



Appeal Decision

Site visit made on 20 February 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 9 March 2017

Appeal Ref: APP/G5750/C/16/3159821

Land at 27 Broadway, Stratford, London E15 4BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr M Sethi, trading as Serene Entertainments, against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 2 September 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of structures to the rear of the property.
 - The requirements of the notice are to: (1) Demolish the structures (as shown edged blue on the plan attached at Appendix 1 [to the enforcement notice]). (2) Remove from the site all debris arising from compliance with the above step.
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Act.
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Formal 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 Act.

Procedural matter

2. The Appellant did not attend the site inspection. I telephoned the Appellant's Agent just after the appointed time and it would appear that he had overlooked the terms of the start date letter from The Planning Inspectorate [PINS] dated 8 December 2016, which had set down the date and time at that early stage. This is a case that has been run via PINS "*Enforcement Transformation Project*" [ETP] and hence the appeal was allocated to me upon first registration, which might explain this oversight. Nevertheless the lady behind the bar permitted me access to the rear of the property and so, effectively, the inspection was conducted on an unaccompanied basis. The Appellant's Agent subsequently telephoned me and I advised him what had taken place. PINS then wrote to both main parties giving them 7 days to object to the manner in which I had proceeded, but no issue has been raised in that period by either main party.

Ground (a), planning merits: *Preliminary observations*

3. The Officer's report on application No 16/00936/FUL, which was submitted with the Council's questionnaire, is dated 26 August 2016. The paragraphs in the report are not numbered but the last paragraph on page 5 of that report starts: "*Officers note that the beer garden is ancillary to the use of the main property, however, on review of the property history there appears to be no planning permission in place for the current use*". The sentence is ambiguous, but if the Council is saying that the use of the property might be in breach of planning control, that would not alter the fact that the garden could be used ancillary to the main building. Applying the principles that underpin the concept of the

planning unit, as the Council agree that the use of the beer garden is ancillary to that of the main property, which is labelled 'PH', or Public House, on the Council's plan of the Stratford St John's Conservation Area [CA], it is unclear how the use of the beer garden itself could be in breach of planning control.

4. Whilst I would be exceeding my jurisdiction if I were to make a determination on this point I regard it to be material that the enforcement notice, the subject of this appeal, post-dates the Officer's report and does not allege the making of a material change in the use of the land. Moreover, although I have not been provided with a copy of the planning permission, the Officer's report lists an application No 87/0079, which is said to include: "*Alterations to Existing Beer Garden...*", and records that the application was permitted. I therefore intend to deal with the ground (a) appeal on the basis that the claim the: "*Existing use already in place to drink and dine*"¹, relates to the beer garden, the use of which is ancillary to the use of the main property, which was trading as "*The Refreshment Room*" at the time of my inspection. This is without prejudice to the Council's ability to address any breach of planning control relating to the use of the planning unit as a whole that might exist upon further investigation.
5. The answer to question 5a of the Council's questionnaire says that the appeal site is "*within*" the CA. However the map of the CA reveals that whilst the PH is within the CA, the beer garden is not. The boundary line runs along the back of the PH and then part way up the north-east boundary of the beer garden, but the net effect is that the area within which the structures edged blue on the plan attached to the notice have been erected are not within the CA. To this extent the report on application No 16/00936/FUL appears to be incorrect.

Main issue

6. The main issue in the ground (a) appeal is the effect of the development on the character and appearance of the area.

Planning policy

7. The Development Plan [DP] includes the London Plan [LP], which was published in March 2016, the Newham Core Strategy [CS] and the Detailed Sites and Policies Development Plan Document [DPD], which were adopted in January 2012 and October 2016, respectively. Relevant LP Policies include 7.1, 7.4, 7.6 and 7.8, and relevant DPD Policies include SP8. Although the CS pre-dates publication of the National Planning Policy Framework ["the Framework"], neither party has given me reason to find that relevant CS Policies SP1, SP2, SP3, SP5 and SP6 are, applying paragraph 215 of the Framework, inconsistent with it. In the circumstances I attach relevant CS policies significant weight.

Reasons

8. The area upon which the structures at issue have been erected is not within the CA, but it does directly adjoin the CA and there are views into the CA and, I have no doubt, out of the designated area into the rear beer garden. My site inspection revealed that the tall stone tower of the former West Ham Town Hall, with its distinctive cupola, which the map of the CA identifies to be a listed building, is visible from the rear beer garden. So the area within which the structures have been erected is part of the surroundings in which designated

¹ Source of quote: the terms in which application No 16/00936/FUL was applied for.

