



Appeal Decisions

Site visit made on 2 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref A: APP/A5270/C/20/3252745

Appeal Ref B: APP/A5270/C/20/3252746

153-157 Ruislip Road, Greenford, Middlesex UB6 9QQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - **Appeal A** is made by Mr Surjit Singh Arora and **Appeal B** is made by Mr Gurmeet Singh against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 6 April 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission the installation of refrigeration units at the rear of the premises.*
 - The requirements of the notice are:
 1. Remove the refrigeration units at the rear of the premises; and
 2. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - **Appeal A** 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.
 - **Appeal B** is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) has lapsed.
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Formal Decisions

For Appeal A:

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.

For Appeal B:

2. The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

3. During the course of the appeal the new London Plan was published in March 2021. This replaces the policies from the previous London Plan and the Draft London Plan. The parties have been given the opportunity to advise which policies I should take into account in coming to my decision. The Council have provided me with new policies, although the appellant has not commented. I find policies D2 and D6 relate mainly to density of development,

infrastructure capacity and housing standards and design which are not directly relevant to an existing retail unit and the main issues set out below.

Appeal A

The Appeal on Ground (a) and the Deemed Planning Application

4. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

5. The main issues in this case are:
 - The effect of the appeal development on the character and appearance of the area, and
 - The effect of the appeal development on the living conditions of existing and future occupiers of neighbouring properties with particular regard to noise.

Reasons

Character and appearance

6. The appeal site is a two-storey, end of terrace property on the corner of Ruislip Road and Verulam Road that forms part of a parade of shops. The ground floor of 153–157 Ruislip Road, the subject of the appeal, was formerly three shop units but is now amalgamated into a single retail unit currently occupied by Kopernik Polish Supermarket. Above the parade of shops there are residential flats accessed by separate doors between the various shop units. Above the appeal property itself there are three flats. On the side elevation of the appeal premises, facing Verulam Road, there are two roller shutter doors. A service alleyway runs along the rear of the parade from Verulam Road. On my visit it was gated and had to be unlocked.
7. During my site visit I observed that Ruislip Road was well trafficked and was on a bus route. With two other parades of shops on the other side of the road, the area appeared to be a bustling local centre. However, despite the parades of shops on Ruislip Road, the area is predominantly residential.
8. There is no shop window or advertising on the side elevation of the appeal unit facing onto Verulam Road. However, the two metal roller shutters and the rear alleyway with its commercial paraphernalia of waste bins, hint at a commercial unit. Consequently, the commercial unit is not unduly prominent as it turns the corner into the residential character and appearance of Verulam Road, which I observed to be a quiet street of terraced and semi-detached dwellings, with little traffic using it.
9. On the rear wall of the appeal property, facing into the rear alleyway, 8 grey and white wall-mounted refrigeration units (the 'units') have been erected. A further 5 units have been installed on the flat roof above the supermarket: two are sited close to the edge of the roof and the other 3 are placed behind them closer to, and facing, the flats. The units are of various sizes, designs and brands and some have two fans.
10. The units are to serve the various chilled display counters and fridges in the supermarket. There was also a large refrigeration room in the storeroom. It

was a hot day when I visited, and on walking into the supermarket I felt the inside ambient air temperature was cool, indicating to me that air-conditioning was also in use.

11. The rear wall-mounted units cannot be seen from Ruislip Road so have no impact on its street scene. Due to the position of the units along the rear wall of the building facing into the rear alleyway, together with the limited width of the rear alleyway and its location sandwiched between the side of No.1 Verulam Road (No.1), wider views of the wall-mounted units from Verulam Road are limited. Nonetheless, the units can be seen when one passes the end of the alleyway. I find their number, size and commercial appearance result in an untidy assembly that detracts from the residential character and appearance of the area.
12. The roof-mounted units are clearly visible from habitable rooms of the flats above the appeal property, as was evident on my invitation to visit flat No.153A Ruislip Road (No.153A). Other than the units, the roof of the supermarket is largely free of other plant and commercial paraphernalia. These roof units are sited closer to a window to what appears to be a habitable room on the side elevation of No.1 - the submitted plans annotated with dimensions show the units would be about 5 metres away and about level with the window. Consequently, the units would be visible to occupiers of this room too.
13. The roof-mounted units are also visible from Verulam Road, although their prominence is somewhat reduced as they are seen against the backdrop of the flats. However, as one gets closer, their location at the far end of the property on the furthest extremity of the roof, and their varying designs and heights without any screening, introduces an elevated and discordant commercial element that adds visual clutter to the roofscape of the parade and which detracts from the prevailing residential character and appearance of Verulam Road.
14. I observed that longer range views of all of the units from Verulam Road and from No.1 are mitigated to some extent by the hedge along the boundary between the alleyway and No.1. The Council's submitted photographs show views of the rear of the appeal property and front of No.1 before the units were installed. The hedge was a lot lower and did not extend so far along the boundary as it does now. However, the hedge cannot be considered an effective screen for visual mitigation as it is not permanent nor is it within the appellant's control.
15. Overall, I find the effect of the number of units, their positioning and their variety of size and design combine to add visual clutter. This diminishes and harms the predominantly residential character and appearance of the area. Accordingly, the development is contrary to Policies D1, D3 and D4 of the London Plan 2021, which cumulatively seek to ensure that development is appropriately designed and responds to the character of a place.

Living conditions

16. On my visit I stood in the rear alleyway. The units were clearly audible with a constant hum and rumble.
17. From the submitted plans, the wall-mounted units are located about 4 metres away from the side of No.1 and the roof-mounted units about 5 metres away.

No.1 is side-on to the rear alleyway and rear of the appeal property. Along this boundary there is a lean-to type conservatory with high level glazing, as well as a number of small obscure glazed and stained-glass windows at ground and first floor that would appear to serve hallway/landing and bathrooms/toilets. However, as already described there is a first floor window to a habitable room directly facing the units. The rear garden of No.1 also continues along the boundary with the alleyway. From what I heard during my visit, and taking into account the close proximity of the units and the number of them, I find the appeal development would likely result in an unacceptable noise intrusion to occupiers of No.1.

18. A number of residents of the flats above the appeal property and parade of shops have also expressed their concerns about the noise levels from the units. When visiting No.153A I was able to stand in its two habitable rooms that look out over the flat roof of the appeal unit and also stand and walk about on the flat roof. Three of the roof units have their fans directly facing the flats – the other two units face towards the alleyway and No.1. Although my visit was a snap-shot in time, I was able to clearly hear the hum and rumble of the units over the background noise of Ruislip Road, planes passing overhead, nearby construction and barking dogs. I also heard some of the units click on and off.
19. The other two flats and their habitable rooms are closer to the units than the flat I visited. The upper floor windows were obscure glazed and presumably served bathrooms. As I could hear the units from No.153A, I find it likely that the noise from them would also be heard from the closer flats, and possibly be louder.
20. It is also likely that at night, when generally traffic levels decline and background noise levels are lower, any noise from the units would be more discernible.
21. The appellant refers to a brand of unit, which he submits has a maximum noise output of 78 decibels. He maintains that this is equivalent to the noise output of a television or vacuum cleaner. However, no technical data for this type of unit has been submitted. Moreover, it is not clear if these output levels are for a single unit, or for all of the units of this brand combined.
22. I observed that the majority of the units were in fact another brand. No report or technical data has been provided to indicate what the noise levels are from this make of unit, which are of varying designs and sizes. Nor has any technical data or acoustic report been submitted setting out the individual and cumulative effects and noise levels from all 13 units, including whether they operate in cycles, and with how many other units at the same time. Furthermore, there is no evidence before me to demonstrate whether any mitigation measures would be necessary, such as some form of acoustic screening, and what difference such measures would make.
23. The appellants state they are finalising a retrospective application with an acoustic report that will assess the noise impacts of the units on adjacent residential units. They also mention that the units will be positioned and sited closer together. From the planning history provided, it is not clear if the appellants intend to submit an additional retrospective application to the one already submitted to the Council (LPA ref: 195359FUL for 8 refrigeration units) but which was pending a decision at the time Statements were submitted over

a year ago. If a planning application had since been approved, then that would have provided a 'fall-back' position I could have considered as part of the ground (a) appeal for Appeal A. I have not been advised of any subsequent grant of planning permission and must therefore assume there is no planning permission for the units, either as they are or in a modified form.

24. I am aware that the units are necessary for the proper care of goods for sale as part of providing a good business. However, I am not satisfied, from the evidence before me, that it has been demonstrated that noise levels from each unit and cumulatively, are within acceptable limits. I am therefore unable to conclude that the appeal development does not cause harm to the living conditions of existing and future occupiers of neighbouring properties. Accordingly, the appeal development is contrary to Policies D3 and D13 of the London Plan 2021, which cumulatively seek to prevent and mitigate the impact of noise.

Other matters

25. I am mindful of paragraph 92 of the National Planning Policy Framework which seeks to provide for social, recreational and cultural facilities and services the community needs, and to that end seeks to ensure that established shops, facilities and services are able to develop and modernise and are retained for the benefit of the community. I saw that the supermarket was clean, tidy and well-stocked. However, this does not outweigh or mitigate the harms I have identified.

Conclusion on ground (a) and the deemed planning application

26. I have powers to grant planning permission for part of the alleged matters should I find some parts acceptable and some parts not. However, I find both the wall and roof-mounted units cause harm to the character and appearance of the area and to the living conditions of nearby occupiers.
27. For the reasons given above, and having regard to the matters raised, I find the appeal development is contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly Appeal A fails on ground (a) and planning permission is refused for the deemed application.

Appeals A and B

The Appeals on Ground (f)

28. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. To determine this, it is essential to first understand the purpose of the notice. Section 173(4) of the Act provides that the purpose of the notice shall be either to remedy the breach of planning control or to remedy any injury to amenity.
29. The notice requires all of the units at the rear of the premises to be removed. Therefore, the purpose of the notice is to remedy the alleged breach. Accordingly, the appeals on ground (f) could only succeed if the appellants can show that the requirements of the notice are excessive to remedy the breach and 'lesser steps' would achieve the same end.

30. The intention to submit a retrospective application, which would seek to keep the units even if amended in some way, does not remove them and so does not remedy the breach.
31. In my assessment of the ground (a) appeal in Appeal A, I considered whether planning permission should be granted for part only of the development applied for. However, I could not be satisfied on the information before me that any of the units would be acceptable. Thus, there is no obvious alternative to complete removal of the units.
32. I find, therefore, that the appellants have not proposed any lesser steps. To that end, it is essential and not excessive of the notice to require that the unauthorised units are removed. The appeals on ground (f) therefore fail.

Conclusion

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

K. Stephens
INSPECTOR