

Appeal Decision

Site visit made on 21 June 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: 27 June 2017

Appeal Ref: APP/H5960/C/16/3161617

Land at 111 and 113 Upper Tooting Road, London SW17 7TJ

- 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 Noor Mohamad Nasar against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 6 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, and within the last four (4) years, unauthorised alterations comprising the installation of new external metal roller shutters with associated metal box housing and additional exhaust chimney at the rear of the Property.
 - The requirements of the notice are:
 - (1) Remove the unauthorised metal roller shutter and associated metal box housing at front and side elevations;
 - (2) Remove the unauthorised additional exhaust chimney; and
 - (3) Remove from the Property all debris arising from compliance with steps 1 and 2 above.
 - The period for compliance with the requirements is two (2) months after the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Preliminary matter

2. The site visit was originally notified to the parties as an accompanied visit. However the parties had accepted that the relevant part of the appeal site could be seen from a road or other public land. Therefore the parties were notified of a change in procedure and the visit was undertaken unaccompanied.

The enforcement notice

3. The notice refers to an “additional” exhaust chimney at the rear of the premises without specifying its location. Two very similar chimney flues rise above the roof at the rear of the premises. The Council’s statement contains a photograph marked to show that the chimney the subject of the notice is sited further into the property than the one closest to Lynwood Road.
 4. For clarification I will correct the notice by including the photograph thus making it clear what is being enforced against. I will do this using powers available to me in s176(a) of the 1990 Act.
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5. The shutter over the corner opening is neither completely to the front nor the side elevation of the premises. There is also more than one shutter that faces completely to the front. The description of the breach clearly includes all the shutters that have been installed at the premises, and as the first of the steps required to be taken is not wholly consistent with the description and no injustice to the parties would arise, I will correct requirement (1) properly to reflect the allegation.

The appeal on ground (b)

6. The issue under ground (b) is whether the breach of planning control alleged has occurred as a matter of fact. It is one of the "legal" grounds of appeal. Consequently, the burden of proof is on the appellant to show on the balance of probabilities that the alterations to the appeal premises alleged to have been made, have not in fact occurred. I am unable to take into account the planning merits of the development on this ground.
7. The appellant does not deny that the additional exhaust chimney has been installed as alleged. His case is that the roller-shutters are not new but are essentially the same roller-shutters that have always been in situ. Over time they have had sections "installed and maintained part after part".
8. The Council accepts that the premises were previously fitted with shutters which had become immune from enforcement action over the passage of time, but asserts that they were removed between 2014 and 2015.
9. I inspected the roller shutters during the day when I found they were all in the closed position. The shutters appear substantially different from those shown in photographs of the premises, said to date from 2012 and 2014. For example the three shutters facing Lynwood Road were divided by two middle guide rails, now replaced by a single shutter with a new, prominent box housing. Also the shutter at the corner opening is clearly larger than the original. All the existing shutters have a modern, clean appearance, of a uniformly different colour and design from those in the photographs. I therefore cannot agree that a gradual replacement of parts of the previous shutters has taken place, but find on the balance of probabilities that they are all new shutters.
10. To conclude therefore, the additional exhaust chimney and new roller shutter and box housing have been installed at the appeal premises as alleged in the notice. The appeal on ground (b) must therefore fail.

The appeal on ground (f)

11. The issue on ground (f) is whether the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. Having regard to the purposes set out in s173(4)(a) and (b) of the 1990 Act that should inform such steps, it appears that the main purpose of the notice is to remedy the injury to amenity caused by the breach.
13. I appreciate that insurance and licensing considerations may make it expedient for the appellant to have shutters or some form of security in place for the business use to continue. Nevertheless the Council does not object in principle

to the installation of roller shutters but rather to the particular design which it views as a hard and deadening façade in this prominent corner position. Reasons of security do not therefore make it excessive to require removal of these particular shutters.

14. Nor do I consider that, if carefully removed, compliance with the notice would cause other than superficial damage to the shopfront. Such damage could be easily remedied without the need for a separate planning permission.
15. In his appeal form the appellant states that he will take down the additional chimney exhaust but says in his later statement that he is prepared to shorten the chimney so that it is not visible from Upper Tooting Road. However as I saw, the chimney the subject of the notice is not visible from that road so this would not provide an effective alternative remedy to the requirements of the notice.¹
16. An appellant may not use the appeal under ground (f) to seek to retain the development or part of it, where there is no appeal on ground (a) and therefore no opportunity to address the planning merits of the development. I cannot therefore consider the appellant's arguments about other examples of shutters in the area.
17. I conclude from the foregoing that the requirements of the notice are not excessive and therefore the appeal on ground (f) must fail.

Conclusion

18. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice as corrected.

Formal decision

19. It is directed that requirement (1) in the notice be corrected as follows:
 - Delete "shutter" and replace with "shutters"
 - After "front" add ", corner"
20. It is further directed that the notice be corrected by attaching to it the photograph annexed to this decision, and that the allegation of breach of planning control in the notice be corrected as follows:
 - After "Property" insert "as shown on the photograph attached to this notice"
21. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR

¹ See also the previous s78 appeal decision, Ref APP/H5960/W/16/3149987 that dealt with the alterations the subject of the enforcement notice. It stated: "Whilst the chimney is not visible from Upper Tooting Road it is highly prominent when viewed from Lynwood Road, a predominantly residential street that bounds the north of the appeal site."

Photograph

This is the photograph referred to in my decision dated: 27 June 2017

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Unauthorised additional exhaust chimney

