



Appeal Decision

Site visit made on 2 June 2020

by Zoë Franks Solicitor

An Inspector appointed by the Secretary of State

Decision date: 25 June 2020

Appeal Ref: APP/H4505/C/19/3243207

168 Kells Lane, Low Fell, Gateshead Borough, NE9 5HY

- 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 David Harbron against an enforcement notice issued by Gateshead Council.
 - The enforcement notice, reference DC/19/00915/FUL, was issued on 29 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a wooden "shack" structure ("Shack Bar") measuring 3.75m x 2.93m x 2.3 m on the Land in the approximate location shown blue on the Plan.
 - The requirements of the notice are: (i) Dismantle and remove from the Land the Shack Bar in its entirety. (ii) Remove all materials from the Land arising from the compliance with (i) above.
 - The period for compliance with the requirements is 8 weeks.
 - 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is dismissed and 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.

Ground (a) and the deemed planning application

2. The appeal under this ground seeks planning permission for the matters stated in the notice for the development as built i.e. the wooden Shack Bar.
3. The main issue in this appeal is the effect of the development on the character and appearance of the area.
4. The site is situated on a main road within Low Fell, a residential suburb of Gateshead, and is within the Low Fell Conservation Area ("the CA"). The section of Kells Lane on which it is located is predominantly residential but with a few commercial uses and the road is described in the Character Statement as containing: *"a rich diversity of building types; vernacular stone cottages; stone and brick terraces; and semi-detached stone villas in grounds such as Home House with its tall garden wall. In the midst of this housing the attractive Kells Lane Primary School and St Peter's and Denewell Avenue churches dominate*

the skyline and the very poorly designed Last Days of the Raj restaurant stands out.”¹²

5. Many of the buildings in the immediate vicinity of the site are terraces, constructed of either stone or red brick. There is a large detached sandstone building across the small road to the north of the site and a white-rendered pub with car parking adjoining the host property to the south. The host property is a large and fairly modern property which bears no resemblance to its surrounding buildings in either design or use of materials.
6. The development is different again from both the surrounding area and the host building, and is clearly visible from the road. It is a simple structure with a sloping roof and large canopy and hatch at the front, constructed from wood and corrugated iron (with a rough finish to both). The Shack Bar is built cutting around the bottom edge of the pitched roof of the large covered entrance to host property. It does not rest on that structure but is so close that there is little visual gap between them which causes an extremely awkward relationship between the two buildings. The angle of the sloped roof of the Shack Bar towards the downward pitch of the entrance roof is discordant and clumsy with the covered canopy at the front of the Shack Bar introducing yet another angle. In addition, the roof lines of the Shack Bar do not take any reference from the main roofs of the host property. The materials used do not reflect or complement any other building in the vicinity, or indeed the host property, and the development does not sit comfortably within the site.
7. The appellant argues the benefits of the development include the effective and efficient use of the site that contributes to the residential and economic well-being of the locality through the provision of a thriving business which includes the outdoor facility. The notice does not require the use of the outdoor space to cease or the removal of the play facility and seating area. The business can continue to offer its customers the outdoor elements but this can be provided without the Shack Bar. The operational benefits of the external Shack Bar do not outweigh the harm caused by the development to the street scene and visual amenity of the area.
8. The location on the site, the relationship with the host property and the overall design causes material harm to the character and appearance of the area. This is contrary to the good place-making and design objectives of Policy ENV3 of the Unitary Development Plan 2005, Policy CS 15 of the Core Strategy and Urban Core Plan 2010 - 2030, and the National Design Guide.
9. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
10. The site is located in the CA and there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character of that area. I consider that the development does cause harm to the CA but I do not need to consider this further in light of the reasons for dismissing the appeal as set out above.

¹ IPA17: Conservation Area Character Statements, Strategies and Policy Guidelines, Low Fell Conservation Area

² The restaurant operating on the appeal site was formerly call The Last Days of the Raj.

Ground (f)

11. An appeal under this ground is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control, or as the case may be, to remedy any injury to amenity. In this case the notice requires that the Shack Bar is dismantled and removed from the Land in its entirety. The purpose of the notice is clearly to remedy the breach of planning control and nothing less than complete removal would fulfil the purpose.
12. Furthermore, an alternative to complete removal has not been put forward in the appeal. The appellant has not indicated what part of the deemed planning application should be considered as the alternative under this ground. In the absence of a specific alternative scheme to consider this ground cannot succeed and the appeal is dismissed.

Zoë Franks

INSPECTOR