
Appeal Decision

Site visit made on 12 January 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/V5570/C/20/3254952

394 Camden Road, London N7 0SJ

- 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 Bernard Spitz on behalf of Embankment Building Ltd against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice was issued on 30 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a new roof from ply and felt on the warehouse building, the provision of scaffold railings and fixings on its south eastern parapet elevation and the installation of air conditioning plant on its north eastern elevation.
 - The requirements of the notice are:
 - (i) Remove the ply and felt roof covering from the whole of the roof of the warehouse building and associated supports and fixings;
 - (ii) Remove the scaffold railings, posts and fixings on the south eastern elevation roof parapet;
 - (iii) Remove the air conditioning plant located on the north eastern roof slope and associated fixings and pipework; and
 - (iv) On completion of steps (i), (ii) and (iii) remove from the Land all materials and debris arising from the works.
 - The period for compliance with the requirements is 10 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 an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "Ten (10) calendar months" within Schedule 5 (Time for Compliance) and its replacement with "Twelve (12) calendar months".
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) appeal and the Deemed Planning Application (DPA)

Main Issues

3. The main issues are:

- whether the unauthorised development preserves or enhances the character or appearance of the Hillmarton Conservation Area (HCA); and
- the effect of the air conditioning plant on the living conditions for neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Hillmarton Conservation Area (HCA)

4. The appeal building relates to an L-shaped warehouse building situated in a prominent location with frontages onto both Camden Road and Hillmarton Road. The site comprises a simple industrial building made from stock brickwork with a solid utilitarian character and lies within the HCA. With regards to the effect on designated heritage assets, Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
5. The National Planning Policy Framework, 2019 (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
6. Both main parties have submitted their views on the three distinct elements referred to in the enforcement notice: (i) New ply and felt roof; (ii) Scaffold railings and fixings on south east parapet and (iii) installation of air conditioning plant on north eastern elevation roof. I shall consider each of these in turn, with specific regard to whether the unauthorised development preserves or enhances the character or appearance of the HCA.

Ply and Felt roof covering

7. The Islington's Conservation Area Design Guidelines, 2002 (Design Guidance), states that the majority of the HCA was first developed in the 1850/60s and has a predominantly residential character. The area has a spacious scale, with wide streets and grand villas and terraces. I also observed during my site visit that the consistent historic and architectural quality of the area including its traditional materials gives the area a special character and appearance. This view is supported in the Design Guidelines which further explains that "the Council will require the use of vernacular materials" and that "it is important that refurbishments of existing buildings blend in with and reinforce the existing character of the area". In addition, Islington's Urban Design Guide

Supplementary Planning Document, 2017 (Design SPD) adds that “ Care needs to be taken to ensure that the new material is sympathetic with the local vernacular.... The proposed palette of materials should not jar, inappropriately draw the eye, or otherwise undermine the local character or distinctiveness of the area”.

8. Prior to the current unauthorised development, the photographic evidence submitted by the Council demonstrates that the pre-existing corrugated roof, owing to its colour and texture was sympathetic to the character of the area. In contrast the new ply and felt roof covering is not characteristic of the previous roof or the wider conservation area, where pitched roof buildings have more traditional material such as tiles or slates. In particular, the ply and felt roof is uniform in colour, with a flat matt finish which is in stark contrast with the traditional roof coverings seen elsewhere in the HCA. Furthermore, no evidence has been submitted to demonstrate this roof covering represents a robust and energy efficient roof covering.
9. Whilst I appreciate that the building is a former warehouse, given its overall size and highly prominent location, the roof is a significant feature within the HCA, visible from a number of public vantage points, particularly from Hillmarton Road, Keighley Close and Camden Road. Despite the insertion of rooflights within the pitched roof, the large expanse of ply and felt dominates views of the upper part of this building from these public vantage points to a harmful degree. In this respect the new ply and felt roof covering is not sympathetic to this building, and thus results in harm to the character and appearance of the host building and the HCA.
10. Due to fire damage, the building did not have a roof when the appellant acquired the building in 2015, and therefore the appellant states that the pre-existing building resulted in harm to the HCA. However, the Council have provided photographic evidence which shows that the pre-existing roof consisted of a corrugated roof which had a neutral impact on the HCA.

Scaffold railings and fixings on south east parapet

11. Given its height, size and prominence, the scaffold railings and fixings form a large, obtrusive, and incongruous feature in the street scene which is at odds with the prevailing character and appearance of the area. They, therefore, harm the roofscape of the building to a harmful degree and fail to preserve or enhance the character or appearance of the HCA.
12. I appreciate that the scaffold railings can be removed from the building and that they are remnants of construction work to install the new roof. Nevertheless, the scaffold railings were in situ during my site visit and are included in the alleged breach of planning control described in the enforcement notice. Therefore, this must form part of the appeal on ground (a) and the DPA.

Air conditioning plant on the north eastern elevation

13. Islington’s Design Guidance states that “The Council is opposed to the erection of plant rooms, air conditioning units and other services.... at roof level where this can be seen from street level or public space, including long views from side streets. Contrary to this guidance, the air conditioning plant results in visual clutter and a discordant feature at roof level, which is visible at street

level from Keighley Close, and from a number of rear gardens on Camden Road. Therefore, the air conditioning plant fails to preserve or enhance the character or appearance of the HCA.

14. I appreciate that the site is in an urban area, designated in Islington's Site Allocations 2013 document for mixed-use residential and business use and serves tenants of the building. However, this does not justify the harm identified above.
15. Under the ground (f) appeal the appellant suggests that the air conditioning plant could be relocated to another, less prominent position to reduce its visibility and impact on neighbouring occupiers. Whilst the principle of this is welcomed by the Council, no specific drawings have been submitted with this appeal. In the absence of any detailed drawings and technical information, I am unable to determine what the proposal would look like, how visible it would be from both public and private vantage points, and what the expected noise levels would be from the nearest neighbouring residential occupiers. The appellant also states that timber screening or another suitable material could be erected to hide the plant. Again, no detailed drawings of this proposed screening have been submitted. Therefore, the screening could modify the development substantially from that shown on the submitted drawings with regard to the character and appearance of the property and its impact on the living conditions of the neighbouring occupiers. As such, I consider that a condition requiring these further details would not be reasonable in this case.

Conclusion on HCA

16. In the terms of the Framework and paragraph 196, the harm that the unauthorised development has caused to the significance of the designated heritage asset, that is the HCA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. The felt and ply roof covering and the air conditioning unit, ensures that the warehouse building can be re-used following the fire damage. However, there is no evidence before me to suggest that the current unauthorised works, is the only way that this could be achieved. Therefore, I do not consider that these benefits outweigh the harm identified above to the character and appearance of the HCA.
17. Both individually and cumulatively, the unauthorised works results in harm to the character and appearance of the HCA as a whole. As such, the unauthorised development fails to preserve or enhance the character or appearance of the HCA, contrary to policy CS9 of Islington's Core Strategy, 2011, policies DM2.1 and DM2.3 of Islington's Local Plan: Development Management Policies, 2013 (Local Plan), policies 7.4 and 7.8 of the London Plan 2016. Amongst other things, these state that all forms of development are required to be of high quality; make a positive contribution to the local character and distinctiveness of an area; and that the historic significance of Islington's unique heritage assets and historic environment will be conserved and enhanced whether designated or not.
18. The unauthorised development also conflicts with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, the works do not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Living conditions for neighbouring occupiers, with particular regard to noise and disturbance.

19. I acknowledge that the site is in an urban area and is designated in Islington's Site Allocations 2013 document for mixed use development and that the existing air condition plant serves current occupiers of the warehouse building. Nevertheless, the installed air conditioning plant is located close to a number of residential properties and private gardens on Camden Road, and therefore the location of this plant requires careful consideration to ensure acceptable living conditions for nearby residential occupiers.
20. No noise assessment, or noise mitigation measures have been submitted to demonstrate that neighbouring residential occupiers would not be affected by the operation of this plant. As such, there is no firm evidence to show that any potential noise arising from the plant could be satisfactorily mitigated.
21. In the absence of any substantive evidence, I conclude that the air condition plant as installed results in harm to the living conditions for neighbouring occupiers, with particular regard to noise and disturbance. In this respect development conflicts with Policy DM2.1 of the Local Plan and paragraph 127 of the Framework, which together requires development to achieve a high standard of amenity for existing users.

Conclusion on Ground (a) and the Deemed Planning Application

22. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

23. The appeal on this ground is "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 which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
24. The enforcement notice requires the removal of the unauthorised roof covering; the scaffold railings, posts, and fixings on the south eastern elevation roof parapet; and the air condition plant located on the north eastern roof slope and associated fixings and pipework. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
25. I have found under ground (a) appeal that the unauthorised development as built fails to preserve or enhance the character or appearance of the HCA and that the air condition plant results in harm to the living conditions for neighbouring occupiers, with particular regard to noise and disturbance. I have also found that the alternatives suggested by the appellant, namely the relocation of the air conditioning plant and the installation of timber screening would not be acceptable on this occasion. Furthermore, it would also not achieve the purpose of the notice which is to remedy the breach. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.

26. The appellant further states that the removal of the roof is excessive since this would expose all tenant the building to the weather whereby the use of the building would become impossible, forcing the existing businesses to relocate in a currently uncertain work climate. However, the scope of the Notice is limited by s173(4)(a) and (b). The recipient on the notice cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with a planning permission or restoration of the land to its previous condition, even if the result is that compliance with the Notice would mean that the building is left insecure or open to the elements. On this occasion, there is currently no planning permission granted for a replacement roof and therefore the power is simply to restore the land to its previous condition.
27. However, a planning application¹ has been submitted for a replacement work together with the use of the building, which is currently being considered by the Council. The Council have advised that if the current planning application is approved then a condition would be attached requiring the works to be carried out in a specified time period. I shall return to this matter under the ground (g) appeal.
28. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
29. On this basis, the ground (f) appeal fails.

The appeal on Ground (g)

30. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 10 to 18 months, since the building is currently occupied by 15 small-medium sized businesses and the removal of the roof would result in these businesses not being able to operate. The additional time is also sought to provide the appellant with additional time undertake the necessary works in light of the current social distancing restrictions associated with the Covid-19 pandemic.
31. I have found under the ground a) appeal that the unauthorised development as built fails to preserve or enhance the character or appearance of the HCA and that the air conditioning plant results in harm to the living conditions for neighbouring occupiers, with particular regard to noise and disturbance. As such, the 18 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.
32. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. The Council suggest that a period of 12 months should be sufficient period of time to consider the current planning application for the replacement roof, any further planning applications if necessary, and to carry out the remedial works.
33. In my view, 12 months would strike a more reasonable and proportionate balance in light of Government policy regarding the Covid-19 pandemic and

¹ Council ref: P2018/4071/FUL

restriction of social contact. This would also provide additional time to seek planning permission for a replacement roof and the relocation of the air conditioning plant. I shall therefore extend the period from 10 to 12 months for compliance with the notice. I also note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.

34. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

35. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR