

Appeal Decision

Site visit made on 1 March 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/V5570/C/16/3147035
313 Highbury New Park, London, N5 2LB

- 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 HUQQA London Limited against an enforcement notice issued by the Council of the London Borough of Islington.
 - The Council's references are E/2015/0071 and 17/2016.
 - The notice was issued on 29 February 2016.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of a mansard roof and dormer roof extension on the Premises on the Land."*
 - The requirements of the notice are: *"Remove the unauthorised mansard roof extension and dormer from the Premises, make good all resulting damage to the property, and remove any resulting debris from the land."*
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected:
 - 1) by adding Plans A1, A2, A3 and A4 annexed to this decision to the plan attached to the enforcement notice; and
 - 2) by adding the words *"as shown on Plans A1, A2, A3 and A4 annexed to this decision"* after the word *"Land"* in Schedule 2.
2. Subject to these corrections, 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,

Background

The appeal site and surroundings

3. No. 313 Highbury New Park was formerly a public house, which – according to the Council – dates from the 1930s. The ground floor is now vacant and is secured in places by roller shutters.
4. The appellant's agent says that when the appellant company bought the property in 2014 the building contained nine flats on the upper floors.
5. The company refurbished those flats, added a mansard roof to the front of the building and extended a rooftop rear addition to provide a further three flats in the roof space. The building's timber windows were removed and replaced by uPVC windows. As a

result of works carried out since 2014, the first, second and third floors of the building each contain four flats.

Procedural matters

Matters relating to the enforcement notice

6. As part of the ground (c) and (d) appeals, the appellant's agent contends that the requirement of the enforcement notice is unclear. The plan attached to the notice identifies the whole building as being subject to its requirements and does not define clearly the part of the roof that must be removed. The agent has sought the Council's clarification on whether the notice requires the removal of the rear component of the mansard roof as well as the front component.
7. The Council argues that the appellant is aware of the extent of the unauthorised works because in 2015 an invalid application (Ref. 2015/2607) was submitted for retrospective planning permission for the works that are the subject of the notice.
8. The Council has supplied copies of the drawings that accompanied that application. Drawing Nos. 14015-TWH-FB P04, P06, P07 and P08 ('the existing plans') show the unauthorised mansard roof and dormer roof extension¹. These drawings are annexed to my decision as Plans A1, A2, A3 and A4.
9. The Council contends, rightly in my view, that it is clear from the wording of the notice that it is directed at the entirety of the unauthorised roof alterations that have been carried out. However, for the avoidance of doubt, the Council has requested that these drawings be added to the notice. I am satisfied that to do so would not cause injustice to any party. Accordingly, the notice is corrected as set out in paragraph 1 above.

'Pre-existing plans'

10. The Council has also submitted copies of the application drawing Nos. 14015-TWH-FB E04, E06, E07 and E08 ('the pre-existing plans'). These drawings show the building before the unauthorised works were carried out. For completeness, these drawings are annexed to my decision as Plans B1, B2, B3 and B4.

The scope of the requirements of the notice

11. The Council's 'Pre-Inquiry Statement' (which was attached to its email of 26 May 2016 to the Planning Inspectorate) states, by way of clarification, that "*The roof must be returned to its pre-existing state as per the plans*".
12. That may well be the Council's preference, but that is not what the requirement of the notice says. The wording used is "*make good all resulting damage to the property*". It does not require the construction of a replacement roof, and it is right that it should not do so.
13. Although the wording to "*make good all resulting damage to the property*" would potentially leave the building open to the elements or insecure, it will be for the appellant to seek planning permission from the Council for further works that may be required.

The appeal on grounds (c) and (d)

14. An appeal on ground (c) is there has not been a breach of planning control; for example, because (1) the matters alleged in the notice do not constitute 'development'; or (2) planning permission has already been granted; or (3) the works are 'permitted development'.

¹ The plans also show unauthorised uPVC windows that have been installed in place of timber windows. These works are the subject of a separate enforcement notice and appeal (Ref. APP/V5570/C/16/3147037).

