



Appeal Decision

Site visit made on 21 September 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2021

Appeal Ref: APP/U5930/C/21/3269581

357 Hoe Street, Walthamstow, London E17 9AP

- 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 Feinm Gaxha on behalf of Atdeu Caffè Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 14 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission: I. The unauthorised installation of a retractable roof and single storey timber framed rear extension.
 - The requirements of the notice are:
 - 1) Demolish and Remove the retractable roof and single storey timber framed rear extension, timber boarding, the metal frame supports, Polycarbonate sheeting, and all connected fixtures and fittings;
 - 2) Remove all resulting fixtures and fittings, materials and general detritus from the Land following compliance with step 1- above.
 - 3) Return the Land back to its former condition as a patio area prior to the change of use taking place.
 - The period for compliance with the requirements is 6 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. 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. 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

2. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
3. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to

comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Ground (a) appeal and the Deemed Planning Application

Main Issues

4. The main issues are:

- the effect of the unauthorised development on the living conditions of nearby residential occupiers of Hoe Street, Clarendon Road and Livingstone Road, with particular regard to noise and disturbance; and
- the effect of the unauthorised development on the character and appearance of the host building and the area.

Reasons

Living conditions of the neighbouring occupiers – noise and disturbance

5. The appeal relates to a retractable roof and single storey rear extension positioned within the rear yard of a ground floor café located within a three storey mid terraced property. The appeal terrace comprises commercial uses at ground and office/residential uses located on the floors above. The site also backs on to residential properties and gardens of Clarendon Road and Livingstone Road.
6. The appellant states that they constructed the single storey rear extension, alongside a retractable roof, to provide an additional seating area for the expanding customer base of the café. The appellant also states that the operation of the established café within a vibrant town centre location (Bakers Arms District Centre) can reasonably be considered to emit a level of noise in connection with its spatial designation. It is therefore argued that the unauthorised development should be acceptable in this location.
7. However, I observed during my site visit when walking along Clarendon Road and Livingstone Road, and away from Hoe Street that background noise levels noticeably fall. As such, both Clarendon Road and Livingstone Road have a residential character, where noise levels are likely to be relatively lower, and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use of a commercial site.
8. I also observed that the single storey rear extension extends the footprint of the café closer to neighbouring residential properties on Clarendon Road and Livingstone Road and increases the number of covers for the existing café with the potential for more noise and disturbance to these nearest neighbouring residential occupiers. The hours of use for the café are 06:00 to 23:00 Mondays to Sundays, and therefore the existing use as a café occurs during the day and until late in the evenings and weekends, when neighbouring residential occupiers should reasonably expect a quieter living environment. The appellant's Noise Technical Note, states that the existing structure itself does not provide any significant sound attenuation measures. Furthermore, as the side windows and roof are both openable, it would appear that any noise generated from within the extension would not be contained.
9. I consider that the noise generated from within the extension late in the evening, and on Sundays in particular, when background noise levels are

typically lower, are likely to be more intrusive and consequentially more harmful. In addition, noise from the rear extension is expected to be particularly harmful during summer months when neighbouring occupiers are likely to have windows open for ventilation, and more likely to be using their gardens for alfresco dining and for play space/relaxation.

10. Noise associated with a café use includes music playing and customers conversing whilst eating, drinking, and smoking. In addition to music playing, I also witnessed three televisions within the newly extended seating area showing live sports. I also note an objection has been raised from a neighbouring occupier complaining that since the development was built, loud music is often played in the evening and audible until after 23:00. In the absence of any details of appropriate sound mitigation measures, I consider that the unauthorised development, in such close proximity to neighbouring residential properties, results in additional noise and disturbance to neighbouring occupiers.
11. The appellant highlights that the rear garden area can already be used for activities in connection with the established café, and therefore, the provision of the rear extension, enclosing this area assists in mitigating noise. However, the rear extension increases the likelihood that the outside seating area would be used, for longer periods of the year. For instance, the extension is more likely to be used by patrons during the evenings and also during autumn, winter months when it's cold outside. In this regard, the extension would increase the use of the outside area as a dining/seating area, and the lightweight materials used in its construction are unlikely to mitigate against increased noise levels/music playing.
12. The appellant's Noise Technical Note also states that the overall acoustic performance of the existing extension will be no worse than the previous timber framed extension. However, the Council advise that this previous extension was unauthorised and no details of any planning permission or a certificate of lawful development have been provided for this previous extension. As such, it has not been demonstrated that this previous structure was lawful, and therefore I attach limited weight to this argument.
13. I note that the appellant would be willing to accept a condition, restricting hours of use of the retractable roof between the hours 23:00 to 07:00. However, for the reasons outlined above and given the close proximity of the development to neighbours, I do not consider that this condition would be sufficient to prevent noise entering neighbouring properties and gardens at other times.
14. I therefore conclude that the development fails to provide acceptable living conditions for the neighbouring residential occupiers on Hoe Street, Clarendon Road and Livingstone Road, with particular regard to noise and disturbance. Accordingly, the development conflicts with policies DM1, DM25, DM27 of the London Borough of Waltham Forest Development Management Policies Local Plan, 2013 (DPD), Policies CS1 and CS13 of the Waltham Forest Local Plan Core Strategy, 2012 (CS), and Policies D13 and D14 of the London Plan. Amongst other things, these require that all development proposals improve the social, economic and environmental conditions in Waltham Forest, that appropriate evening /night time economy uses would be encouraged provided that there will be no significant individual or cumulative adverse effect on the

