The Planning Inspectorate

Appeal Decision

Site visit made on 24 October 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/T5150/C/19/3219838
414 High Road, Wembley HA9 6AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Artan Ethemi against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 28 November 2018 under ref. E/17/0698.
- The breach of planning control as alleged in the notice is: *Without planning permission, the erection of a single storey extension and a flue at the rear of the premises.*
- The requirements of the notice are:
  STEP 1 Demolish the single storey extension and the flue at the rear of the premises.
  STEP 2 Remove all items, materials and debris arising from that demolition from the premises.
- The period for compliance with these requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

Decision

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

Matters of clarification

2. As clarified by the appellant at the site visit, I have taken the appellant's name in the heading above from his appeal statement and letter, rather than from the enforcement notice appeal form.

3. The appeal concerns a bar/café/restaurant (trading as Cerbul Romanesc) on the ground floor of a 3-storey building along a parade on the northern side of High Road. The appellant runs and manages this enterprise. He says he took over the place in 2017.

4. On the day of my visit, Cerbul Romanesc was closed. Internal renovations were being carried out. Moreover, the single storey rear extension attacked by the enforcement notice had been substantially, but not entirely, demolished. A flue also falls within the alleged breach of planning control described in the notice. This flue remains in situ.

5. I should emphasize that as no appeal has been brought on ground (a), the planning merits of the development alleged in the enforcement notice do not fall to be considered. I say this because the appellant's appeal statement of 22 May 2019 at point (11) goes to the planning merits of the

alleged breach by suggesting that the unauthorised development has not resulted in the loss of the existing parking and servicing area and respects the host building and the visual amenity of the area.

6. Although no appeal has been brought on ground (d) – that it was too late for the Council to take enforcement action at the date when the notice was issued – the appellant's written representations stray into this territory. The Council has covered the origins of the development in its statement and I shall consider the potential ground (d) appeal.

The appeal on ground (b)

7. In order to succeed on this ground, the burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact. The relevant date for assessing whether the alleged breach of planning control set out in a notice has taken place is the date of issue of the notice. Hence, my focus must be on any pertinent matters which had occurred by the time the notice was issued on 28 November 2018.

8. The main thrust of the appellant's case on this ground seems to be that the unauthorised developments took place over 4 years ago, in or around early 2010. The appellant says he does not know the exact dates as he was not managing the restaurant then. Such evidence is more relevant to the potential ground (d) appeal. The issue for ground (b) is simply whether the single storey extension and flue at the rear of the premises have been erected at all. The photographs from the Council's site investigation on 16 November 2017 clearly show the existence of the subject extension, clad in white plastic materials, and the tall silver flue. I saw the flue and the remaining part of that extension on my site visit. The extension has been added to an original single storey flat-roofed rear extension granted planning permission under ref. 01/0646 in May 2001.

9. I conclude on the balance of probability that what has occurred is the erection of a single storey extension and a flue at the rear of the premises, as stated in the enforcement notice. The appeal on ground (b) must fail.

The appeal on ground (c)

10. On ground (c), the onus is on the appellant to demonstrate on the balance of probability that the matters stated in the enforcement notice, when they occurred, did not amount to a breach of planning control.

11. Under section 336(1) of the 1990 Act as amended, "*building*" is to be interpreted as including "*any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*". For the purposes of section 55(1), development, amongst other things, means the carrying out of building operations in, on, over or under land. By reference to section 55(1A) building operations include

structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.

12. The subject extension (now partly demolished) and external flue fall within the definition of building operations and constitute development. Section 57(1) makes clear that, subject to certain provisions, planning permission is required for the carrying out of any development of land. I know of no reason why any of those other provisions would apply in this case and none of them have been referred to in the appellant's written representations. Planning permission is required. This has not been obtained. I therefore conclude on the balance of probability that the unauthorised development alleged by the notice constitutes a breach of planning control. Accordingly, the appeal on ground (c) must fail.

Potential ground (d)

13. If an appeal on ground (d) had been made, the onus would have been on the appellant to show on the balance of probability that the operational developments alleged in the notice were immune from enforcement action because they were substantially completed more than 4 years before the notice was issued.

14. The appellant's assertion that the unauthorised developments took place over 4 years ago, in or around early 2010, is contradicted by the aerial photograph from 2015, produced by the Council, which shows an open wooded structure or framework projecting out over the rear yard beyond the original single storey rear extension. This is presumably why the appellant, upon taking over the premises in 2017, could still identify a back garden with litter, overgrown bushes and flooding problems. I could see no such back garden on my visit owing to the subject rear extension.

15. A previous leaseholder of no. 414 (Besim Tahiri) refers only to a "*temporary shed or tent*" being present at the end of the premises since at least June 2013. The owner of the first floor at no. 414A (Jose Marques) makes a rather vague reference to "*the shed of the restaurant below*" having been there for over 6 years. This may well be a reference to the open wooden framework. It is likely that he would only know "*that it had been unattended for most of the time*" if he could see down into the structure. The minor electrical works carried out by Protek Electrical Ltd in September 2013 involved replacing "*2 x double sockets in extension area*." Without further clarification, this could easily have related to works within the original single storey rear extension.

16. The appellant said he made only minor changes so as to improve the deteriorating condition of the "*fence*" and ground floor. The term "*fence*" is not understood unless it is being used to point to the former wooden framework. In any event, the changes made were not small; it appears from the evidence that after some excavation of the land to the rear, a new solid extension with an external flue was erected in place of the wooden framework in or around September 2017, when the Council's enforcement case was created following the receipt of complaints.

17. Drawing these threads together, I find on the balance of probability that the notice was issued within 4 years of the breach of planning control having taken place as is required. It was not too late for the Council to take enforcement action when it did. Any appeal brought on ground (d) would, therefore, have failed.

Andrew Dale

INSPECTOR