



Appeal Decisions

Site visit made on 25 June 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal A Ref: APP/M5450/C/18/3206162

Land rear of 6-8 Whitchurch Parade, Whitchurch Lane, Edgware HA8 6LR

- 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 M Amlani against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 25 May 2018.
- The breach of planning control as alleged in the notice is, without planning permission: the construction of single storey wooden Perspex canopy on the land as shown hatched on the attached plan ("the Unauthorised Development").
- The requirements of the notice are:
 1. Demolish the Unauthorised Development.
 2. Remove from the Land all debris resulting from compliance with steps 1.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) 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.

Appeal B Ref: APP/M5450/C/18/3206164

Land at 6-8 Whitchurch Parade, Whitchurch Lane, Edgware HA8 6LR

- 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 M Amlani against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 29 May 2018.
- The breach of planning control as alleged in the notice is, without planning permission:
 1. The unauthorised use of the flat roof over the single storey rear extension as a balcony ("the unauthorised use").
 2. The installation of all extract ducts, vents and air-con units on the Land ("the unauthorised development").
- The requirements of the notice are:
 1. Cease the unauthorised use and remove all furniture and other materials that facilitate the unauthorised use.
 2. Demolish the unauthorised development.
 3. Remove from the Land all debris resulting from compliance with steps 1 and 2.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal A on ground (d)

1. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving building operations it is four years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the single storey wooden Perspex canopy was substantially complete at least four years before the date the notice was issued. In this instance, that date is the 25 May 2014.
2. The appellant indicates that the canopy was in situ when he took possession of the appeal premises in June 2014. Satellite images have been provided which appear to show the canopy in situ in October 2016 and in April 2017. However, no photographic evidence has been provided which shows the canopy was in place on or before 25 May 2014.
3. The appellant has provided photographs which, it is said, show signs of age and deterioration to the timber frame of the canopy, as well as wear to the Perspex. This deterioration is said to be consistent with the structure having been in place for a period of several years.
4. However, it does not say how long a period of several years is. The term 'several' is, by definition, not exact. In the absence of any evidence supporting the extent of degradation, it does not demonstrate with sufficient clarity that the condition of the timber frame is consistent with it having been in place for a period of four or more years.
5. The appellant points to the remnants of beads being hung from the timber, which it said was done by the previous occupier when they ran a shisha smoking place. However, again, there is no visual or written evidence that the beads were in place prior to 25 May 2014.
6. It is said in the initial grounds of appeal that further evidence would be submitted, including statements from individuals with knowledge of how the site has been used over the past several years. However, no such evidence has been forthcoming.
7. As a consequence, I am not satisfied it has been demonstrated, on the balance of probabilities, that the single storey wooden Perspex canopy was substantially complete on or before 25 May 2014.
8. The appeal on ground (d) therefore fails.

Appeal A on ground (g)

9. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
10. The notice in Appeal A gives a period of 3 months for the development to be demolished and all debris removed from the land. The appellant argues that the canopy is used to shelter a storage unit for dry foodstuffs, as well as a

refrigerated unit. It is said that they will need to be relocated to protect them from the elements.

11. Whilst the appellant indicates there is not currently room for them within the building, there is nothing before me to suggest the products stored within them could not be kept elsewhere on the premises nor that units could not be relocated to another property elsewhere. There is no evidence that the removal of the canopy would unduly affect the appellant's business and very little to support the view that a period of 12 months would be more reasonable.
12. In my view, a period of 12 months would not deal with the harm identified in the notice with the necessary expediency. It seems to me that the period of 3 months given by the notice is a reasonable length of time for the works to be undertaken and the appellant to find alternatives for the storage purposes it has been used for.
13. The appeal on ground (g) therefore fails.

Appeal B on ground (b)

14. To succeed on ground (b) the onus is on the appellant to show, on the balance of probabilities, that what is alleged in the notice has not occurred as a matter of fact. The notice alleges the use of the flat roof over the single storey rear extension as a balcony and the installation of extract ducts, vents and air conditioning units.
15. The appellant indicates that the flat roof is not used as a balcony. In contrast, the Council indicates within its statement (which comprises its original officer report) that the roof of the single storey rear extension is being used as a roof terrace with tables, chairs, storage crates and other paraphernalia. There are photographs appended to the report which appear to have been taken in April and May 2018 before the notice was issued. However, the photographs are of poor quality and it is not clearly apparent from any of them that there are tables and chairs, or other paraphernalia which indicates its use as a balcony.
16. The appellant has provided satellite imagery from various dates including April 2017 and June 2018. Again, however, the imagery is particularly unclear and I am unable to determine from them whether or not the roof was being used as a balcony at the time they were taken. An undated photograph within the appellant's statement shows a pallet and some storage boxes being housed on the roof but no evidence of its use as a terrace.
17. Whilst what matters is what existed at the time of my notice, I was able to see from my site visit that the roof was accessible by doors at first floor level of the property. There was a storage cabinet present which appears to be the same one shown on the Council's photographs from April and May 2018. However, there were no tables and chairs present on the roof, no railings nor any other paraphernalia which suggests the roof has been used as a balcony. I also noted signs within the property which informed customers not to use the roof area.
18. Consequently, I find that, on the balance of probabilities, at the time the notice was issued, the alleged use of the flat roof over the single storey rear extension as a balcony had not occurred as a matter of fact.

19. Nevertheless, there is no dispute that the installation of extract ducts, vents and air conditioning units has occurred. As a result, the appeal on ground (b) succeeds only in part. I shall correct the notice to delete the first part of the allegation in respect of the use of the roof.

Appeal B on ground (a)

20. The terms of the deemed application derive directly from the alleged matters in the notice, as corrected. In light of my conclusion to correct the allegation in relation to Appeal B on ground (b), the ground (a) appeal and the deemed application relate solely to the installation of all extract ducts, vents and air-con units.
21. The main issues are:
- the effect of the development of the living conditions of neighbouring occupiers by reason of noise and disturbance; and,
 - the effect of the development on the character and appearance of the area.

Character and Appearance

22. The appeal property comprises a two-storey, mid-terraced property which is in commercial use. The parade of which the appeal property is part of is distinctly commercial in character. There is a hotel to the west of the site whilst to the east is a mix of residential and commercial units on Whitchurch Lane. To the rear of the appeal site there is a small area occupied by a tyre business and the servicing areas for the units on the parade. Beyond those are the rear gardens of the dwellings on Buckingham Road.
23. The development subject of the deemed application as a result of the correction to the notice comprises several large extract ducts, vents and air conditioning units which have been sited on the roof the ground floor rear addition of the property.
24. Whilst there are several units and they are placed on the roof, they are not widely visible within the public realm, being screened from Whitchurch Lane. They units are visible from the rear yard area. Views from the rear gardens on Buckingham Road would be possible but limited by the tree and vegetation cover. Nevertheless, from either vantage point, the units are seen in the context of the heavily commercialised character of the rear yard and the rear façade of the parade. As a result, I am satisfied that they are not unduly prominent and do not detract from the appearance of the building or the area as a whole.
25. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area, in accordance with Policies 7.4 and 7.6 of the London Plan¹ which state that development should provide a high quality design response and make a positive contribution to the public realm. It will also accord with Policy DM1 of the Harrow Development Management Policies 2013 (HDMP) which states that proposals which fail to achieve a high standard of design will be resisted.

¹ The London Plan: The Spatial Development Strategy for London, consolidated with alterations since 2011, 2016

Living Conditions

26. The closest residential properties to the appeal site are those located to the rear on Buckingham Road. I saw from my site visit that the units sit close to the rear gardens of 3a, 3 and 5 Buckingham Road. The Council alleges that the proximity is such that the units have the potential to harm the living conditions of the residents of those properties by the noise that they generate.
27. At my site visit, I stood on the rear roof of the appeal property at its nearest point to the garden of No 3a. The continuous low hum from the units was audible, however, it had diminished considerably in the short distance I had moved away from the units. Whilst the noise is likely to be audible from within the rear gardens of those properties, I have no reason to believe that it would be of a level that is harmful to the occupiers. Indeed, the noise is heard in the context of the immediate area which has a reasonable level of ambient noise with road traffic from Whitchurch Lane and Buckingham Road, and the noise deriving from the servicing and commercial uses to the rear of the parade.
28. Moreover, the appellant suggests that there is a separation of around 27m between the units and the nearest rear facing habitable windows in the properties on Buckingham Road. I have no evidence to lead me to believe that is not the case. Thus, in the absence of any substantive evidence from the Council to suggest otherwise, I am satisfied that at such distances, the noise would not be audible at harmful levels within the closest residential properties.
29. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring occupiers by reason of noise and disturbance. To that end, the development will accord with Policies DM1 and DM12 of the HDMP which state that all development must achieve a high standard of amenity for neighbouring occupiers having regard to the impact in terms of noise and that the design and layout of buildings should incorporate measures to mitigate any significant noise pollution arising.

Conditions

30. The appellant has suggested conditions in respect of noise reduction, servicing and removal of the units, however, in light of my findings on the main issues above, I do not consider such conditions to be necessary. The Council has not suggested any conditions and, on that basis, I see no reason why any conditions are necessary in this instance.

Conclusion

31. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the installation of all extract ducts, vents and air-con units as described in the notice as corrected.
32. Appeal B on ground (g) does not therefore fall to be considered.

Formal Decisions

Appeal A

33. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

34. It is directed that the enforcement notice is corrected by:

- the deletion of the words "1. The unauthorised use of the flat roof over the single storey rear extension as a balcony ("the unauthorised use")" in paragraph 3 of the notice.

35. Subject to the correction, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of all extract ducts, vents and air-con units at 6-8 Whitchurch Parade, Whitchurch Lane, Edgware HA8 6LR as shown on the plan attached to the notice.

J Whitfield

INSPECTOR