

Appeal Decision

Site visit made on 29 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 18 January 2017

Appeal Ref: APP/V5570/C/16/3155411

Land at Popeseye Steakhouse, 36 Highgate Hill, London N19 5NL

- 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 James Hutchison against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice was issued on 4 July 2016 under ref. 54/2016.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the erection of wooden ramp structure."
 - The requirement of the notice is to: "Remove the wooden ramp structure (as shown in the photograph at Appendix 'A' of this notice) from the Land, including all waste materials and detritus therefrom."
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the ground set out in section 174(2) (f) 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.

Background

2. The appeal concerns a restaurant located on the ground floor of a three-storey terraced building next to the junction between Highgate Hill and Waterlow Road. There is a tiled threshold to the entrance door on the corner of the property.
 3. The enforcement notice attacks a wooden ramp structure or platform that has been erected on the outside space of the restaurant on the frontage to Highgate Hill. It has provided a level surface upon which tables and chairs can be placed. No furniture is permanently fixed in place. Photographs submitted with the appeal show that two tables and three chairs can be safely accommodated upon it. Given the appreciable fall in Highgate Hill and the adjacent footways from north-west to south-east, the surface of the wooden structure is about 38 cm above the footway level at its south-eastern end. An upright wooden safety panel about 90 cm above footway level encloses the south-eastern end. The ramp structure extends across the full width of the property's frontage to Highgate Hill and across the full depth of the land available to the premises at the back of the footway.
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The appeal on ground (f)

4. Section 173 of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These purposes are to remedy the breach of planning control as specified in section 173(4) (a) or to remedy any injury to amenity which has been caused by the breach as specified in section 173(4) (b).
5. In the enforcement notice the subject of this appeal, the Council has titled Schedule 4 as "WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH". The requirement of the notice seeks the removal of the unauthorised development. This would restore the land to its condition before the breach took place, one of three ways set out in section 173(4) (a) in which a breach can be remedied. The purpose of the requirement is within section 173(4) (a); it is seeking to remedy the breach of planning control which has occurred.
6. Where no appeal has been brought on ground (a) and consequently there is no deemed application for planning permission, ground (f) cannot be interpreted as allowing arguments about the planning merits of the development or an alternative modified development. Similarly, where the purpose of the requirement is to be found wholly within section 173(4) (a), the Act cannot sensibly be interpreted as allowing any appeal submission under the second head of ground (f) arguing that the requirement exceeds what is necessary to remedy any injury to amenity.
7. The key issue under this ground (f) appeal is therefore whether the requirement of the notice exceeds what is necessary to achieve the purpose of remedying the breach of planning control. In the case of operational development put up without planning permission, as here, the appropriate requirement in these circumstances is to secure its removal. That is what this enforcement notice seeks to do. It seems to me that no lesser step other than the one set out in the notice would achieve the purpose of remedying the breach of planning control. The requirement cannot be said to be excessive or unreasonable in any way.
8. Many of the appellant's arguments would require me to assess the planning merits of the development which I cannot do. For instance, this would include comparisons with the fixed bench and narrow table on the frontage to "Artista" café at no. 24 Highgate Hill, the flower boxes at "Sushi Wa" at nos 28-30 Highgate Hill and the raised platform outside "Over the grill" at no. 616 Holloway Road. Similarly, whether the development is in line with the Islington Urban Design Guide Supplementary Planning Document December 2006 or Policies DM2.1 and DM4.1 of the Council's Development Management Policies 2013 and whether the Council has a policy for outdoor seating on a hill could only be assessed if an appeal on ground (a) had been lodged.
9. The concerns raised by third parties and the appellant's response to them are noted but again they go over matters that would engage the planning merits of the wooden structure erected outside the restaurant.
10. The appellant has suggested other steps such as covering the decking foundation with paving slabs, growing flowers or vines up the wood, adding flower boxes or painting the structure. However, it is clear to me that none of these suggested steps would actually remedy the breach of planning control.

11. The appellant has raised a number of other concerns relating to the service received from the Council, the costs charged for advice, planning application fees, the increase in the monthly rates for the property in January 2016 and the interruption to his business from "Two car crashes into my restaurant in one year..." (as set out in his final comments). These are matters of importance to the appellant and I have considered them accordingly. However, they are not matters that can be decisive to the outcome of this ground (f) appeal which is simply concerned with whether the step in the notice exceeds what is necessary to achieve the purpose of remedying the breach.
12. Taking into account all the above and all other matters raised in the written representations, I conclude that the appeal on ground (f) should not succeed. The enforcement notice is therefore upheld without variation.

Andrew Dale

INSPECTOR