

Appeal Decision

Site visit made on 24 October 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 3 November 2016

Appeal Ref: APP/G5750/C/16/3154197
515 Barking Road, East Ham, London E6 2LN

- 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 Mahalingham Parthipan against an enforcement notice issued by the Council of the London Borough of Newham.
 - The Council's reference is 16/00135/ENFNOT.
 - The notice was issued on 17 June 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a canopy structure.
 - The requirements of the notice are: (1) Demolish the canopy structure (as shown edged in yellow on the photographs attached at Appendix 1 of the notice); and (2) Remove from the site all debris arising from compliance with step 1.
 - The period for compliance with the requirements is two months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

The Appeal on Ground (d)

2. The appeal on ground (d) is made on the basis that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters specified in the notice. The ground of appeal relates to the statutory time limits for taking enforcement action, as prescribed by section 171B of the Town and Country Planning Act 1990. In the case of operational development, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
 3. When making an appeal on ground (d) the onus is on the appellant, on the balance of probability, to demonstrate his case. In this case, it would be necessary for the appellant to demonstrate that the canopy had been in place since at least June 2012. Little information has been provided by the appellant in support of his case. The photographic image provided by the Council, dated August 2012, shows that a retractable canvas canopy was in place at that point in time – less than four years prior to the service of the notice.
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4. There is no doubt that the canopy shown on the photograph is a different structure to the present canopy; the current canopy has a lightweight metal frame, with supporting legs attached to the ground, it is not retractable, and the roof covering is made from plastic sheeting which is attached to the framework. The current structure represents operational development for which planning permission would have been required. The fact that an earlier canopy may have been in place did not negate the need for planning permission for the current structure which, on the basis of the photographic evidence provided by the Council, had been in place for less than four years at the point the notice was served. No evidence to the contrary has been provided by the appellant.
5. Accordingly, the appeal on ground (d) must fail.

The Appeal on Ground (a)

6. From the information presented I consider that the main issue in the determination of the ground (a) appeal is the effect of the canopy on the character and appearance of the area.
7. The appeal site is situated on a busy stretch of Barking Road within East Ham. The mix of commercial and residential uses within the vicinity and the level of vehicular and pedestrian traffic passing along Barking Road gives the area a vibrant character. A short distance to the west, where Barking Road intersects with High Street, the land use at ground floor level is dominated by a mixture of retail, commercial and civic buildings. The appeal site sits slightly detached from that thriving commercial area and is part of a terraced row that is made up of Victorian residential properties with a retail unit at each end of the block – traditional corner shops. The houses are well proportioned with attractive two storey bays facing the street.
8. As noted at my site visit, it is not uncommon for shops in the local area to display goods on the forecourt, particularly greengrocers' shops such as that at the appeal site. To my mind, that form of retailing is part of the established character and does not, of itself, detract from the character or appearance of the area. Nor does it cause any harm to pedestrian safety in this instance due to the ample width of the public pavement beyond the private forecourt of the shop.
9. However, for the most part, shops using the forecourt appear to utilise retractable canopies to cover their wares. That arrangement provides for the opportunity to clear the pavement outside of business hours and remove associated clutter. In contrast, the framework supporting the canopy is permanently fixed to the floor and, as set out above, the canopy is not retractable. In my view, that has created a structure with a more substantial and permanent appearance, when compared to a retractable canopy, and it is noticeable that the space beneath the canopy has been filled with associated boxes and shelving. Thus, it appears as a permanent cover and means of enclosure and has been designed in such a way that there would be less need to clear the boxes and shelves from the forecourt outside opening times.
10. In that regard, it appears to me that the permanence of the canopy has led to a much more substantial and permanent incursion of the retail space onto the forecourt than would be the case for a retractable canopy. The associated clutter detracts from the character of the area, particularly when one considers

that residential properties sit closely to the side. The visual impact of the permanent canopy appears at odds with the scale, appearance of traditional pattern of development on the row.

11. Moreover, the materials used are of low quality with flimsy plastic panels on the roof and wrap around plastic 'barge boards' to the side and front. The design and materials are therefore unsympathetic when set against the attractive Victorian terrace and the canopy is a visually discordant feature at a prominent position on the corner of the street.
12. In view of the above, I consider that the canopy has caused significant harm to the character and appearance of the area. It represents poor design that fails to take account of the established character of the area and, in that regard is contrary to the aims of policies 7.4 and 7.6 of the London Plan (2016), policies SP1, SP3 and H1 of the London Borough of Newham Core Strategy (2012) (the CS), and the aims of the National Planning Policy Framework with regard to the need for good design as referenced at paragraph 17 and section 7. The agent acting for the appellant contends that policy H1 of the CS is not relevant on the basis that it is related to new housing. Whilst housing is referred to, the aims of the policy are much broader, including the creation of quality neighbourhoods and the need to ensure high quality design from all development (subsection 1 of the policy). The development is clearly contrary to those particular aims.
13. Whilst I am mindful of the benefit to the appellant, and to customers, resulting from the ability to trade on the forecourt I consider that the visual impact of the present canopy and its degree of permanence are at odds with the prevailing character of the area. Furthermore, I have no reason to conclude that the removal of the present canopy would prevent all forecourt trading in future at the site. That would still be possible, either in the open, or potentially under cover, if an alternative form of canopy was found to be acceptable by the appellant and the Council. Whether planning permission would be secured for any alternative scheme is not a matter that I can consider within my decision which is taken on the particular merits of the current canopy. Consequently, I do not consider that any benefits of forecourt trading resulting from the existing canopy are sufficient to outweigh the significant visual harm that has resulted from the erection of the structure.
14. Having regard to the evidence before me, and all relevant material considerations, I conclude that planning permission should not be granted for the canopy and the appeal on ground (a) fails.

Conclusion

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

Chris Preston

INSPECTOR