



Appeal Decision

Site visit made on 30 August 2017

by Simon N Hand MA

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

Decision date: 5 September 2017

Appeal Ref: APP/T5150/C/17/3171577

189 East Lane, Wembley, HA0 3NE

- 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 Ion Taralunga against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0193, was issued on 13 February 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension located next to the brick built single storey rear extension and adjoining no.187 East Lane, the erection of retractable canopies to the front and side elevations and the erection of decking at the side of the premises.
 - The requirements of the notice are:- STEP 1 Demolish the unauthorised single storey rear extension, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises. STEP 2 Remove unauthorised retractable canopies, remove all items, debris, materials arising from these works and remove all materials associated with the unauthorised development from the premises. STEP 3 Demolish the unauthorised decking, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by deleting Step 2 and Step 3 from the requirements. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Background to the Appeal

3. No 189 is a general grocery shop standing on the corner of East Lane and Harrowdene Road, at the end of a short of row of shops and other commercial premises. At the rear of this row of shops is a narrow area of open land used for informal parking and deliveries. A previous enforcement appeal decision¹

¹ APP/T5150/C/16/3149504

was issued on 29 December 2016 concerning a brick built structure erected to the rear of the corner shop. The appeal was dismissed and the brick extension was to be demolished. Prior to the demolition the appellants constructed another structure next to the brick extension, presumably to replace it, and this is the single storey rear extension referred to in the notice.

4. There are also retractable canopies placed around the two sides of the shop that face onto the pavement and all are subject to the notice, although the Council's objections seem to be limited to the canopies on the side wall of the shop. Also down the side of the shop is a strip of decking which supports shelving used for the display of goods for sale and this too is subject to the notice. The ground (c) appeal refers only to the decking and all three elements are covered by the ground (a) appeal.

The Appeal on Ground (c)

5. This ground is that planning permission is not required for the development as it has already been granted or is not necessary. In this case the appellant argues the decking is not fixed to the ground and so is not development at all, but if it is development then it is permitted by Class A of Part 7 of Schedule 2 of the General Permitted Development (England) Order 2015.
6. The appellant argues the decking is no more a structure than the shelves it supports. The Council are not bothered by the shelving so it seems they accept they are not development, it follows therefore the decking is also not development. I do not agree with this argument, as it is entirely up to the Council what they decide to include within their enforcement notice, but I also do not accept the decking and the shelves have a similar status. While I accept the decking is not fixed to the ground that is not determinative. It is quite clear the decking is not intended to be portable, or to be moved around. It is a permanent fixture to the side of the shop, even when the shop is closed and it is not in use. Consequently, I consider the decking to be a structure that falls within the definition of operational development.
7. I also do not consider it falls within the limits of Class A. That class allows, amongst other things, the extension or alteration of a shop subject to various limitations described in A.1. A raised platform is not allowed if it is more than 30cm in height. I take from this that raised platforms below this height are allowed, and the appeal decking is less than 30cms tall. However, A.1(g) also prevents any development which extends beyond an existing shop front. As the shop extends around the corner, and the side wall contains a shop window and is used actively for the display of produce I consider this to be a shop front and so the decking is not permitted by Class A. The appeal on ground (c) fails.

The Appeal on Ground (a)

8. The Council mention a number of policies in their statement. In terms of the rear extension they refer to Policy DMP13 of Brent's Development Management Policies document (November 2016) which resists the loss of existing servicing areas, but they also refer to the impact of the development on the character and appearance of the area which is policy DMP1(a) which requires high levels of internal and external amenity.
9. The previous Inspector found the brick extension to be a "box with little aesthetic merit and no architectural features to relieve its characterless

appearance". This has now been demolished, but I have photographs to show what it looked like. The new extension is, if possible, even worse. It is a structure which appears to be made of metal sheeting painted white, and is roughly the same size as the previous brick extension, albeit a little lower in height. It is used as a cold store and is accessed from the rear of the premises. It is entirely functional in purpose and appearance. The rear of the row of shops is not particularly attractive but does have some architectural features that provide a uniformity of appearance none of which are seen in the appeal structure which is simply a large white box. Indeed the appellant seems to have gone out of his way to build something that is completely incongruous. There are some very small rear extensions visible to the rear of the shops, but these are constructed of similar materials and design to the main buildings. There is also a small standalone brick shed-like structure, but the large appeal extension looks entirely out of place and is contrary to policy DMP1.

10. I saw the rear yard was currently being used for informal parking. As the new appeal structure is set in, away from the road, there is now a space, where the original brick extension stood, where a van could pull off the road to unload goods for the shop. This was not the case before as the brick extension stood next to the road and made it difficult for vehicles to access the rear of the shop. Consequently, I do not consider the appeal extension does contravene DMP13. Nevertheless the structure is still unacceptable for the reasons given above.
11. There are three canopies, one over the front of the shop and two down the side. The side wall contains a window, now covered up with shelving, then two 6 sheet advertisement hoardings and further shelving. The purpose of the canopies, at the front and side is to protect the goods on the shelves from the weather. The decking supports the shelving on the side wall as the pavement slopes gently downhill and the decking provides a flat surface. The council's photographs show it is made of plywood, but it was covered in green matting at the time of the site visit.
12. The Council refer to policy DMP1 and SPG7 which deals with shop fronts. They say SPG7 resists canopies that extend a shop front down the side of a building, but I cannot find that in the SPG, which seems to be silent about corner shops. The Council say there are no other corner shops with canopies or outdoor merchandise in the area, which seemed to be true, but there were plenty of shops with canopies and outdoor merchandise on their street frontages. None of them were corner units and the only corner shop I could see which did have canopies and outdoor merchandise was the appeal unit, although I have seen plenty of similar examples in other parts of London and indeed in cities around England. Such displays are not unusual or particularly out of place. The area around the appeal site was a typical north London mixed commercial/residential area that had grown around a transport hub, in this case the tube station. In my view neither the canopies nor the decking looked out of place or harmful, indeed they looked entirely consonant with the busy, semi-commercial neighbourhood. The canopies are all clearly separate entities and do not create a block of canopy as feared by the Council. The decking, even if not covered by artificial grass would not be particularly visible, but the displays I saw on the site visit actually added some colour to the street scene. There is no conflict with DMP1 or SPG7. Nor are they contrary to DMP4A which supports forecourt trading as long as there is no obstruction to pedestrians.

13. In my view therefore while the canopies and decking are acceptable the rear extension is not. How I shall deal with that is explained below.

The Appeal on Ground (f)

14. There is no need to consider the decking or canopies, but the appellant argues the rear extension can be made acceptable by painting. On the site visit I saw the effects of some white paint that had been applied, but it is hard to imagine any improvements, particularly none suggested by the appellant, which would render the structure acceptable, short of completely redesigning it so that it sat more comfortably with the main buildings and no plans have been provided to show how this could be achieved. There are thus no lesser steps that would overcome the objections and the appeal on ground (f) fails.

The Appeal on Ground (g)

15. The appellant pleads poverty, particularly because he has had the recent expense of removing the previous unlawful extension. However, I cannot see that removing the current unlawful structure and bricking up the door in the wall should be particularly expensive, and no actual evidence has been provided to suggest it would. The appeal on ground (g) fails.

Conclusions

16. No conditions are needed for the canopies or decking, but I cannot quash the notice as it needs to remain to ensure the rear extension is removed. Consequently, the easiest option is to vary the notice by removing the decking and awnings from the requirements, leaving the notice to bite on the rear extension but granting permission for the other items through the operation of s173(11).

Simon Hand

Inspector