15. An appeal on ground (d) is that at the time the notice was issued it was too late to take enforcement action against the matters stated in the notice.
16. The ground (c) and (d) appeals relate only to the rooftop extension at the rear of the building; a part of the building that the Council has referred to as "*the pre-existing unauthorised roof addition*". The gist of the case presented for both grounds of appeal is that this part of the building has been in place for many years and may even have been part of the original structure.

Reasons and conclusions on grounds (c) and (d)

17. Where an appeal is made on legal grounds, the decision depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority.
18. The burden of proof regarding decisive matters of fact rests on appellant. Where an assertion is made that the development is lawful and thus immune from enforcement action, the appellant must adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).
19. No evidence has been received to show that any aspect of the roof alterations has achieved immunity. Furthermore the Council points out that, notwithstanding the lack of such evidence, the pre-existing unauthorised roof addition is now physically attached to the newer unauthorised roof addition to form one completely new roof addition.
20. I find that the burden of proof has not been discharged. Accordingly, the appeals made on grounds (c) and (d) fail.

The appeal on ground (a)

21. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

Main issue

22. The main issue is whether the mansard roof and dormer roof extension significantly harm the character and appearance of the appeal building and the surrounding area.

Planning policy

23. No special policies, controls or designations apply to the appeal building or the immediate locality. The development plan policy cited as relevant to the appeal is policy DM2.1 of Islington's Development Management Policies (2013).
24. The policy requires all forms of development to be of high quality and make a positive contribution to the local character and distinctiveness of an area, based upon an understanding and evaluation of its defining characteristics.

Reasons and conclusions on the appeal on ground (a) and the deemed planning application

25. The appeal building is a particularly conspicuous and imposing element in the street scene. In its heyday, as a busy public house, bedecked with hanging baskets and canopies, it would have been a local landmark. That grandeur has faded, but because of its size and prominent position, the building continues to draw the eye of passers-by and exposes unsympathetic alterations to public scrutiny.
26. The traditional character and appearance of the building are derived mainly from the scale, design, proportions and detailing. The symmetrical arrangement of the windows and individual decorative details give the façade an ordered and refined character and appearance. With such a clearly defined unity of design, changes or additions to the

building can be disruptive. Different parts of a building can have varying degrees of sensitivity to changes and with increased height comes greater sensitivity.

27. The photographs of the building before the unauthorised mansard roof and dormer roof extension were added show that there was symmetry and order to the design. Like many period buildings where the architect sought to ensure that his building would stand out from its surroundings, the principle adopted was the 'shallower the roof pitch, the more dominant the façade'. On the photographs, the original roof of the appeal building is barely visible.
28. The new mansard roof and dormer roof extension are highly visible. They constitute a bulky addition that fails to respect, or respond positively to, the design and proportions of the original building. They significantly harm the character and appearance of the building and the surrounding area, and therefore conflict with the design objectives of the development plan. For these reasons, the unauthorised development is unacceptable and accordingly, the appeal on ground (a) fails.

Overall conclusions

29. I have taken account of my observations at the site and the written representations made. For the reasons given, the appeal is dismissed, the enforcement notice (as corrected) is upheld and planning permission is refused on the deemed application.

George Mapson

INSPECTOR

Plan A1

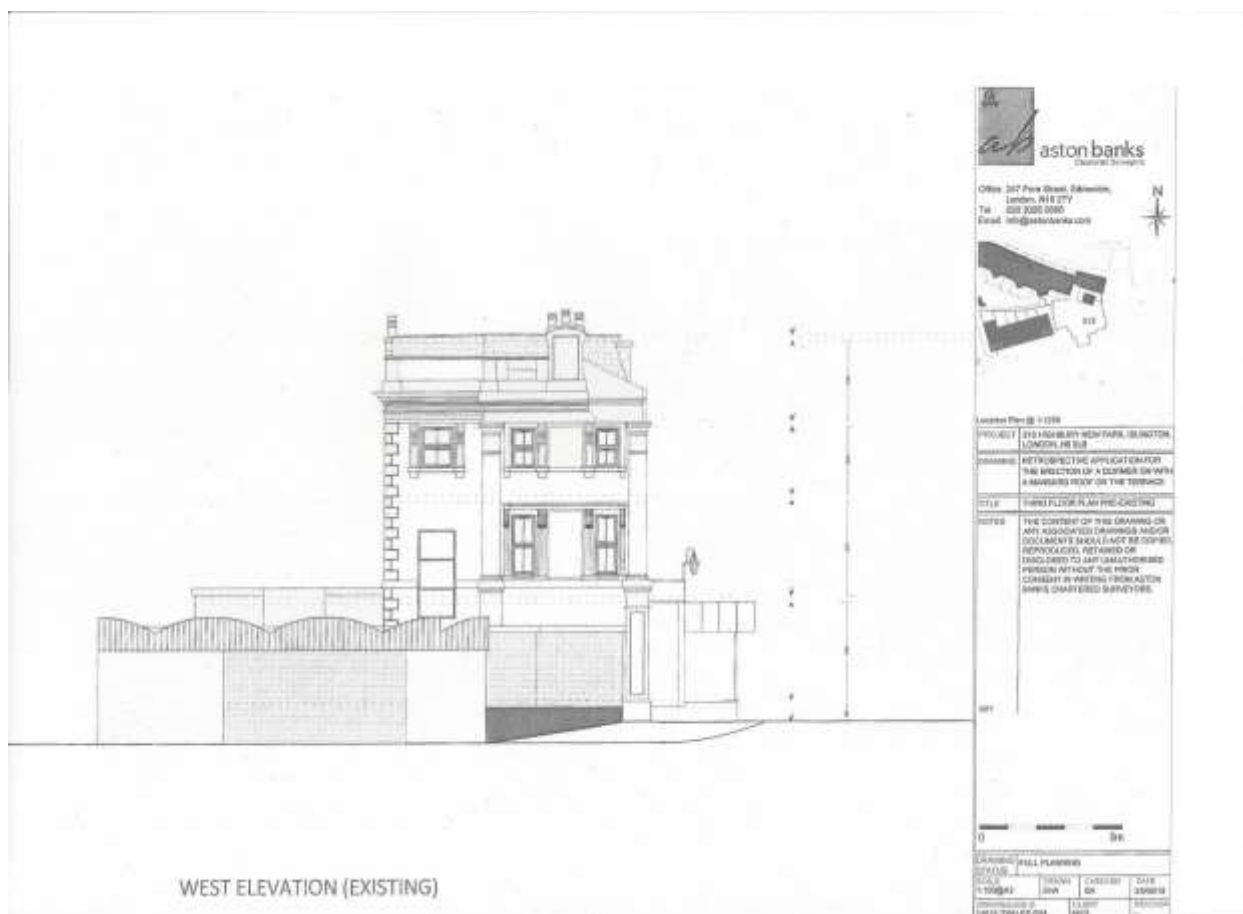
This is Plan A1 (Drg No. 14015-TWH-FP-P04) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

Land at: 313 Highbury New Park, London, N5 2LB

Reference: APP/V5570/C/16/3147035

Scale: NTS



George Mapson

INSPECTOR

This is Plan A2 (Drg No. 14015-TWH-FP-P06) referred to in my decision dated: 31 March 2017

Land at: 313 Highbury New Park, London, N5 2LB

Reference: APP/V5570/C/16/3147035

Scale: NTS



INSPECTOR

This is Plan A3 (Drg No. 14015-TWH-FP-P07) referred to in my decision dated: 31 March 2017

Land at: 313 Highbury New Park, London, N5 2LB

Scale: NTS



INSPECTOR



Plan A4

This is Plan A4 (Drg No. 14015-TWH-FP-P08) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

Land at: 313 Highbury New Park, London, N5 2LB

Reference: APP/V5570/C/16/3147035

Scale: NTS



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Plan B1

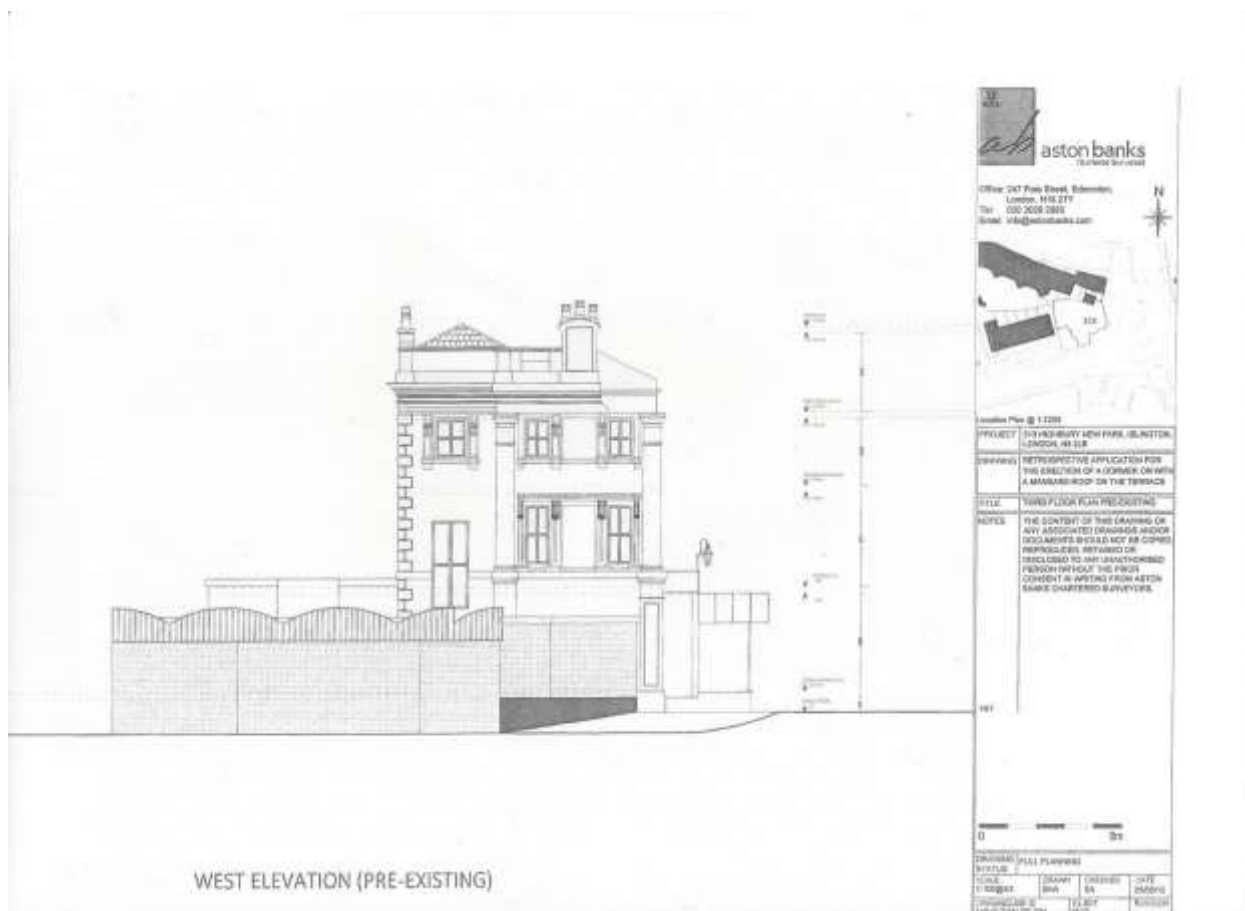
This is Plan B1 (Drg No. 14015-TWH-FP-E04) referred to in my decision dated: 31 March 2017

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Land at: 313 Highbury New Park, London, N5 2LB

Reference: APP/V5570/C/16/3147035

Scale: NTS



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Plan B2

This is Plan B2 (Drg No. 14015-TWH-FP-E06) referred to in my decision dated: 31 March 2017

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Reference: APP/V5570/C/16/3147035

Scale: NTS



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Plan B3

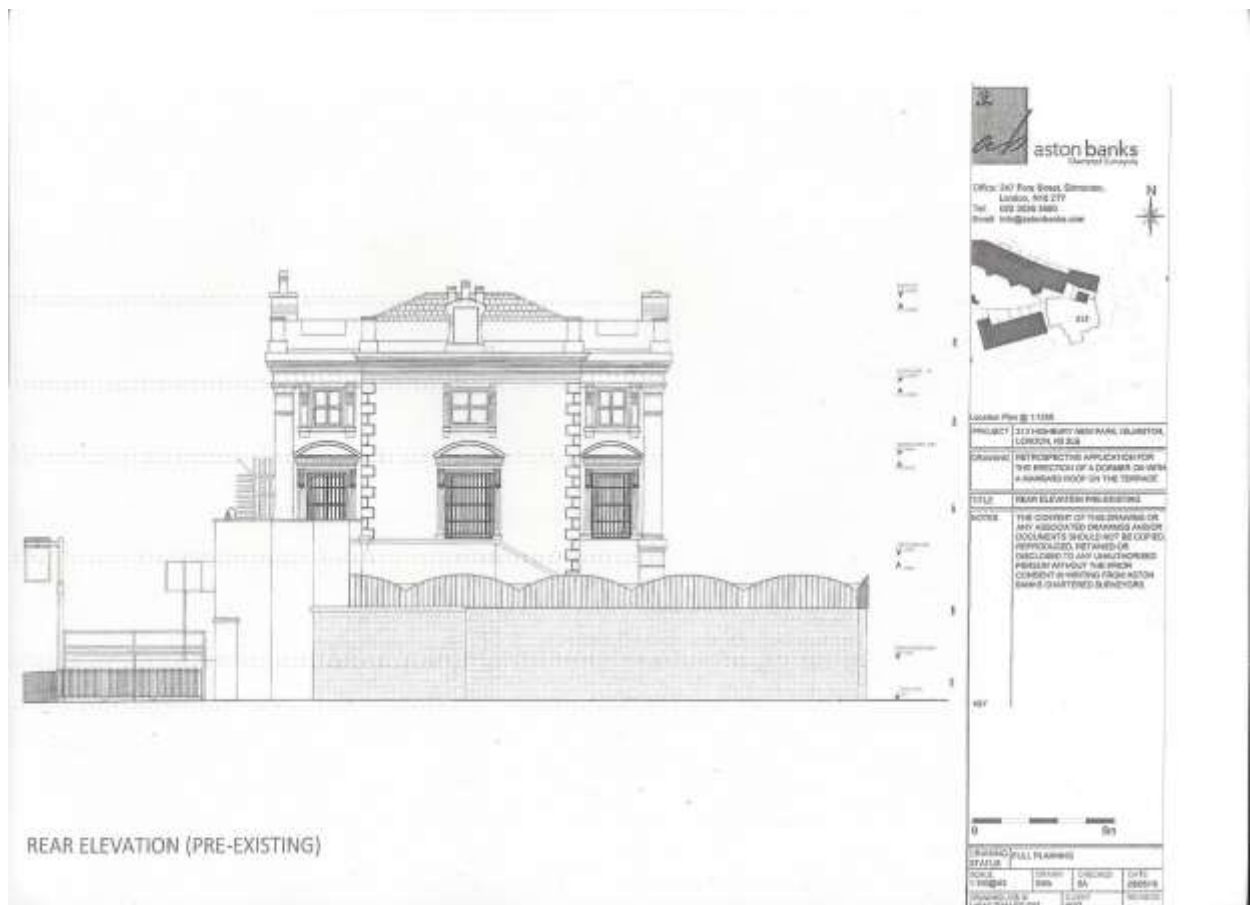
This is Plan B3 (Drg No. 14015-TWH-FP-E07) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

Land at: 313 Highbury New Park, London, N5 2LB

Reference: APP/V5570/C/16/3147035

Scale: NTS



George Mapson

INSPECTOR

Plan B4

This is Plan B4 (Drg No. 14015-TWH-FP-E08) referred to in my decision dated: 31 March 2017

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Land at: **313 Highbury New Park, London, N5 2LB**

Reference: **APP/V5570/C/16/3147035**

Scale: NTS



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