The Planning Inspectorate

Appeal Decision

Site visit made on 12 April 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 16 May 2017

Appeal Ref: APP/G5750/C/16/3160981
Land at 185 Altmore Avenue, East Ham, London, E6 2BT

- 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 Rasu Basi against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 16 September 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a roller-shutter.
- The requirements of the notice are:
  1. Remove the roller shutter (at the location shown by a blue line on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
  2. Remove from the site all debris arising from compliance with above step.
- The period for compliance with the requirements is three months from the date this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with variations.

Matters concerning the enforcement notice

2. The "roller shutter" as required to be removed is identified on the photograph attached to the notice, as including some parts of the surrounding brick piers that have been built up from their pre-existing height. The Council's statement refers to a similar photograph that shows the "roller shutter" as including the original piers from ground level upwards. The statement might be seen as ambiguous in this respect, but I am satisfied that the notice itself does not intend to remove other than what is edged yellow on the attached photograph.

3. For clarity I will amend the notice specifically to refer to the newly built parts of the surrounding piers, as denoted by the yellow edging in the photograph attached to the notice. I am satisfied that I can do this without injustice to the parties using powers available to me under s176(1)(b) of the Act.

The appeal on ground (f)

4. The enforcement notice requires the complete removal of the roller shutter, it being reasoned by the Council in the notice that its excessive size, poor quality design and a low standard of materials used in its construction fails to respect and maintain the established character of the area and adversely affects the outlook from surrounding properties and the street scene.

5. In appealing on ground (f), it has to be demonstrated that the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the development. The notice indicates that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.

6. For the appellant it is said that anti-social activities have occurred to the rear of the shop, in the yard which was constantly used for drinking and drug taking. The yard was accessed by persons climbing over a metal gate that was of a lower height before it was replaced with the roller shutter. Residents living in the adjacent flats support the appeal as, according to them the shutter has helped to clear the rear of the premises of undesirable activities.

7. The appellant, who is the landowner, would be prepared to lower the shutter box and surrounds to the adjacent wall height, so that the base of the box is level with the existing wall. I sympathise with the circumstances in which the appellant and nearby residents find themselves, however there is no appeal on ground (a) and therefore no deemed application for planning permission before me. The proposed lesser step, which would retain metal sheeting as a material, would not be appropriate to consider in the absence of an appeal on ground (a). The sole question for me to determine is whether there are lesser steps that could be taken to achieve the purpose of the notice.

8. As the enforcement notice does no more than identify the minimum work necessary to remedy the breach of planning control in accordance with s173(4)(a) of the Act, I find that the requirements of the notice are not excessive. I would also note that they do not prevent the landowner from pursuing an application for planning permission for an alternative solution that may be acceptable in planning terms. The appeal on ground (f) therefore fails.

Conclusion

9. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations for clarity and consistency.

Formal Decision

10. It is directed that the breach of planning control described in the enforcement notice be varied as follows:

    - Replace "roller-shutter" with "roller shutter"
    - After "roller shutter" add "and new brick surrounding piers shown edged in yellow on the photograph attached at Appendix 1"

11. It is further directed that the requirements of the notice be varied as follows:

    - After "roller shutter" insert "and new brick surrounding piers"

12. Subject to these variations the enforcement notice is upheld.

Grahame Kean

INSPECTOR