



Appeal Decision

Site visit made on 14 July 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal Ref: APP/V5570/C/19/3238199

313 Highbury New Park, Islington, London N5 2LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Salman Kurt of Dream Group Ltd against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice was issued on 21 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a glazed enclosure with retractable awning and associated plinth.
- The requirements of the notice are:
 - I. Remove the glazed enclosure with retractable awnings;
 - II. Remove [the] concrete plinth from the forecourt;
 - III. On completion of steps I and II remove from the land all materials and debris from the works.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. An appeal made under section 78 of the 1990 Act as amended against a refusal to grant planning permission for the same development at the site has been dismissed¹. This decision is a material consideration to which I attach considerable weight.

The appeal on ground (a) and the deemed planning application

Main Issues

2. The appeal on ground (a) is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation. Therefore, planning permission is sought for the erection of a glazed enclosure with retractable awning and associated plinth.
3. The main issues are the effect of the development on:
 - (i) the character and appearance of the host building and the wider area, and;
 - (ii) the living conditions of nearby occupants with regard to noise and disturbance.

¹ Ref APP/V5570/W/19/3232097 dated 14 October 2019.

Character and Appearance

4. The appeal relates to pub/restaurant which, I understand, was constructed as a public house in the 19th Century. The building has been altered through the unauthorised addition of a partially enclosed seating area, which extends along the whole of the front and side elevations at street level. The building is prominently located at a relatively busy road junction, opposite Clissold Park which is a designated Conservation Area. The area is predominantly residential, although there are recreational and commercial uses in the vicinity.
5. The appeal building is not statutorily or locally listed but it is clear that the Council considers it to be a non-designated heritage asset. The significance of the building is attributed to its 'Palladian' architectural style and detailing, in particular the symmetrical arrangement of windows and ordered façade which gives a considered appearance. It is acknowledged that some of the historic architectural details have been removed. In addition, I saw that uPVC windows have been installed and it is evident that there has been a series of previous alterations, particularly at ground floor level. Nonetheless, the building retains architectural merit and it contributes positively to the area's local identity.
6. The glazed enclosure and associated plinth forms a large and obtrusive feature that does not respect the proportions or design of the host building. The development dominates the front and side elevations, masking any remaining historic design features and detracting from the architecture of the upper floors. The development does not respect or complement this historic building and it erodes its significance as a non-designated heritage asset.
7. The site lies adjacent to the Clissold Park Conservation Area, which forms an attractive open feature within an otherwise urban area. The spacious theme is carried through to the opposite side of the road, which incorporates fairly wide pavements and green verges. The development extends across a large area of pavement, especially at the side elevation. This is at odds with the spacious nature of the locality. Contrary to the appellant's opinion, I consider that the glazed enclosure intrudes into the streetscape and stands out as an incongruous form of development that does not reflect the character and appearance of its surroundings.
8. The appellant argues that the conservation policy and guidance relied on by the Council are not relevant. Policy CS9 is a generic policy that concerns the Borough's built and historic environment and is relevant to the matters before me. The Council has explained why it considers the building to be a non-designated heritage asset and provides an analysis of its significance in accordance with paragraph 197 of the National Planning Policy Framework.
9. I appreciate that the building has been altered previously, as described above. However, the large scale and unsympathetic design of the more recent development is significantly more damaging to the historic building and the street scene in general.
10. I conclude on this matter that the development has an adverse effect on the character and appearance of the host building and the wider area. It is contrary to Policy CS9 of the Core Strategy (2011), Policy DM2.1 of the Development Management Policies (2013) and the Council's Urban Design Guide (2017) which, among other things, seek to protect local identity and preserve heritage assets while also promoting high quality design.

Living Conditions

11. The development enables a relatively large number of customers to sit within an area that is partially open. Although the awning and balustrades may provide some acoustic treatment, I note that these features are partially retractable meaning that parts of the seating/dining area could be open for a proportion of the time. In addition to a possible residential use on the upper floors, the premises lies relatively close to a number of other residential properties and there is significant potential for noise transfer. This would have an adverse effect on the living conditions of nearby occupiers due to the size and proximity of the glazed area, the recreational use and the likely hours of operation.
12. The appellant claims that the external amenity area is pre-existing, indicating that there would have been a level of noise and disturbance arising from the premises irrespective of the unauthorised development. The photographs submitted in support of this assertion, which appear to date from 2008, show canopied seating areas on each frontage. These are considerably smaller than the unauthorised glazed enclosure and are more exposed to the elements, making them less attractive to customers. They would not generate the same level of use and are not comparable in my opinion.
13. I am also referred to a Noise Impact Assessment (NIA)². This document is not strictly relevant as it was submitted to support a proposal for the redevelopment of the site, including its suitability for residential use. While it provides an assessment of ambient noise levels in the area, it does not provide an assessment of noise from the development before me and its likely impact on neighbouring residential uses. The NIA carries limited weight, therefore. However, it does acknowledge that glazed elements within a building form the weakest acoustic barriers, which does not support the appellant's case that there would be no noise impact.
14. I acknowledge that the appeal building is within a relatively busy location with medium to high ambient noise levels which arise, in particular, from the adjoining roads. Nonetheless, the development enables a relatively large number of customer to site within an area that has very limited sound proofing. It is highly likely that noise and disturbance arising from groups of people eating and drinking within the enclosure would disturb nearby residents late into the evening and at night. This would be detrimental to their living conditions as it would be likely to be over and above ambient noise levels in the vicinity. Consequently, I find that the development would not accord with Policy DM2.1 of the Development Management Policies, which seeks to safeguard residential amenity.

Conclusion

15. For the reasons given, above the appeal on ground (a) must fail.

Conclusion

16. I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

² Ref 1154-AF-00002-01 dated 1 June 2019.

Formal Decision

17. 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.

Debbie Moore

Inspector