

Appeal Decisions

Site Inspection on 25 November 2016

by Graham Self MA MSc FRTPi

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

Decision date: 08 December 2016

Appeal Reference: APP/R5510/C/16/3149394

Site at: The Bear on the Barge Public House, Moorhall Road, Harefield UB9 6PE¹

- The appeal is made by The Bear on the Barge Limited (see "Procedural Matters" below) under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Hillingdon Council.
- The council's reference is ENF/498/15.
- The notice is dated 30 March 2016.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of:
 - (1) A single storey side extension;
 - (2) A single storey rear extension."
- The requirements of the notice are:
 - "(i) Take down and remove the single storey extensions as shown in the approximate positions outlined and crosshatched in blue on the attached plan.
 - (ii) Remove from the Land all materials, debris, plant and equipment associated with requirement (i) above."
- The period for compliance is one month.
- The appeal was made on grounds (a), (e) and (g) as set out in Section 174(2) of the 1990 Act, but ground (a) is barred from consideration for legal reasons. (It is a claim that planning permission should be granted for the development enforced against and this aspect is in effect covered by the Section 78 appeal.)

Summary of Decision: The enforcement notice is varied to extend the compliance period. Apart from that variation, the appeal fails.

Appeal Reference: APP/R5510/W/16/3149420

- This appeal, which relates to the same site, is made by Mr Andrew Leeming under Section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the failure of the London Borough of Hillingdon Council to decide an application for planning permission within the statutory time.
- The council's reference is 13931/APP/2016/721.

¹ The road name stated in the titles of the application plans is Moorfield Road, although the road is labelled Moorhall Road in the actual drawings. As far as I could find out from checks on the ground and from maps, it is only the south-western part of this road (outside Hillingdon, in South Bucks District) which is named Moorfield Road, so I think the titles on the application drawings are incorrect.

- The application was dated 21 February 2016.
- The development was described in the application as: "Erection of 2no single storey structures to rear and side of existing building".

Summary of Decision: The appeal fails.

Costs

1. An application for an award of costs has been made in respect of both appeals. This is the subject of a separate decision notice.

Procedural Matters

2. As is apparent in the summary points above, these appeals are by different appellants. On both appeal forms, the appellant's name was stated as: "Director Mr Andrew Leeming", followed by a company name ("The Bear on the Barge Limited"). Thus the enforcement appeal appears to have been made by the company, with Mr Leeming named as acting on the company's behalf. However, for the Section 78 appeal, the appellant can only be Mr Leeming personally, because he was specified in the original application as the applicant, and under Section 78 of the 1990 Act the right of appeal is held by the original applicant.
3. The application now subject to the appeal under Section 78 was made retrospectively, that is to say it sought planning permission for development which had already been carried out.

Site Inspection

4. No representative for the planning authority appeared at the time arranged for the site inspection, or for about half an hour afterwards. I carried out the inspection. Having investigated the matter with the relevant administrators in the Planning Inspectorate, I have been assured that the council was notified in the normal way about the site inspection arrangements.² I have decided against re-arranging any further inspection.

Format of this Decision

5. Both appeals are considered below in a logical sequence,³ that is to say dealing first with ground (e) of the Section 174 appeal, then with the planning permission issues, and then with ground (g) of the Section 174 appeal.

Section 174 Appeal, Ground (e)

6. Ground (e) of Section 174(2) provides for a claim that copies of the enforcement notice were not served as required by the legislation. Under Section 172 of the 1990 Act, copies of enforcement notices have to be served on owners, occupiers and anyone else with an interest (which normally means a financial interest) in the land.
7. The basis of the appellant's case is that the notice was served with a letter which was addressed to a dissolved company known as St James of London (Restaurant) Ltd, and that the letter was slipped inside an external door of the premises, found by a member of staff but ignored for a number of days because

² The council was notified by electronic message at 11.42 hours on 7 November 2016 to PlanningAppeals@hillingdon.gov.uk. No automatic "undelivered" message was sent back to the Inspectorate.

³ The reason for this sequence in this type of case is that if ground (e) succeeds, the enforcement notice is quashed and other grounds become superfluous; if planning permission is granted, ground (g) becomes superfluous.

the St James company was not an occupier. As a result the requirement for a 28 day period to elapse before the notice could come into effect was not met.

8. Section 176(5) of the 1990 Act gives me powers to disregard non-service of an enforcement notice provided that neither the appellant nor any other party has been substantially prejudiced. As the appeal was lodged before the notice came into effect (albeit only just) the notice has in effect been suspended. The appellant has had the opportunity to appeal and to make written representations and in these circumstances the appellant's interests cannot be said to have been substantially prejudiced. I conclude that ground (e) fails.

