
Appeal Decision

Site visit made on 17 August 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/N5090/C/21/3266735

Land at 24 - 26 Watling Avenue, Edgware HA8 0LR

- 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 M Moisa (MGM Construction) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 2 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of raised decking and balustrades at the front of the property.
 - The requirements of the notice are:
 - 1 Demolish the raised decking and balustrades.
 - 2 Permanently remove all constituent materials resulting from the works in 1 above from the property.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

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.

Preliminary Matter

2. Since the appeal was submitted the Government has published a revised National Planning Policy Framework (the Framework). Both the appellant and the Council were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account.

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

3. The main issue is whether the decking and balustrades preserve or enhance the character or appearance of the Watling Estate Conservation Area.
4. The appeal site is located on Watling Avenue which is the principal shopping area and one of three-character areas within the Watling Estate Conservation Area. The buildings along Watling Avenue are generally two-storey with steeply pitched roofs and predominantly built from red brick, with shops and other town centre uses located at ground floor level on both sides of the road. The appeal site consists of two ground floor units, in use as a restaurant.

5. It is stated in the Character Appraisal¹ that during the day Watling Avenue is very busy, bustling, vibrant, and noisy in places with shoppers and traffic movements, which is consistent with my observations at my visit. However, it is stated that at night the area is quiet and somewhat desolate.
6. The shops and businesses along Watling Avenue appear to be predominantly independent traders with a number trading on the wide forecourts in front of the premises. Whilst the use of forecourts for trading is an historic feature of the Conservation Area, a relatively small number of temporary, with an occasionally more permanent structure under canopies, have been erected to facilitate this, including the use of grill and cage type structures. As recognised in the Character Appraisal, whilst this adds a certain vibrancy to the area it tends to result in a cluttered, messy street scene and blocks views of the buildings.
7. Notwithstanding the existence of such structures and the replacement of many of the shopfronts with frontages of a more modern appearance, the street retains the character of a traditional shopping parade, with permanent outside seating areas not being, in my view, a characteristic feature.
8. The appearance of the decking and balustrades, when viewed in isolation, is not fundamentally harmful. However, the introduction of an outside seating area of this scale and with this degree of permanence, detracts from the overall traditional character of the street scene. This harmful effect would be particularly appreciable during the evening when surrounding premises are closed and most forecourt displays removed. As such, I find that the decking and balustrades cause harm to and fail to preserve or enhance the character of the Conservation Area.
9. Whilst some of the structures erected on the forecourts to premises look untidy, it seems likely that most of the goods and associated paraphernalia will be taken in at night when the businesses are closed. Furthermore, although I acknowledge, as do the Council, that some of the structures are more permanent in nature, the slow degradation of the historic qualities of the area by uncontrolled structures does not justify granting planning permission in the context of the special attention that must be paid to the desirability of preserving or enhancing the character or appearance of the area as a whole.
10. Given the scale of the proposal within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that in the Framework paragraph 199 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
11. Paragraph 202 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the proposal. In this case reference has been made by the appellant to allowing him to trade better and customers having the option to eat outside which was important during the COVID-19 pandemic.

¹ Watling Estate Conservation Area Character Appraisal Statement Adopted (July 2007)

12. Whilst undoubtedly the availability of outside space will have aided the business during the pandemic given the need for social distancing, such restrictions have, since the appeal was made, eased. Consequently, and since there is no substantive evidence about the economic benefits to the business, these matters do not outweigh the above findings.
13. Accordingly, the public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation. Therefore, I conclude that the development does not accord with the design and heritage protection aims of Policies DM01 and DM06 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 and Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Other matters

14. The Council referred to their Residential Design Guidance SPD² however, since the appeal concerns commercial premises, I find this is not relevant and weighs neither for nor against the development.
15. I acknowledge that the appellant attempted to communicate with the Council to seek a solution however, this has no bearing on the planning merits of the development. Similarly, whilst I note comments regarding licensing, since licensing operates under a separate legislative regime this too has no bearing on the planning merits.
16. I have had regard to the representations in support of the development however, this is a neutral matter which cannot outweigh my findings.

Conclusion

17. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR

² Local Plan Supplementary Planning Document: Residential Design Guidance October 2016