
Appeal Decision

Site visit made on 4 April 2018

by Stephen Hawkins MA MRTPI

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

Decision date: 20 April 2018

Appeal Ref: APP/R5510/C/17/3180099

Land at The Black Horse, Black Horse Parade, 1446 High Road, Eastcote, Pinner HA5 2EN

- 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 Nick Kharbanda against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 7 July 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a garden shelter.
- The requirements of the notice are (i) Take down and remove the garden shelter, shown in the approximate position outlined and crosshatched in blue on the attached plan; and (ii) Remove from the Land all materials, debris, plant and equipment associated with requirement (i) above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with variation. Planning permission is refused on the deemed application.

Ground (a)

Main Issues

1. The main issues are whether the garden shelter:
 - Preserves the setting of the listed building.
 - Preserves or enhances the character or appearance of the Eastcote Village Conservation Area.

Reasons

Setting of the listed building

2. The Black Horse is a two storey Public House constructed in stock bricks with a hipped slate roof. The pub dates from the early 19th Century but has later single storey extensions at either end. Grade II listed, the pub occupies a generous plot in a conspicuous location set back from High Road behind a forecourt parking area.
3. The garden shelter is a detached timber framed structure with a shallow sloping roof. The sides and roof of the shelter are covered with canvas. The shelter is situated alongside a single storey extension at the west end of the pub, in part of the garden adjacent to the back of the forecourt.

4. Although the shelter is of modest scale in comparison with the substantial proportions of the pub, it is of a significant size. Due to its timber frame and canvas covering the shelter has an obviously modern, lightweight, functional and transient appearance, similar to that of a large tent. The light coloured sides and roof of the shelter contrast starkly with the darker colours of the external materials of the listed building. Therefore, the shelter pays little regard to and is entirely at odds with the robust, permanent characteristics of the pub, its traditional external materials and elevational details. The later extension adjacent to the shelter has similar brickwork to the pub, it has a low roof line and it is viewed as a subordinate addition. Therefore, this extension does not offset the incongruity of the shelter in relation to the pub.
5. A significant part of the shelter is readily apparent in views from High Road, where it is seen in conjunction with the front elevation of the pub. The timber fencing along the back of the forecourt and maturing evergreen trees only partly screen the shelter from this direction. The shelter is also open to view from parts of the pub grounds and it can be seen from adjoining residential properties in conjunction with other elevations of the listed structure. The setting of the listed building extends to all of the surroundings in which it is experienced, not just the public realm. Accordingly, the shelter is viewed as an alien feature in relation to the listed pub and does not preserve its setting.
6. I understand that the shelter has been reduced in height at some stage since its erection. Tall bamboo plants have also been placed in containers in front of part of the screen fencing. However, this has had a limited effect in terms of reducing the overall visual impact of the shelter. Whilst I acknowledge that the canvas sides and roof of the shelter are removable, whether in practice they would actually be removed if it were not in use for any extended period of time is open to question.
7. Any further reduction in the height of the shelter together with additional screen fencing and planting would provide only limited mitigation in terms of visual impact, as it would simply be a further attempt to disguise the unacceptable appearance of the shelter. Also, the long term retention of any planting could not be secured. In any event, the potential to further screen an otherwise unacceptable development is not, in itself, a good argument for granting permission as it could be repeated too often, unacceptably eroding the significance of heritage assets. As a result, such measures would not satisfactorily address the harm caused. I can only consider this appeal on the basis of the current location of the shelter as to do otherwise would potentially fetter the Council's discretion in relation to any future decisions regarding the appeal property.
8. Consequently, the shelter does not accord with Policy BE1 of the Hillingdon Local Plan (LP), as it does not maintain the quality of the built environment. Also, the shelter does not accord with LP Policy HE1, as it does not conserve the setting of the listed building. Furthermore, the shelter does not accord with saved Policy BE8 of the Hillingdon Unitary Development Plan (UDP) as it is not in keeping with other parts of the listed building. The harm to the setting of the listed building does not accord with saved UDP Policy BE10.

Character or appearance of the Conservation Area

9. The character and appearance of the Conservation Area (CA) is largely derived from individual buildings of traditional character and materials in the original

hamlet of Eastcote, the surrounding later areas of high quality suburban development and the landscaped open spaces following the river Pinn.

10. The pub is one of the individual traditional buildings in part of the original hamlet. With the exception of the adjacent rank of shops and flats, the pub is largely surrounded by later suburban development constructed in varying styles but with similar materials. Due to the qualities of the shelter described above it is viewed as an alien feature in the street scene, entirely at odds with the character and materials of surrounding development. Therefore, the shelter fails to preserve the character and appearance of the CA.
11. Consequently, for this reason also the shelter does not accord with LP Policy BE1. Further, the shelter does not accord with LP Policy HE1 as it does not conserve the CA. Moreover, the shelter does not accord with saved UDP Policy BE4 as it fails to preserve or enhance the features that contribute to the special architectural and visual qualities of the CA. Also, the shelter does not accord with saved UDP Policy BE13, as it fails to harmonise with the street scene.

Other Matters

12. I understand that the shelter is used in conjunction with a distinctive style of cooking originating in Kenya known as 'Koroga', in which food is cooked outdoors in a tent-like structure. I am led to believe that this forms a popular and established part of the pub's food offer. Although I have not been supplied with any details of the pub's income, like many similar businesses the profitability is likely to be largely reliant on food sales. I acknowledge that there is a continuing decline in the number of pubs in the London area, following the trend nationally. I have also taken account of the petition signed by around 150 mainly local people in support of retaining the shelter on the basis that it enhances their enjoyment of the pub garden.
13. Nevertheless, from the submitted information it is not clear as to exactly what proportion of the pub's trade is associated with patrons enjoying Koroga cooking, as opposed to other aspects of the pub's food and drink offer. Therefore, I cannot be certain of the scale of the financial contribution made to the business income by the shelter. Consequently, there is no firm evidence before me to suggest that the shelter is essential to ensure the future viability of the pub. As a result, I have given this matter and the suggestion that the shelter supports the significance of the heritage asset limited weight.
14. I note that the appellant is willing to accept a condition regarding the soundproofing of the shelter in order to safeguard the living conditions of occupiers of adjoining residential properties. However, this would not overcome the planning harm identified above.

Planning Balance

15. Paragraph 134 of the National Planning Policy Framework explains that where as in this case there is less than substantial harm to the significance of designated heritage assets, the harm should be weighed against public benefits. Whilst the shelter assists the appellant's business and his customers, these are largely private benefits. Accordingly, there are minimal public benefits to weigh against the harm to the significance of the heritage assets.

Conclusion

16. The shelter does not preserve the setting of the listed building or the character or appearance of the CA and it fails to accord with the Development Plan. Therefore, the appeal on ground (a) fails.

Ground (f)

17. According to Section 173 of the Act, there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s.173 (4) (a)) is to remedy the breach of planning control that has occurred. The second (s.173 (4) (b)) is to remedy any injury to amenity caused by the breach. The ground (f) appeal concerns whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
18. Whilst the Council has not specified which of the above purposes it seeks to achieve in this case, its reason for issuing the notice concerns the effect of the shelter on the setting of the listed building and the CA. The notice requires the complete removal of the shelter as opposed to its modification in some way. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place.
19. The potential for a reduction in height of the shelter and for additional screening was dealt with on the ground (a) appeal. These lesser steps would not remedy the breach of planning control. Consequently, the requirements in the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) must fail.

Ground (g)

20. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The Council has given a period of one month. This would be sufficient for the actual works to be undertaken. I understand that the appellant has taken bookings for events which would involve use of the shelter for several months ahead. Extending the compliance period to cover all of the bookings listed would simply perpetuate the planning harm for a longer period. However, a compliance period of three months would strike an appropriate balance between remedying the planning harm whilst also allowing the appellant sufficient time to rearrange his business, thereby reducing the extent of the burden placed on him. To this limited extent, the appeal on ground (g) therefore succeeds.

Formal Decision

21. It is directed that the enforcement notice be varied by the deletion of the words "One (1) calendar month" and the substitution of the words "Three months" in the sentence in bold entitled "Time for Compliance" at the end of paragraph 5. Subject to this variation 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.

Stephen Hawkins

INSPECTOR