



Appeal Decision

Site visit made on 8 September 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 07 October 2020

Appeal Ref: APP/T5150/C/18/3219426

Second Floor, 8 Station Parade, London NW2 4NH

- 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 Nihat Algul against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, ref E/17/0363, was issued on 19 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the formation of a second floor and the alterations to the roof of the premises.
 - The requirements of the notice are:
 - STEP 1 Demolish the unauthorised second floor extension and roof alterations of the premises and remove all associated items, debris and materials arising from this demolition from the premises.
 - STEP 2 Restore the premises back to its original condition before the unauthorised development took place as shown in the photograph attached to the notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall 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.

Procedural Matters/the enforcement notice

2. On 7 December 2015 a separate enforcement notice, ref E/15/0475, was issued by the Council concerning the appeal building alleging "Without planning permission, the installation of a new shop front and the erection of a first floor extension to the premises". The appeal before me does not concern that notice or the allegation it contains. Further, as the deemed planning application made under ground (a) derives from the allegation of the notice appealed against, I do not have the power to grant planning permission other than relating to the second floor and roof of the building. I clarify this as the appellant's submissions, in part, deal with planning merits arguments in relation to the development of the ground and first floors (as do the images on pages 29-30 of the statement representing an alternative scheme being considered by him).
3. The appellant says that the appeal development does not include a shopfront and that accordingly the notice is invalid since it refers to the Council's Supplementary Planning Document (SPD3) "Shopfronts" (the SPD) in its

reasons for issue (Schedule 3). However, as the appeal development concerns a commercial frontage in use as a restaurant within the context of a shopping parade, I do not consider it falls outside that which is ordinarily understood to be a shopfront. Several of the examples used in the SPD are restaurants. I also note that previous planning applications have referred to a shopfront notwithstanding use as a restaurant. Therefore, I find the notice readily capable of being clearly understood and it is not defective or invalid.

Ground (a) and the deemed planning application

Main Issue

4. The main issue in this appeal is the effect of the development on the character and appearance of the streetscene.

Reasons

5. In January 2013 an appeal¹ (the 2013 appeal) was dismissed following a refused application for the erection of a first-floor extension at the property together with a new to extract system and flue. The Inspector found the following:

The appeal premises are located in a prominent position at the junction of Walm Lane and Station Parade. They are particularly prominent in views from the south, from outside the station and beyond...

The adjoining terraces are different in design approach and, though some alterations have detracted to a degree from their appearance, provide interest and quality in the local streetscene. Although the appeal premises effectively links them at ground floor level, the existence of the gap above means that the terraces retain their individual identity...

6. I agree with the Inspector's findings and place significant weight on them as material planning considerations due to their relevance to the merits of the appeal development before me and the importance of consistency in the planning process.
7. The infilling of the gap above the appeal property between the terraces (which, in the appeal before me, is more substantially infilled than in the 2013 appeal) detracts from the important contribution the terraces make to the streetscene. Their distinct characters, either side of the gap, derive from the fairly uniform appearance of the row of properties forming the 3-storey terrace to the west of the appeal property (10-26 Station Parade, notwithstanding the front dormer extension at No 24) and the similarly-natured but differently-designed 3-storey terraced row of properties to the east (53-69 Walm Lane) linked at one end to the extensively-glazed estate agent development (2-6 Station Parade) abutting the appeal site.
8. The appellant says that the appeal development creates a 2nd floor and new roof "mimicking" 2-6 Station Parade including the gable and mock Tudor elements at roof level. However, it does so very unsuccessfully, with roof ridge and roof plane angles being jarringly different to that of each of its neighbours due to the poorly designed linking of buildings of different roof heights. The result is an incongruous addition to the streetscene which, notwithstanding

¹ APP/T5150/A/12/2184696, Decision date 28 January 2013

limited views from other directions, can be seen for some distance from the south along Walm Lane and which is significantly harmful.

9. In October 2017, there was a further dismissed appeal² of an application refused by the Council seeking to regularise the development. However, as the Council did not refer to the second floor and roof in its reasons for referral, the Inspector made clear that she did not consider that element of the scheme and therefore I place no weight on the fact that she did not raise concerns about it in her Decision. I accept that the delegated officer report for the application³ (according to the appellant, as I have not been provided with a copy) said that the infill at roof and second floor level does "an adequate job of complimenting the neighbouring terraces", but for the reasons I have given in the paragraphs above I do not agree.
10. I place very limited weight on the appellant's argument that little or no objections have been received about the appeal development, as it does not mitigate against the significant harm to the character and appearance of the streetscene that I have identified. As such it is in conflict with Policies DMP1 and DMP4A of the London Borough of Brent Development Management Policies (2016), supported by the SPD, which together seek to protect character and appearance. The appeal development is also in conflict with Chapter 12 of the National Planning Policy Framework as the discordant angles of the roof form within the setting of the adjoining buildings does not achieve a well-designed place. The appeal under ground (a) accordingly fails.

Ground (f)

11. It is clear from the way the requirements of the notice have been drafted that the Council is pursuing the purpose of remedying the breach of planning control rather than remedying injury to amenity.
12. Notwithstanding this purpose, the appellant has put forward alternative steps to those required in the notice which would be to strip the existing roof tiles and re-lay tiles more in the horizontal plane (as proposed in planning application 16/5401).
13. However, this alternative to what is required in the notice would not remedy the breach of planning control. Further, even had I found that the purpose of the notice was to remedy injury to amenity caused by the breach, the alternative scheme would not achieve this. Such steps involving changes to the tiling alone would not address the issue of harm to the character and appearance of the adjoining terraces through infilling of the important gap between them or the harm caused by a roof form set at discordant angles to its neighbours.
14. The appellant has also suggested that I vary the notice to require the appellant to agree with the Council acceptable changes to the development. However, to do so would not be appropriate as the face of the notice must clearly disclose what is to be achieved. Precision is important as failure to comply can result in prosecution.
15. Therefore, while declining to use my powers under ground (a) to grant planning permission for the development in whole or in part, I will also not vary the

² APP/T5150/W/17/3177563, Decision date 4 October 2017

³ 16/5401

notice under ground (f) as no lesser steps are possible to remedy the breach of planning control than as required in the notice. Therefore, the appeal under ground (f) fails.

Ground (g)

16. For an appeal to be successful under this ground, I must be satisfied that the time given to comply with the notice falls short of what reasonably should be allowed.
17. The appellant says that at least 1 year is needed to comply with the notice due to the negative effect on the finances and viability of the business, loss of employment and the need to comply with Party Wall legislation and arrange structural stability reports and measures. However, no substantive evidence has been submitted to support these arguments and I find that the 3-month compliance period of the notice is a reasonable period for the requirements to be undertaken including demolition and restoration works. Accordingly, the appeal under ground (g) fails.

Conclusion

18. 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.

Andrew Walker

INSPECTOR