



Appeal Decision

Site visit made on 22 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Appeal Ref: APP/H5390/C/19/3226318

Hally's, 60 New King's Road, London SW6 4LS

- 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 Ms Anna Halliday of Hally's Ltd against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 26 February 2019.
 - The breach of planning control as alleged in the notice is:
The installation of 2 air conditioning units on the flank elevation without planning permission.
 - The requirements of the notice are:
Remove the two air conditions units on the flank wall and make good the flank wall by restoring it to its condition prior to the unauthorised works.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be varied by substituting the period of compliance of 3 months with 9 months. 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.

Procedural matter

2. In their grounds of appeal, under ground (f), and without prejudice to their arguments under ground (a), the appellants ask that a temporary permission be granted to provide sufficient time for an application to be submitted for a permanent solution. As this deals with time periods to comply with the requirements of the notice, I shall treat this as an appeal under ground (g) and will address it below.

Appeal on ground (a) – that planning permission should be granted

Main Issues

3. The main issues are the effect of the development on:
 - i) the character and appearance of the surrounding area, and
 - ii) the living conditions of nearby residents with particular regard to noise.

Reasons

Character and appearance

4. The two air conditioning units project from the flank wall of the three storey building, which is on the corner of New King's Road and Doria Road. Whilst New King's Road is a vibrant commercial road, Doria Road is a residential street with attractive three storey terraced properties. Although the site lies not far to the west of the Parsons Green Conservation Area, this part of New Kings Road is nevertheless characterised by Victorian terraced buildings with a plethora of features of architectural interest, such as decorative window heads, cornicing, traditional shopfronts and, immediately opposite the appeal site, on the other side of the Doria Road junction, a visually striking conical corner turret. The residential properties in Doria Road also possess interesting architectural features.
5. The flank wall on which the air conditioning units are installed lacks the richness of architectural features which are found on front elevations. Nevertheless, it is inoffensive and does not stand out in the street scene. The air conditioning units are of different sizes, but are sizeable structures and high up on the wall so that they stand out. Despite being of a modern design, they have a utilitarian appearance that is at odds with the high quality appearance of buildings in the vicinity of the site. They relate poorly to the windows and door in the side wall, and do not constitute the high standards of design that is sought in both local and national policy. I consider that they fail to respond appropriately to the high-quality architecture in the area, and materially harm the street scene.
6. The appellants have suggested that the units be allowed be retained on a temporary basis, enclosed in an acoustic cover, to allow time for a more appropriate design or siting to be agreed with the Council, to be the subject of a further application. A cover would result in the projections becoming even larger, and would not adequately mitigate the harm that I have found. I therefore find that
7. I therefore find that the units result in clear harm to the character and appearance of the surrounding area, and conflict with Policies DC1 and DC4 of the Hammersmith and Fulham Local Plan 2018, which respectively deal with design and conservation and alterations and extensions to buildings.

Living conditions

8. The two units are installed beneath windows of first floor residential accommodation. The appellants have provided me with technical information about the noise levels associated with the two models concerned, and the loudest is shown as being 59dBA, which is about equivalent to conversational noise levels. Whilst it is likely that units may get noisier through the passage of time or if not maintained in accordance with the manufacturer's instructions, I consider it unlikely that they would become significantly noisier than they are now.
9. The units were in operation at the time of my visit, and I asked that the one cooling the café be turned to maximum. Their sound level was quieter than the kitchen vent just a metre or so away, and in any event, the noise was completely masked by the sound of passing traffic on the busy New Kings

Road, the A308, a main road through Parsons Green leading from Putney to Chelsea.

10. The units have been in situ for well over a year, but I have not been told of any complaints from residential occupiers about noise from the units, and the Council has produced no noise evidence of its own. Bearing in mind that the café is only open during the daytime, and the times of use of the air conditioning units could be controlled through the imposition of conditions, I consider that they are unlikely to result in material planning harm to the living conditions of nearby residents. Nor do they conflict with LP Policy CC11 which deals with noise.

Other matters

11. The appellants have explained that the reason for installing the air conditioning units was because of the uncomfortably warm conditions experienced within the seating area of the café, which was seen as discouraging custom, and within the windowless basement kitchen, where staff were being exposed to poor working conditions. I recognise the value of having cooler air in these areas, and the contribution that this makes to the viability of the café. I have taken into account that the café contributes to the local economy, provides a service to its customers and provides employment for its staff.
12. However, the Government, in the revised National Planning Policy Framework, identifies good design as a key aspect of sustainable development, which creates better places in which to live and work and helps make development acceptable to communities. It also says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. I therefore consider that the harm to the character and appearance of the area outweighs other considerations.
13. The requirements of the notice interfere with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy is a matter of legitimate public interest. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellants' rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
14. I therefore conclude that planning permission should not be granted for the development, and the appeal on ground (a) fails.

Appeal under ground (f) – that the steps required are excessive

15. The notice seeks to remedy the breach of planning control by restoring the land to its condition before the breach took place. The steps specified do not exceed what is required to achieve this. I have discussed above whether any lesser steps would be appropriate, but I have concluded that there is no obvious less onerous alternative. Accordingly the appeal on ground (f) fails.

Appeal under ground (g) – that the time for compliance is too short

16. Whilst 3 months is an adequate period to comply with the steps, I consider it reasonable to allow additional time for the appellants to explore with the Council whether there may be a mutually acceptable means of proving air conditioning to the café, and to allow sufficient time for discussions to take place, for an application to be submitted and determined, and if approved, for the approved scheme to be implemented. Given the importance that is attached to supporting economic development, I shall therefore extend the period of compliance to 9 months.

Overall conclusion

17. For the reasons given above, I conclude that the appeals on grounds (a) and (f) fail, and that the appeal on ground (g) succeeds to the limited extent indicated above, and that subject to variation, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

JP Roberts

INSPECTOR