
Appeal Decision

Site visit made on 1 September 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2021

Appeal Ref: APP/F5540/C/20/3266032
364-366 Bath Road, Hounslow TW4 7HT

- 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 K Kanendran against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 24 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a rear extension and placement of two shipping containers at the rear of the shop.
- The requirements of the notice are
 - i. Demolish the single storey rear extension
 - ii. Remove the 2 rear shipping containers from the premises
 - iii. Remove all the resultant debris from the Land
- The period for compliance with the requirements is 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made under ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted but otherwise the appeal fails and the enforcement notice is upheld as set out in the terms set out below in the Formal Decision.

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

Main Issue

1. The main issue is whether the development effects the character and appearance of the surrounding area.

Reasons

2. The appeal site is situated within a parade of shops which front onto Bath Road. To the rear, a number of shops have extended out and use a mix of buildings and structures for storage space for the shops. A service road beyond the storage areas runs parallel with Bath Road with access from Rosemary Avenue and Manor Avenue at either end and enables deliveries to be made to the rear.
3. The appeal site is made up of a three storey terraced building with a supermarket called Best Foods at ground level with residential use above. The development consists of a single storey extension with canopy element attached to the rear of the shop building together with two shipping containers, one stacked on top of the other. The shipping containers are closest to the service road. To one side of the shipping containers, there is an

electricity substation and to the other side, there is an expanse of hardstanding which is used by vans and lorries as well as cars by shop owners vehicles for unloading.

4. The single storey rear extension is used for cold storage for the shop and also has a toilet area and area for a dishwasher. The shipping container at ground floor level is accessed through the single storey extension and is also used for food cold storage. The extension is constructed from a timber frame with a flat roof. The top shipping container has a door but no access due to its height as the extension does not extend out as far as the door. There are external stairs to the side of the appeal site but they provide access to the residential flats above the front of the shop.
5. The Council has assessed the containers as being permanent structures largely due to their size. The courts have held that three primary factors establish what constitutes a building (a) of a size to be constructed on site, as opposed to being brought on site, (b) permanence and (c) physical attachment. No one factor is decisive. Given their size and appearance it is likely that the structures were brought onto site. However, equally, the containers are not capable of being moved easily and would require some form of lifting equipment. Although there are bricks underneath the lower shipping container, the containers are fixed to each other and the lower container is attached to the rear extension which would indicate a significant degree of permanence. Given the scale, nature, and size of the development, I am therefore satisfied that they are buildings and are therefore operational development.
6. The appellant has stated that the character of the area is not one of high quality design. The service road is not in a good condition and from my site visit observations fly tipping appears to be an ongoing issue. The other shipping containers along the service road are in poor condition. Nevertheless, the policies relied upon by the Council refer to transforming areas of poorly defined character and using opportunities to establish a new coherent character. Otherwise, allowing poor design would mean that there will never be any improvement in the area for shop owners, for the users of the garages that are to the other side of the service road or for pedestrians who can see at least part of the service road when they walk past on either Manor Avenue or Rosemary Avenue.
7. Nearby residents have objected to the development both individually and also collectively with a petition. The petition refers to the safety aspects particularly the height of the stacked containers, other shop owners rights to unload and load being blocked and the demolition of a small extension and the current extension being erected. Individual comments include the unsightly appearance of the lower container, workers accessing the top container which is not safe, and concerns about the stability of the containers in adverse weather.
8. The issue of the location of the development preventing the use of third party rights is a separate matter which falls outside the planning legislation. Similarly, the Health and Safety Executive has powers with regard to health and safety. Whilst the concerns of residents are noted, it is their comments about the appearance of the development that are most relevant to the appeal.

9. There are some single shipping containers along the service road but extensions and buildings are more common. Stacked containers are not prevalent along the service road, there is only one stack of two containers at 320 Bath Road which from their appearance and rust at the base may have been there for some time. The Council has referred to taking enforcement action where unlawful development has not acquired immunity. A photograph taken from a dwelling on Francis Road shows all of the top shipping container and the top section of the lower container. Whilst I agree that no one has a right to a view nevertheless the shipping containers in particular are visible and incongruous both along parts of the service road and on the part of Francis Road opposite the development. In particular, the shipping containers are too high and are of poor quality and dominate the rear of the building.
10. For the reasons given, I do find that the shipping containers in particular due to their size, bulk, design, and general appearance are an incongruous addition to both the appeal site and the wider area particularly in their location next to a busy service road. Although the appellant refers to an essential need for storage, the top shipping container is not accessible in a safe manner in any event.
11. The shipping containers both individually and when considered together with the single storey extension do therefore adversely affect the character and appearance of the area. The development is therefore in conflict with Policies CC1 (Context and Character) and CC2 (Urban Design and Architecture) of the Local Plan 2015-2030 of the London Borough of Hounslow which, amongst other things, refer to transforming areas of poorly defined character.

Part of the Development

12. The appellant's ground (f) appeal is that the development other than the top shipping container should be allowed to remain. In essence, the appellant is asking for planning permission to be granted for part of the development namely the lower shipping container with the extension and canopy element which sits within ground (a) rather than ground (f). Section 177(1)(a) of the Act allows permission to be granted under the appeal to any part of the matters alleged in the notice. However, the retention of a single shipping container with the extension element would still in my view be bulky and incongruous and not overcome the harm that I have identified.
13. Nevertheless, I do consider that retention of the extension element itself which is single storey and which is set back further from the service road and partially obscured from views by the electricity substation would not adversely affect the character and appearance of the area given the existing mix of extension styles and sizes of buildings to the rear of the shops. The extension is subservient to the main building with a flat roof and is set down from the main extension. By itself, it does not have the same prominence or incongruous appearance that arises from the presence of the shipping containers.
14. Other built development extends out significantly further than the extension including the substantial white building to the rear of 354-356. The appellant has commented that the building does not have planning permission. Whilst it may be the case that some surrounding development is immune from enforcement action, due to the variety and number of extensions it is not possible for me in assessing the character of the area to draw a distinction

without further information as to what development is permitted and which is immune. The sporadic development that exists does form part of the character of the area. Nevertheless, I do not consider that the extension by itself prevents the establishment of a more coherent character for the future in accordance with the policies cited by the Council. For those reasons, I do not find that the extension by itself does adversely affect the character and appearance of the area.

15. The development is therefore not in conflict with Policies CC1 (Context and Character) and Policy CC2 (Urban Design and Architecture) of the Local Plan 2015-2030 of the London Borough of Hounslow which, amongst other things, refer to transforming areas of poorly defined character.

The appeal under ground (f)

16. An appeal under ground (f) is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is therefore necessary with a ground (f) appeal to establish the purpose of the notice.
17. The requirements of the notice include the removal the shipping containers and the rear extension. The purpose of the notice is to therefore to remedy the breach rather than to remedy the injury to amenity. The appellant has referred to lesser steps of removing only one shipping container under this ground and allowing the remaining development to remain. I have already considered the planning merits of allowing part of the development to remain under ground (a) and will grant planning permission for the extension only.
18. However, with regard to ground (f) removing only one shipping container would not achieve the purpose of the notice which is to remedy the breach of planning control. The requirements of the notice are not excessive. The ground (f) appeal must therefore fail.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed in part only and I will grant planning permission for one part of the matter the subject of the enforcement notice namely the single storey rear extension but otherwise I shall uphold the enforcement notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
20. Section 180 of the Act states that where after service of a enforcement notice planning permission is granted for any development carried out before the grant of planning permission , the notice shall cease to have effect so far as inconsistent with that permission. Consequently, the notice ceases to have effect with regard to the rear single storey extension because this will benefit from planning permission.

Conditions

21. The removal of the shipping container at ground floor level would however create a gap to the rear of the extension. The obvious way to fill the gap

would be with external materials to match the existing extension and that work could be done within a reasonable time without the need for further applications. In exchanges with the parties about appropriate conditions, creating doors or shutters at the rear was put forward as an option. However, that could only be achieved by the submission of further details and plans which may or may not be approved. The absence of a clear time line creates uncertainty and does not solve the practical problem of a gap being left once the shipping containers are removed within the required 3 months. The need for submission of further details lacks certainty and goes beyond the scope of my powers as the details of what is being suggested are not known at the point of granting planning permission and are not part of this appeal. For those reasons, planning permission is granted for the single storey extension subject to the conditions listed.

22. Two conditions are required so that the rear extension is only used in connection with the use at 364-366 Bath Road, Hounslow and that matching materials are used to fill the gap at the rear of the extension following the removal of the shipping containers.

Formal Decision

23. The appeal is allowed in so far as it relates to the single storey rear extension and planning permission is granted on the application deemed to have been made under Section 177(5) of the Act as amended for the single storey rear extension at 364-366 Bath Road, Hounslow TW4 7HT subject to the conditions listed in the Schedule.
24. The appeal is dismissed and the enforcement notice is upheld in so far as it relates to the 2 rear shipping containers and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The single storey rear extension shall only be used in connection with, and incidental to the use carried out at 364-366 Bath Road TW4 7HT and for no other purposes.

Reason: In order to minimise noise disturbance and to improve the security and appearance of the building within the area, in accordance with Local Plan Policies TC5 and CC2 and London Plan Policy D11

2. Within 3 months of the date of this decision, the gap created by the removal of the lower shipping container shall be infilled with similar external materials to those used for the single storey rear extension, the subject of this planning permission.

Reason: In order to minimise noise disturbance and to improve the security and appearance of the building within the area, in accordance with Local Plan Policies TC5 and CC2 and London Plan Policy D11.

END OF SCHEDULE OF CONDITIONS