

Appeal Decisions

Site visit made on 12 November 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 19 November 2019

Appeal Ref: APP/A5270/C/18/3208257 and 3208258

Fawanees, 69 Hanger Lane, London W5 1DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Scharaf Sami Scharaf and Mr Sami Scharaf Mousa against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 29 June 2018.
 - The breach of planning control as alleged in the notice is the erection of a first floor front extension and external metal staircase situated to the front and side of the premises.
 - The requirements of the notice are A. Demolish the first floor front extension in its entirety; B. Remove the external metal staircase and supports to the front and side elevation of the premises; and C. Remove all resultant debris.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended and appeal ref. no. 3208257 is also proceeding on grounds set out in section 174(2)(a).
-

Decision

1. The appeals are dismissed, the enforcement notice is upheld, and planning permission is refused.

Application for costs

2. An application for costs has been made by the Council against the Appellants. This application is the subject of a separate Decision.

Reasons

The ground (c) appeals

3. The appeal building has two storeys and a flat roof and is in use as a restaurant. The first floor is set back from the ground floor frontage to Hanger Lane. The extension that is the subject of the appeals takes up the whole of the space in front of the first floor element of the restaurant. The Appellants have referred to planning permissions for development at the property, such as planning permission PP/2011/3390, but none of these are for the extension and the staircase that have been erected.
4. Planning permission has not been granted for the alleged breach of planning control and the development is not permitted under the provisions of The Town and Country Planning (General Permitted Development) Order 2015 as amended, or under any preceding Order. The ground (c) appeals thus fail.

The ground (d) appeals

5. To be immune from enforcement action the alleged breach of planning control must have been substantially complete for four years prior to the date of issue of the enforcement notice. The critical date is 29 June 2014. Uncontested photographic evidence submitted by the Council clearly indicates that the extension and staircase were erected in 2017. The breach of planning control is not therefore immune from enforcement action. The ground (d) appeals thus fail.

The ground (a) appeal

6. The main issue is the effect of the development on the character and appearance of the building and the area.

7. The appeal building is on the west side of Hanger Lane. To the south is a flat roofed commercial building and to the north, set well back from the road, is a fast food restaurant. Given its location relative to the road and to the fast food restaurant, and despite the presence of a tree close to its north elevation, the appeal building is a prominent feature on Hanger Lane.

8. The Appellant has referred to an Officer report for the aforementioned planning permission which concluded that "...it is not considered that the proposal would detract from the appearance of the building or the character of the area as a whole". But that development, for retention of a terrace and a retractable awning, is entirely different to the extension and staircase that have been erected. As previously mentioned the extension takes up the whole area in front of the first floor element of the restaurant. Furthermore, the extension rises above the flat roof of the restaurant, unlike the permitted awning or a retractable canopy that was the subject of a planning application in 2014 that was not granted.

9. The extension, given its height and that it takes up the entire flat roof over the ground floor of the restaurant, is a bulky and incongruous addition to the building. The staircase, on the front and side of the building, is a prominent and visually intrusive feature that detracts from the simple form and character of the building. The unauthorised development as a whole has had a significant adverse effect on the character and appearance of the building and the area. The development thus conflicts with policies 7.4 and 7B of Ealing's Development Management Development Plan Document and policy 7.4 of the London Plan.

Other matters

10. Evidence indicates that use of the first floor extension, as a shisha café, is resulting in noise and disturbance to the residents of houses on the opposite side of Hanger Lane. This is a factor that counts against the unauthorised development but is not a factor, in itself, that merits failure of the ground (a) appeal.

11. Under the ground (f) appeals the Appellants have mentioned some matters that are relevant to the ground (a) appeal. The use of the extension is only possible because the extension has been erected and is also unauthorised. There are no changes to its external appearance, or any planning conditions, that would result in the extension having an acceptable appearance. Working with the Local Planning Authority can only be achieved by making direct contact with them and cannot be achieved through the appeal process. Neither these nor any others matters mentioned outweigh the conclusion on the main issue.

Conclusion

12. The unauthorised development has had a significant adverse effect on the character and appearance of the building and the area. The ground (a) appeal thus fails.

The ground (f) appeals

13. The Appellants have not suggested what lesser steps would remedy the breach of planning control. There are no lesser steps than the removal of the extension and staircase to remedy the breach of planning control. The ground (f) appeals therefore fail.

The ground (g) appeals

14. The changed management of the shisha café use of the property is not a reason to extend the period for compliance with the requirements of the notice, and the Appellants have not indicated what period they consider would be reasonable. The possible loss of employment for staff is regrettable but compliance with the requirements of an enforcement notice should be achieved as soon as is reasonably possible. Three months is a reasonable time to effect the removal of the extension and the staircase. The ground (g) appeals thus fail.

John Braithwaite

Inspector