these benefits derive from the erection of a structure which, itself, falls short in terms of its effect upon the character and appearance of the area. This is not a consideration, therefore, which weighs heavily in favour of the development in the decision.
19. I have taken into account all matters raised. However there are no other matters, either singularly or collectively, which sufficiently justify the development and outweigh the harm I have identified in my consideration of the main issue.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector