



Appeal Decision

Site visit made on 5 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 17 May 2021

Appeal Ref: APP/A5270/C/18/3219024

10 Greenock Road, Acton, London W3 8DU

- 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 Reza Khoshnam (MacGill of Kensington) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered EN170116OD(1), was issued on 9 November 2018.
- The breach of planning control as alleged in the notice is without planning permission: The erection of a metal canopy extension to the front of the main building [marked with a large X] and the installation of a vertical storage tank [marked with a small x] at the entrance of the site on the plan attached to the notice.
- The requirements of the notice are to:
 1. Remove the metal canopy extension to the front of the main building in its entirety.
 2. Remove the vertical storage tank installed at the entrance to the Site and remove all associated fittings.
 3. Remove all resultant debris.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. It is directed that the enforcement notice be corrected by:
 - Substituting "front of" for "font" in paragraph 3; and
 - Substituting "front of" for "font" in paragraph 5.
2. Subject to these corrections, 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.

The enforcement notice/procedural matters

3. While it is clear from submissions that the allegation and the requirements of the notice are understood by the appellant, I am correcting typographical errors (as above) within those paragraphs without any injustice to the parties.
4. Since the issue of the notice, The London Plan 2021 (LP) has been published by the Mayor of London replacing The London Plan 2016. It comprises the spatial development strategy for London and is now part of the development plan against which the deemed planning application is to be determined.
5. While the appeal was not started under the grounds set out in sections 174(2) (c) and (d) of the Act, there are submissions among the appellant's papers that

are relevant to these “hidden” grounds and I will address them where they were provided in line with the appeal timetable or otherwise accepted.

Ground (b)

6. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred.
7. However, the appellant does not argue that the alleged operational development has not occurred. Indeed, along with his submissions he has provided photographs of a metal canopy and storage tank in situ at the locations marked in the enforcement plan. I also observed the same on my site visit.
8. Accordingly, I find the matters stated in the notice have occurred and the appeal under ground (b) fails.

“Hidden” ground (c)

9. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
10. The appellant says that the water tank does not materially affect the external appearance of the building, and therefore does not constitute development by reason of section 55(2)(a) of the Act.
11. The water tank, positioned near the street boundary of the appeal site in front of the building, is significant in height, volume and diameter and accordingly is visually prominent within the streetscene. It therefore materially affects the external appearance of the building. I therefore find it to be development under the Act requiring express planning permission, which it does not possess.
12. Notwithstanding the Council’s addressing of the matter in its statement, the appellant has not made any substantive case that the water tank or canopy benefit from general planning permission acquired under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), and it is upon him that the burden of proof rests. In any respect, based on the evidence before me and the Council’s comments (upon which the appellant had an opportunity to comment) I have no reason to find that any part of the development benefits from permission under the GPDO.
13. For these reasons, the “hidden” ground (c) appeal does not succeed.

“Hidden” ground (d)

14. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
15. Section 171B(1) of the Act provides that, in respect to the alleged operational development targeted by the notice issued on 9 November 2018, no enforcement action would have been possible after the end of the period of 4 years beginning with the date on which the operations were substantially completed. Therefore, for this appeal to succeed, the burden on proof is on the

appellant to satisfy me that the water tank and/or canopy were substantially completed before 9 November 2014.

16. The appellant's appeal statement dated 21 April 2020 says that the canopy has been in place for "6 years", but no substantive evidence has been submitted in support. The Council's statement attaches a photograph said to be taken in August 2014 which shows the front of the appeal site without either of the operational development structures present which are targeted by the notice. I have not seen any evidence from the appellant that would lead me to find that the operational development was substantially completed between the date of this photograph and 9 November 2014.
17. Therefore, the appellant has not satisfied me on the balance of probabilities that at the time the notice was issued it was too late for the Council to take enforcement action.
18. For these reasons, the "hidden" ground (d) appeal does not succeed.

Ground (a) and the deemed planning application

Main issue

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

Reasons

20. The appeal building operates as a commercial laundry on part of an industrial estate served by Greenock Road, at a corner point where that road bends. Consequently the large water tank near the front boundary and the large triangular canopy, similar in height to the main building it serves, are particularly prominent in the streetscene. They can be seen from both directions along Greenock Road due to the relatively straight sections of the road coming out of the bend and the fact they stand forward of the building lines of the 2-storey flat-roofed and largely open-forecourted premises on either side of the appeal property. Indeed, the triangular canopy juxtaposed against the horizontal fascia of the appeal property has a striking effect as far as the junction with Colville Road to the south.
21. This prominence accentuates the incongruity that the development creates by largely filling its own forecourt with visual clutter in contrast with the largely open forecourts of nearby commercial premises on the estate, and by introducing a large tall triangular canopy structure against the grain of local built form largely consisting of horizontal and vertical lines of elevation and without similar canopies to their frontages. This incongruity is jarring, and significantly harms the character and appearance of the building and the streetscene.
22. While I agree with the appellant that the local character is one of an industrial estate, I do not agree for the reasons I have given that the development is in keeping with it. Further, the harm I have identified is not contingent on whether Greenock Road is private or has been adopted by the Local Highway Authority, or whether the development is visible from residences or by the public visiting shops and food businesses. The incongruous appeal development is highly visible on the streetscene, notwithstanding limited screening by vehicles which may be parked in front of it on occasion, and has a detrimental

impact on the local character and appearance of the property and the setting of the industrial estate. This harm is unacceptable notwithstanding other harms that might exist by way of rubbish and other undesirable items and materials the appellant argues exist within the estate. Notwithstanding these issues as alleged by the appellant, which may or may not be temporary, the underlying character is as I have described in the paragraphs above and which is harmed by the development. The appellant refers to 2 other laundry businesses on the estate and argues that they must have a greater effect on the amenity of the area as they are bigger. However, the harm I have identified is associated with the particular features of the appeal development within its context and not due to the fact that the appellant's business is a laundry.

23. The appellant says that the canopy material used is in keeping with an extension at 12 Greenock Road (which he says the Council has 'let slide') and with what he describes as a prominent building built without planning permission occupied nearby by Lawson Building Suppliers. However, it is not the material of the canopy which I have found to cause harm. In any respect, if what the appellant says is right about the structures highlighted being unlawful (though I have seen no evidence of this) then I place no weight on the appellant's arguments in respect of their support of the appeal development.
24. For all of the above reasons, the appeal development significantly harms the character and appearance of the building and streetscene. As such it is contrary to Policies 7.4 and 7B of the Council's Development Management Development Plan Document (2013) and Policy D3 of the LP which together, and amongst other aims, seek to protect character and appearance.

Other matters

25. The appellant says that the appeal development does not detrimentally affect levels of privacy, daylight or sunlight. These are neutral factors of the development which do not mitigate against the harm caused. The fact that the development does not overhang any boundary is not a planning matter.
26. I accept that the canopy serves to keep employees and washing/dry-cleaning dry. I also acknowledge that both parts of the appeal development functionally support a business providing a service and employing a number of people (over 50 according to the appellant's submissions). I place moderate weight on these benefits, tempered by the appellant's comment that it may be possible for the water tank to be provided underground. However, they do not outweigh the significant harm I have identified to character and appearance.

Ground (a) conclusion

27. The appeal development does not comply with the development plan and this conflict is not outweighed by other considerations. The appeal does not succeed under ground (a) and I do not grant planning permission in respect of the deemed application.

Ground (f)

28. For an appeal to succeed under this ground, I must be satisfied that the steps required by the notice exceed what is necessary to achieve its purpose.
29. It is clear from the way the notice is drafted that its purpose is to remedy the breach of planning control (rather than simply remedying injury to amenity) by

restoring the land to its condition before the breach took place. The steps in paragraph 5 achieve this and no more. They are therefore not excessive.

30. Even were the purpose of the notice to remedy injury to amenity, the alternate steps put forward by the appellant would not achieve this. Painting or otherwise camouflaging the canopy and water tank (or building another structure around the tank to house it at the same location) would not overcome the significant harm to character and appearance caused by the large size of the structures, the incongruous shape of the canopy's dual-pitch and the visual clutter upon the building's forecourt.
31. Therefore, the appeal on ground (f) does not succeed.

Ground (g)

32. For an appeal to succeed under this ground, I must be satisfied that the period specified for compliance in the notice falls short of what should be reasonably allowed.
33. The appellant says that it should take 6-8 weeks to remove the canopy. As the compliance period of the notice is 2 months, then there is no dispute that the period is sufficient to deal with the canopy.
34. The appellant says that he will need at least 6 months to remove the storage tank as "the Water Board may have to excavate the premises to store a tank underground for the storage of water". However, the compliance period is for the works required in the notice which involves removing the tank and not for carrying out other steps that the appellant may wish to undertake following compliance with the notice. In any respect, the appellant's submissions in this area are vague and no substantive supporting evidence has been submitted. It is not clear from the papers why the tank could not be relocated within the building as opposed to excavating the site. Based on the information and evidence before me, I am not satisfied that 2 months is an unreasonable time in which to drain the tank and remove it together with the other works required by the notice.
35. For these reasons, the appeal on ground (g) does not succeed.

Conclusion

36. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR