



Appeal Decision

Site visit made on 8 October 2019

by Anthony J Wharton BArch RIBA RIAS MRPPI

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

Decision date: 17 October 2019

Appeal Ref: APP/Y5420/F/18/3219063

Middays Brasserie and Lounge, 26 The Broadway, London N8 9SU

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Firat Mayil against a listed building enforcement notice (LBEN) issued by the Council of the London Borough of Haringey (the LPA).
 - The LBEN, Reference LBW/2018/00029, was issued on 19 November 2018.
 - The contraventions of listed building control alleged in the notice are:
 1. The installation of a large extraction flue to the rear elevation.
 2. The erection of a part timber and part metal canopy to the front elevation.
 - The requirements of the notice are as follows:
 1. Remove the extractor flue and associated wall mounts/brackets.
 2. Remove the front canopy and associated wall and floor mounts.
 3. Make good any damage to the building and dispense of resultant debris as a result of complying with requirements 1 and 2 above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is made on grounds (d), (e) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal is allowed in part on ground (h) only. Otherwise the appeal is dismissed and the LBEN is upheld as varied. See formal decision below.

Background information and relevant policy

2. The appeal building was constructed in 1938 to a design by Architects Slater, Moberly and Uren. It was listed in Grade II on 16 January 1981. It is located on the eastern side of The Broadway and is within the Crouch End Conservation Area (CECA). The three storey, pinkish-red brick building, with stone parapets, is still notably recognisable from the list description. The building is part of a group of listed civic buildings centred on the small green in this part of Horney. These include Hornsey Town Hall and Broadway House. When the appeal was submitted the restaurant was known as Middays Brasserie and Lounge. At the time of my visit the signage showed that the restaurant was operating as Pera Kitchen London.

3. The planning and enforcement history of the building is set out in the Council's statement. The latest consents and approvals relate to fascia signage and the installation of a new main entrance door. In 2011 applications for listed building consent (LBC) and planning permission (PP) had been refused for replacement of the existing windows facing on to The Broadway. The Class A3 restaurant use was granted PP following a 2006 application. At that time LBC had also been granted for a new entrance, ventilation grill and internal alterations including a new kitchen. In 2008, in a split decision, LBC was granted on appeal for a large 'awning/canopy' to

the front of the premises. I have not been provided with details of what had been granted LBC at that time.

4. In November 2011 the property had been leased by the Council to '*The Ciabatta Bread Company Limited*' for a period of 10 years. In 2006 the company had previously been granted a lease by the Council to use the footway at the front (or side) of the property for tabling and chairs in relation to the Class A3 use. This permission had followed a refusal of PP in 2005 for a change of use of the ground floor from A1 retail use to A2 Professional and financial services use.

5. The 2006 PP had included a condition requiring that details of any extract fans should be submitted to, and approved by, the LPA prior to implementation of the Class A3 restaurant use. There is no evidence before me to indicate that this condition was complied with, or that the appeal flue has been granted LBC. The Council also indicates that the existing flue had replaced an earlier flue.

6. On behalf of the appellant, surprise is expressed that the Council has taken so long to take enforcement action over the extract flue which, it is contended, must have been in place since 2006. However, the Council's statement contradicts this. However, irrespective of how long the extract flue has been in position, or whether or not it is the original flue, the LPA is not time-barred from issuing a LBEN. The Council in any case explains that its enforcement team had not received any complaint and that planning enforcement is predominantly a reactive service.

7. The most relevant policies are Policy 7.8 (Heritage Assets and Archaeology) of the London Plan 2016 (LP); Policy SP12 (Conservation) of The Haringey Local Plan 2017 (HLP) and Policy DM9 (Management of Historic Environment) of the Haringey Development Management DPD 2017 (HMDPD).

8. The National Planning Policy Framework (NPPF) is a major material consideration as is National Planning Policy Guidance (PPG). I have had regard to the relevant policies and guidance within the NPPF and PPG and particularly to the policies and guidance relating to enforcement and the conservation and enhancement of the historic environment. Because the appeal building is listed in Grade II and also lies within the CECA, I have had special regard and have paid special attention to the requirements of sections 16(2) and 72 of the PLBCAA.

The appeal on ground (d)

9. This ground of appeal addresses situations where essential and urgent works are needed to preserve the listed building. The emphasis is on the words '*essential*' and '*urgent*' and '*to preserve the listed building*'. This ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case for all three tests.

10. On behalf of the appellant it is contended that the restaurant use needs to have an extraction fan/flue provided for health and safety reasons. It is further stated that, without such, the premises cannot function properly as a restaurant. There are no specific safety or health reasons quoted with regard to the need for the canopy.

11. Turning to the first test, I accept that any restaurant, including this one, does normally need some form of extraction system. However, that is not the same as saying that this particular external flue was so '*urgently necessary in the interests of*

safety or health' that it had to be in the form as fitted. The flue was installed primarily in order to provide an extract system for the restaurant. There is nothing to suggest that this particular design for an extract flue was absolutely necessary due to any specific safety or health concerns for users of the building or for members of the public. The only requirements were that the Council's Environmental Health Team was satisfied that the installation complied with the Building Regulations. There is nothing before me to suggest that alternative solutions had been explored; that a scheme had been presented to the LPA for approval or that any detailed matters relating to the flue had been discussed with the Council.

12. When matters such as extract systems are installed in listed buildings care needs to be taken to ensure that the works are carried out in such a way so as not to harm the character of the building, its setting or its features of architectural and historic interest. It would appear that this was the reason for the condition attached to the original PP for change of use to a restaurant. In this case, it seems clear to me that the Council was not made aware of the flue which is now in place. I am not convinced that the first test in relation to an appeal on ground (d) has been met.

13. Nor, in my view has the appellant conclusively shown that it was not practicable to achieve the aims of safety, health or preservation of the building by some other solution. Whilst acknowledging that a temporary solution was not feasible, it may well have been practicable to have resolved the Environmental Health/Building Regulation matters relating to necessary extraction in some other manner. I do not consider that the appellant has demonstrated that the second test has been met.

14. On the third test I also consider that the appellant has failed to show that the works (flue and canopy) as installed were the minimum measures necessary to achieve the aims of safety, health or preservation. The works were seemingly carried out with one aim in mind: to provide some form of extraction system and a covered area to for the external seating. Neither element of these works, in my view were necessary in relation to health and safety issues. I can only conclude that none of the three tests have been met and the appeal must fail on ground (d) in relation to both elements of the unauthorised works to the listed building.

The appeal on ground (e)

15. The main issues are as follows:

- The effect of the works on the character and integrity of the listed building;
- The effect on its setting and;
- The effect on the special architectural and historic features of the building.

The extractor flue

16. Having seen the extractor flue from both near and distant viewpoints, I share the Council's concerns about its effect on the character and integrity of the listed building; on its setting and on its features of special architectural interest. These harmful impacts on the building have, in my view, also had a negative impact on the character and appearance of the CECA.

17. The flue, as fixed, follows a tortuous and visually damaging route across the face of the rear red brickwork to the building. It emerges, from a ground floor window opening adjacent to a metal staircase, like some form of alien and ill-designed metal box. It then extends horizontally onto a crude, supporting bracketed platform before rising vertically and inelegantly between first floor windows to a level above the eaves of the building. In my view it is perceived as an obtrusive and '*Heath-Robinsonish*' type of contraption that is totally out of place on this rear elevation.

18. I acknowledge that some form of ventilation is required but this particular flue is visually harmful and detrimental to the character of the listed building. As indicated by the Council and as seen on my site visit, it can be seen from within Rose Place as well as from the opposite side of The Broadway itself. In the latter case it is the upper section that is visible. In my view this awful metal addition to the building is harmful to its character and integrity; to its setting and to its features of architectural and historic interest: namely the window openings and the brickwork. It follows that it is also harmful to the character and appearance of this part of the CECA.

19. In summary I consider that the flue is contrary to Policy 7.8 of the LP, as well as to Policies SP12 and DM9 of the HLP and the HDMDPD respectively. It is also contrary to sections 12 and 16 of the NPPF in that it is of very poor design and neither conserves nor enhances the historic environment in this part of the Borough. For the above reasons, therefore, I do not consider that listed building consent should be granted for its retention.

The part timber and part metal canopy to front elevation

20. Having seen the canopy I again agree with the Council that it is a most inappropriate and visually harmful addition to the listed building within this part of the CECA. An inspection at close quarters reveals the crudeness of its design. The supporting structure is formed from basic square and round metal sections and the timber roof comprises chipboard or plywood. It is of very poor design and contrary to the aims of section 12 of the NPPF.

21. When viewed from The Broadway, or the other side of the square, the structure is perceived as a dark, long and bland structure which detracts markedly from the fine brickwork to this elevation of the Grade II listed building. As well as detracting from the character and integrity of the listed building, it is harmful to the overall setting of the surrounding listed buildings around the green, including the former town hall. It detracts from the line of the stone banding between ground and first floors; it detracts from the fascia of the building, as well as from the fine brickwork to the upper stories. The inappropriate lighting adds to its visual incompatibility with the rest of this façade.

22. It was clear from my visit that significant works of improvement are being carried out to the front of the former town hall, as shown on the images of the hoardings around the site. The canopy is at odds with the historic design of the host building, as well as with the surrounding listed buildings. Again I consider that it is contrary to Policy 7.8 of the LP; to Policies SP12 and DM9 of the HLP; to section 16 of the NPPF and that it neither preserves nor enhances the character or appearance of the CECA. For the above reasons, therefore, I do not consider that listed building consent should be granted for the retention of the canopy.

23. The appeal fails on ground (e) in relation to both the flue and the canopy and listed building consent is not granted for either element of the works carried out in contravention of the PLBCAA.

The appeal on ground (h)

24. Having considered all of the circumstances of this case I agree with the appellant's contention that the compliance period of just one month falls short of what should reasonably be allowed. I accept that a 6 month period is appropriate, reasonable and in the overall circumstances necessary in this particular case. Taking into account the lawful restaurant use and the fact that alternative solutions will be required for both elements of work, it will be necessary for the appellant to liaise with the Council with regard to acceptable solutions which are not harmful to the listed

building or the CECA. I shall, therefore, vary the notice accordingly and the appeal succeeds to this limited degree on ground (h).

Other Matters

25. I acknowledge that in 2008 a split decision was issued on appeal (APP/Y5420/C/08/2074275) whereby a large 'awning or canopy' was allowed to the area fronting the green. However, there are no details of this before me and I have considered this appeal on the basis of the canopy as currently existing and as inspected during my site visit. If indeed this was similar to the canopy which was allowed at that time the material considerations, in particular the introduction of the NPPF and more up-to-date local policies relating to design have significantly changed since 2008. I acknowledge that the principle of a canopy is acceptable but, for the reasons set out above, this particular canopy is unacceptable on current design and heritage grounds.

26. I have noted the concerns raised on behalf of the appellant that the Council has only recently taken enforcement action in relation to these works and that there has been a period of 12 years whereby it would appear that the works were acceptable. However, as indicated above, unlike in planning issues, there is no time limit by which a LPA is precluded from taking listed building enforcement action. The Council itself stresses that enforcement action is reactive and they have clearly received complaints about the works carried out at the premises. These are evident from the submissions by interested persons and I agree with their concerns about the negative impacts of the works on the listed building.

27. In reaching my conclusions I have taken into account all of the other matters raised by the Council, by interested persons and those made on behalf of the appellant. These include the full planning history; the initial appeal documents; the background to the submission of the appeal; the appellant's statement in support of the grounds of appeal; all references as to whether the proposals accord with relevant policies; the photographic evidence; whether or not there are any mitigating circumstances that may support the case for approval; the fact that the Council has benefitted financially from the lease and the appellant's Architect statement with regard to the what is necessary for the functioning of the restaurant.

28. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision that LBC should not be granted for the flue and canopy as installed at the listed building.

Formal Decision

29. The appeal succeeds to a limited degree on ground (h) only. I direct that the Listed Building Enforcement Notice be varied by deleting the figure '1' in the Third Schedule (Steps required to be taken) and by substituting therefor, the figure '6'.

30. Otherwise the appeal is dismissed and the Listed Building Enforcement notice is upheld as varied. Listed Building Consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Anthony J Wharton

Inspector