surrounding residential amenity due to noise and general disturbance, and that new noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses.

15. The development is also contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Character and appearance

16. The appeal building has been previously extended with a two storey brick built back addition to the rear and a traditional slate clad mansard roof above, which respects the character and appearance of the traditional host building and terrace.
17. The construction of the new extension and retractable roof comprises a steel frame with brick wall on one side and large glazed windows to the opposite side and rear end of the extension. The current unauthorised development, extends the building considerably, covering the majority of the rear yard. Whilst I acknowledge that there are other ground floor rear extensions which are built across the rear yards at Nos 351-355 Hoe Street, these have a traditional brick built appearance with low lying flat roofs, ensuring that those developments remain subservient to their original buildings. In contrast, the ground floor rear extension at the appeal site, rises higher than these other ground floor low lying structures and appears more visually dominant. Furthermore, the materials used in the construction of the appeal development, including its metal framed roof and metal sheeting fail to integrate satisfactorily with this existing traditional building and the appeal terrace.
18. I note that the rear extension and retractable roof structure is not widely visible within the wider public realm, however, its presence is clearly apparent and in close proximity of the surrounding commercial and residential properties. As a result, the development diminishes unacceptably the character, appearance, and integrity of the host building with consequent harm to the character and appearance of the area.
19. I have had regard to the content of the appellant's appeal statement which highlights that the property has been previously altered with a modern shop front and raised decking to the front of the premises. However, I do not consider that these contemporary alterations at the front of the building justifies further harm to the rear of the site.
20. In support of the appeal, my attention has also been drawn to other developments both nearby (385 Hoe Street) and in Islington (262 - 264 Old Street, Islington). However, I do not know the full circumstances of those cases and therefore cannot be sure that they represent a direct comparison to the appeal development. I also note that the development in Islington (located in a different London Borough) related to an extension at second and third floor levels, to a four storey building, which is not directly comparable the appeal development before me. Furthermore, whilst the extension at 385 Hoe Street related to a ground floor rear extension, it appears that that development related to a lower flat roof rear extension, and therefore is also not directly comparable to the current unauthorised development. I also note that the

extension at No 385 Hoe Street, appears to be filling in the space between two larger rear extensions on either side at Nos 383 and 387 Hoe Street, which is not the case with No 357 Hoe Street. As such, I have dealt with the development before me on its own merits.

21. I conclude that the development harms the character and appearance of the host building and the area, in conflict with Policy DM29 of the DPD, Policies CS14 and CS15 of the CS, and Policies D3 and D4 of the London Plan. Amongst other things, these require a high standard of urban and architectural design for all new development, which reinforce and/or enhance local character and distinctiveness, taking account of patterns of development, urban form, building typology, detailing and materials and ensure that the scale of development is appropriate to the role and character of the centre.
22. Finally, the development does not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

Other matters

23. The Council have also referred to Policy DM32 of the DPD and Policy CS16 of the CS. However, these policies refer to safety and harm to the living conditions of neighbours in terms of loss of light, outlook and privacy which does not appear to be relevant to the case advanced by the Council. As such, I find no conflict with these policies.
24. Comments made by third parties in support of the appeal have been taken into account but do not alter the conclusions reached in this decision. I acknowledge that the development has allowed the existing café business to expand, particularly during the Covid-19 pandemic. Nevertheless, these benefits are insufficient to outweigh the harms identified above under the main issues.

Conclusion

25. 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.

R Satheesan

INSPECTOR