Section 78 Appeal

9. In considering whether planning permission should be granted, the main issue is the effect of the development on the appearance and character of the area, having regard to relevant planning policies, and whether those considerations are outweighed by other factors.
10. The rear and side extensions are constructed with a fixed metal framework (apparently aluminium) supporting a retractable roof and sides. The roof of the rear extension has a shallow semi-circular shape and is retractable by means of electric motors. The side extension has a "lean-to" shape with a sloping roof. The sides of the extensions are of plastic material, most of which is transparent to form "windows" which can also be retracted or rolled up in warm weather. The rear extension measures about 13 metres wide by 12.5 metres deep. The side extension is about 8.3 metres by 4.5 metres.
11. The extensions have the effect of greatly enlarging the "footprint" of the original building, even counting previously-built extensions as part of the original building. The scale of the extensions is noticeable from public viewpoints, for example along the canal towpath immediately east of the appeal site. The shape of the extensions does not reflect in any way the shape of the main building; for example, the roof pitch of the pub is fairly steep, against which the shallow curve of the rear extension contrasts. The plastic and metal materials of the extensions do not blend or harmonise with the tiled roof and other materials used in the construction of the pub itself.
12. In some locations, the points just mentioned might well not make the development objectionable. Here, two aspects of planning policy are particularly relevant. First, the site is part of a designated conservation area. As a matter of law and long-established national policy, development in conservation areas has to pay particular attention to the desirability of preserving or enhancing the character or appearance of the area. Second, the site is in the Metropolitan Green Belt, where strict controls apply to many types of development. Under national policy, extensions to existing buildings are acceptable provided that the result would not be a disproportionate addition to the original building. Local policy does not allow extensions to buildings in the green belt which would cause a disproportionate change in the bulk and character of the original building or would significantly increase the built-up appearance of the site.
13. Because of the shape and materials used in the construction of these extensions, the development does not preserve or enhance the appearance or character of the area. The scale of the extensions - enlarging the ground floor area of the original building by around 80-90% (depending on whether previous extensions are counted) - is disproportionate for policy purposes. In sideways views from the nearby canal towpath, the rear extension in particular gives the impression that the rearward depth of the pub building has almost been doubled at ground

floor level. The built-up appearance of the site has also been affected by previously-constructed outbuildings, and the extensions add to this effect.

14. As the appellant points out, the National Planning Policy Framework states that "local planning authorities should look for opportunities for new development within conservations areas....to enhance or better reveal their significance". This development neither enhances nor "better reveals" any significant features of the Widewater Lock Conservation Area.
15. The appellant's written statement refers to a number of policies in the Hillingdon Local Plan and rightly states that the statutory development plan will be the starting point for consideration of planning applications. I do not propose to comment on all of these policies, partly because many of them weaken, rather than strengthen, the appellant's case. For example, the appellant quotes policy BE15 as stating that alterations or extensions to existing buildings will be permitted where they harmonise with the scale, form, architectural composition and proportions of the original building. What has been built clearly conflicts with those criteria.
16. There is a mixture of land uses in the vicinity of the appeal site. Residential and commercial properties are interspersed with some open space. There are also former and active mineral workings nearby. From what I saw I would not describe the area as having any particularly notable beauty or historic character. But that is not a good reason to allow policies aimed at conserving what remains of the area's character to be undermined.
17. It is important to consider the potential economic or financial benefits of the development. The company which now runs the pub appears to be a small business, and national policy is to encourage such businesses. The Bear on the Barge is evidently a "destination restaurant" where the number of customers can vary greatly. I can therefore understand why the kind of facility which could cater for large number of customers in different weather conditions would benefit the commercial viability of the business, which provides local employment. I also note the appellant's argument that the extensions are contained within the curtilage of the pub and that the site can properly be described as "previously developed land". A considerable investment has evidently been made in the property since the current tenant took it over in April 2015.
18. I have considered those arguments, together with all the other points of support for the development; but I find that they do not outweigh the objections described above. Because of their disproportionate scale, the extensions are "inappropriate development" for the purposes of green belt policy. Such development is by definition harmful to the green belt, and the arguments in support of the development do not amount to very special circumstances sufficient to justify making an exception to normal policy.
19. The refusal of planning permission may seem harsh, but the appellant and/or the company of which Mr Leeming is a director must have known that they were taking a risk in carrying out a quite substantial development project without first obtaining planning permission, especially as planning permission had evidently previously been refused for a smaller extension.
20. I conclude that the council had a sound case for refusing planning permission, and that the refusal should not be overturned. Therefore the appeal under Section 78 of the 1990 Act does not succeed.

Section 174 Appeal, Ground (g)

21. This ground of appeal concerns the period for compliance with the enforcement notice. The appellant contends that 6 months should be allowed "or preferably 12 months", though these contentions were partly related to the linkage between the two appeals and the prospect that they might be determined by a hearing rather than written representations. The appellant has been entitled to await the outcome of the appeal, and the compliance period will now run from the date of this decision.
22. There is certainly no justification for a compliance period anywhere near 12 months. Although the unauthorised structures are designed to be permanent, there is no evidence leading me to think that their removal would be a complicated or lengthy procedure. However, it would be reasonable to allow time for a suitable contractor to be engaged, which might involve obtaining alternative quotations, as well as time for the actual removal work. Taking those factors into account, I have decided to increase the compliance period to three months. To that limited extent, ground (g) partly succeeds.

Formal Decisions

Section 78 Appeal

23. I dismiss the appeal.

Section 174 Appeal

24. I direct that the enforcement notice be varied by deleting "one (1) month" from the text specifying the time for compliance, and substituting "three months". Subject to that variation, I dismiss the appeal and uphold the notice as varied.

G F Self

Inspector