- heritage assets, comprising at least one listed building² as well as the CA, can be experienced. As such the rear beer garden forms part of the setting of a heritage asset, as defined in Annex 2, Glossary, to the Framework.
9. In this historic environment I am far from convinced that the development subject of the deemed application is acceptable. Whilst the contrast between old and new is put forward as an attribute this argument does not outweigh my concern that this is a poor design that fails to take the opportunities available to improve the character and quality of the area. One of the photographs supplied as part of the appeal documentation shows an aerial shot looking down on the roof of the shelters that have been erected. From this perspective the metal corrugated sheets are revealed to be functional, but aesthetically unattractive. The roof sheets do not have a uniform finish and in combination they are relatively extensive. The contrast with the tiled roof of what is shown as a kitchen on the plan at Appendix 1 to the enforcement notice is stark.
 10. Even when seen from ground level the structures have a crude appearance which, as the Council says, is at odds with the solidity of the traditional materials of the host building and wider area, which is predominantly brick. From the rear beer garden the mono-pitch design of the roof also enables the roofing sheets to be seen. Amongst other things there are no rainwater goods and so the distinctive wavy edge of the roofing sheets is seen against the backdrop of surrounding buildings. This aspect underlines the validity of the Council's view that this gives the development an unfinished appearance.
 11. As such I find a conflict with the following DP Policies for the stated reasons:
 - LP Policy 7.1: conflict with D because the design does not reinforce or enhance the character of the neighbourhood;
 - LP Policy 7.4: conflict with B because it is not a high quality design response;
 - LP Policy 7.6: conflict with A and B because the scheme does not incorporate the highest quality materials or design appropriate to its context, and does not comprise details and materials that complement the local character;
 - LP Policy 7.8: conflict with D because the development adversely affects the setting of heritage assets, particularly by reason of the use of materials but also in terms of the horizontal scale of the roofing;
 - CS Policy SP1: conflict because this is not a high quality development and it represents an inadequate response to neighbouring heritage assets;
 - CS Policy SP3: conflict because this is not a high quality urban design, which does not appear to have regard to, let alone reinforce, local distinctiveness;
 - CS Policy SP5: conflict because the development does not, at a minimum, conserve heritage assets and their settings, or address the 3 criteria in the policy in terms of concept, design and implementation; and,
 - CS Policy SP6: conflict with criterion 7 because as a new development it has not been designed in response to the strength of the local character.
 12. However the alleged conflict with CS Policy SP2 is not spelt out in the Council's submissions and, because I am concerned with the structures and not the use, I find no basis for conflict with the 8 criteria of the policy. Similarly the claimed conflict with DPD Policy SP8 is not obvious and there is no clear basis to find that the development is unneighbourly. Amongst other things point 4 relates to integration with the street scene, but that is not a concern in this appeal. In

² The map of the CA identifies the Court House, adjacent to the former Town Hall, to be a listed building as well.

- reaching this view I have noted the Council's reference to the objective of the policy, but that does not lead me to find a conflict with the words of the policy.
13. Against a finding that there is a clear conflict with the DP as a whole, I have considered whether there are any material considerations that indicate that the determination should be made otherwise than in accordance with the DP. The Appellant's appeal statement picks up on the comments by the Council's Conservation Officer and offers to remove the existing roofing and replace it with: "*grey/black corrugated fibre cement sheets*". Allied to that it is said that: "*additional drawings have been submitted to propose the amendments*". However paragraph 5.13 of the Council's appeal statement says the Appellant has not provided drawings which demonstrate their intentions; I agree. The list of documents submitted includes drawing No 2174_204, which comprises a cross-section on which it is annotated: "*Corrugated Metal Roofing Sheets*". The list of new documents submitted for this appeal does not include any details of what is now proposed and merely comprises licensing details and photographs.
14. I acknowledge that the Appellant has offered to accept a planning condition to require details of the revised roofing material to be submitted to the Council for its approval. However, in the absence of any such details, I am not prepared to quash the enforcement notice and grant planning permission because I am unconvinced that corrugated fibre cement sheets would address my concerns. Perhaps if I had seen a sample at the site inspection or even a photograph I might have been prepared to express a more positive view but I have nothing. Whilst the Council does have discretion to consider a negotiated solution where a notice has taken effect, having regard to section 180(1) of the Act, this does lead me to find that conditions, including the possibility of climbing plants to help soften the built forms, could not address the harm that I have identified.
15. I appreciate that the Council's Conservation Officer has raised no objection in principle to shelters of this type in this location. In broad terms I understand that view because these single storey structures cannot be readily seen from public vantage-points at street level, but that does not mean that anything would be acceptable. Having taken account of all other arguments raised there are no considerations that outweigh the clear conflict with relevant DP Policies.
16. On the main issue I conclude that the development harms the character and appearance of the area and, for the reasons given, I find a conflict with LP Policies 7.1, 7.4, 7.6 and 7.8, and CS Policies SP1, SP3, SP5 and SP6.

Conclusion

17. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR