



Appeal Decision

Site visit made on 24 January 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal Ref: APP/U5360/C/21/3278700

Land at Pub on the Park, 19 Martello Street, Hackney, London E8 3PE

- 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 Kieran Ryan of North Road Bar Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 10 June 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a roof structure over the rear balcony and the erection of timber walls with plastic windows surrounding the front and side elevations of the side balcony.
 - The requirements of the notice are:
 1. Remove the metal supported plastic roofing.
 2. Remove the timber walls with plastic window inserts that surround the side seating area.
 3. Make good all damage to the property resulting from the removal of the unauthorised works as listed above.
 4. Upon completion of the above steps, remove all materials, debris, waste and equipment arising from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld subject to corrections and variation as set out in the Formal Decision below.

Procedural matters

1. The breach of planning control alleged in the notice is the erection of a roof structure over the rear balcony and the erection of timber walls with plastic windows surrounding the front and side elevations of the *side balcony* (emphasis added). I note, however, that the requirement at paragraph 5(2) of the notice refers to the *side seating area*. There is therefore a mis-match between the breach of planning control alleged in the notice and the requirements to comply with it.
2. The area of seating to the side of Pub on the Park is on a vestigial area of road surface. The use of the word balcony in the allegation at paragraph 3 of the notice implies access from a door at an upper level. Whilst this would be appropriate for the area enclosed by the roof structure, it would not be an accurate description of the seating area to the side. I will therefore correct paragraph 3 of the notice in this respect by replacing the words 'side balcony'

with 'side seating area', as described in paragraph 5(2) of the notice. I am satisfied that no injustice would be caused by so doing.

3. The enforcement notice has photographs of the rear balcony and side seating area embedded within it, both taken in March 2021. I noted at my site visit that the side seating area was somewhat different in appearance to that depicted in those photographs. In particular, the timber lattice with plastic window inserts was no longer present, leaving just the solid timber base in situ. The entire area was covered by what appeared to be the parasols visible in the photographs embedded within the enforcement notice which, when opened, create an open-sided covered space. Notwithstanding these changes, I have considered this appeal on the basis of the breach of planning control alleged in paragraph 3 of the notice, and therefore including the plastic window inserts.
4. The Council cites, amongst others, Policy LP3 of the Hackney Local Plan 2020 (Local Plan) in the reason for issuing the enforcement notice. However, on my reading, Policy LP3 only relates to designated heritage assets. The National Planning Policy Framework (Framework) defines a designated heritage asset as a World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation. This does not include a locally listed building, such as the Pub on the Park, which would therefore be regarded as a non-designated heritage asset.
5. The supporting text to Policy LP3 distinguishes between designated and non-designated heritage assets. Indeed, I note that there is a separate and specific policy in the Local Plan relating to non-designated heritage assets (Policy LP4). It therefore seems to me that the Council has misapplied Policy LP3 in this case, and that Policy LP4 is the relevant policy in the development plan. The appellant and the Council were both offered the opportunity to comment on the application of Policy LP4 to this case, and I have taken those comments into account. In particular, the Council accepts that Pub on the Park is a non-designated heritage asset and that Policy LP4 is the relevant policy in the development plan. I will therefore correct the notice to delete reference to Policy LP3 and substitute there reference to Policy LP4. I am satisfied that no injustice would be caused by so doing.

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

6. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised is the effect on the character and appearance of the host property.
7. The appeal property is a two-storey detached public house located on the west side of Martello Street within the London Fields area of open space. The building itself is of distinctive character and appearance and, whilst not statutorily listed, is locally listed. The location of the building within London Fields means that all elevations of the building are clearly visible from the public domain, including from the public park and from Martello Street. Moreover, when viewed from the latter, the prominent position of the building at the junction of Martello Street and a vestigial section of a now truncated road results in the front and side elevations of the detached building making a significant contribution to the character and appearance of the area.

8. The roof structure over the rear balcony is a not insubstantial structure that, from some viewpoints, obscures part of the rear elevation of the building. Although I am not aware that any particularly important architectural features are now hidden from view because of it, by reason of its size the roof structure dominates the rear elevation of the building. Whilst the rear elevation is not as important as the front elevation, the rear elevation nonetheless forms an integral part of the character and significance of this locally listed building. Given that the rear elevation is plainly visible from London Fields, the roof structure partly obscures a view of the building that was previously visible to the public and which enabled the character of this locally important building to be fully appreciated. The erection of the roof structure has diminished that experience. The visual harm that results is exacerbated by the poor quality of the materials used in the construction of the roof structure, including the metal supports and the means by which they are affixed to the building.
9. When viewed from Martello Street, the side seating area is largely viewed in connection with the front elevation of Pub on the Park and/or against the backdrop of the side elevation. By reason of its size, design and the use of poor-quality materials, the side seating area is an incongruous addition that is out of keeping with the character and appearance of this locally listed building. The harm in that respect is exacerbated by the prominent position of the building and the contribution that it otherwise makes to the character and appearance of the area.
10. I conclude that the breach of planning control alleged in the notice unacceptably harms the character and appearance of the host property. I therefore conclude that the development is contrary to Policy HC1 of the London Plan 2021, as well as Policies LP1 and LP4 of the Local Plan. These policies require, amongst other things, that all new development must be of the highest architectural quality, and that development affecting non-designated heritage assets should conserve or enhance and reveal the significance of the assets and their setting.
11. In addition to the above policies, the reason for issuing the enforcement notice also cites Policies D1 and D3 of the London Plan 2021. However, on my reading, these policies primarily relate to optimising the use of land in the context of large-scale developments. For that reason, I am not persuaded that either of these policies is directly relevant to the breach of planning control alleged in the notice.

Other considerations

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control alleged in the notice fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
13. The appellant has provided an Operational Statement that sets out the challenges faced by pubs, both during the Coronavirus pandemic and beforehand. The appellant explains that whilst customers are returning

following the first lockdown, pub culture has become more sophisticated over recent years and that in order to have any chance of survival a modern pub must offer quality products with a wide range of experiences and settings. The appellant explains that one of the most significant customer behavioural changes has been an increase in advance bookings and enquiries for outdoor space on the existing decking, but that customers are reluctant to make bookings unless they can be provided with protection from inclement weather.

14. The appellant explains that the development that has been undertaken was intended to improve the existing outdoor decking space by having a permanent covered structure that would enhance customer experience. The appellant goes on to explain that the existing outdoor decking area is a tricky space to cover, and that a bespoke frame marquee was considered to be the most effective choice. The appellant considers that the development undertaken optimises the potential of the outdoor space in the colder months, and points out that the structure(s) subject to this appeal has enabled the operator to continue to trade and to provide a valuable community facility during extremely challenging times. I have taken the appellant's comments, of which the foregoing is just a summary, fully into account.
15. The appellant also refers me to the Written Ministerial Statement (WMS) made by the Rt Hon Robert Jenrick MP on 5 March 2021 setting out the Government's proposals for supporting the reopening of outdoor hospitality following the first lockdown. The WMS indicated that, given the continuing importance of the outdoors to reduce transmission of the virus, Councils were encouraged to plan for outdoor dining and make all necessary changes to local high streets, squares and the public realm so this is as convenient as possible for businesses and members of the public. The WMS went on to explain that the changes first introduced in 2020 were to provide much needed support to hard-hit hospitality businesses, and that it was vital that local authorities used those measures in a pragmatic way to help support the high street, businesses and jobs, once restrictions allow them to do so.
16. Although I have had regard to this WMS, it must be read in context. The main thrust of the WMS was the measures first introduced in July 2020, such as pavement licences, would be continued for 2021. Whilst this was clearly intended to help the hospitality sector, there was no suggestion in the WMS that this extended to countenancing breaches of planning control. Furthermore, the WMS only refers to outdoor capacity on the public highway or marquees for temporary outdoor events, neither of which are relevant to the development subject of this appeal. For these reasons, whilst fully recognising the support for the hospitality sector provided by the WMS, I attach only limited weight to it for the purpose of this appeal.
17. A considerable number of representations have been received in support of retaining the rear balcony (in particular) and the side seating area, both submitted to the Planning Inspectorate in response to notification of the appeal and to the appellant directly. The latter alone amounts to some 212 emails and a petition containing 141 signatures. Whilst there is an element of overlap, this nevertheless constitutes a significant level of support. I am also mindful that the majority of representations received are from the local community, and that many of the respondents consider the 'marquee' (the roof structure over the rear balcony) to be a real benefit. These representations all weigh in favour of retaining the development that has taken place.

18. Paragraph 203 of the Framework provides that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining applications. This clearly includes applications deemed to have been made under section 177(5) of the 1990 Act, as in this case. Paragraph 203 of the Framework goes on to indicate that, in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
19. The significance of Pub on the Park as non-designated heritage asset lies in the combination of the distinctive character and appearance of the building itself, coupled with the extent to which all elevations of the building are readily visible from public vantage points. The non-designated heritage is therefore a prominent and distinctive landmark in the streetscape, and makes a significant and positive contribution to the character and appearance of the area. I therefore assess the significance of this non-designated heritage asset as being considerable.
20. The harm resulting from the development subject to the application is in two parts. Firstly, both the rear balcony and side seating areas obscure or restrict views of the host property. Secondly, by reason of their size and the use of poor-quality materials, both the rear balcony and side seating area detract from the character and appearance of the building itself. Both of these factors serve to diminish the way in which the heritage asset is experienced. This results in great harm to the non-designated heritage asset.
21. The erection of the rear balcony and side seating area has clearly enabled the operator to continue to trade and to provide a valuable community facility throughout challenging times for the hospitality sector. It is clear from the representations received that the rear balcony in particular is widely regarded by the local community as being a real benefit. However, whilst I recognise that having covered areas assists the social wellbeing of customers, there is no evidence before me that the retention of these particular structures is essential for securing the ongoing and future viable use of this non-designated heritage asset, or for that matter represent the only option available. For that reason, I consider that policies in the London Plan 2021 that seek to safeguard the hospitality sector and the night-time economy, including Policies HC6, HC7 and S1, are not infringed by the requirements of the notice.
22. Indeed, the Council has indicated that it considers the enclosing of each of these areas area may be acceptable in principle. It therefore seems to me that the possibility remains that covered areas could be provided to enhance the viability of the Pub on the Park and the wellbeing of its customers, but which do not unacceptably harm the significance of this heritage asset. Given that other, potentially acceptable options, have not been fully explored, I can only give limited weight to the possibility that the removal of the rear balcony and side seating area would undermine the future viability of the business.
23. In weighing the balance required by paragraph 203 of the Framework, I am mindful that restrictions imposed by the Coronavirus pandemic have now been eased. It therefore seems to me that the original need for the rear balcony and side seating area has now passed, albeit it is clear from the representations received that these structures continue to be valued by customers.

24. Nonetheless, and notwithstanding the significant local support, the retention of these structures would cause great and permanent harm to the considerable significance of this non-designated heritage asset. For that reason, I conclude that the harm caused to the significance of this heritage asset by the rear balcony and side seating area outweighs the benefit secured by retaining them.
25. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates (my emphasis). The rear balcony and side seating area are completely separate, and I have therefore considered whether I could grant planning permission for either of those structures in isolation. However, conducting again balance required by paragraph 203 of the Framework, adjusted this time to have regard to the presence of just either one of these two structures, I still consider that the harm to the significance of the non-designated heritage asset outweighs the benefits of retaining either of them.
26. I have considered whether the imposition of suitably worded conditions could overcome the harm that I have identified above, but conclude that they would not. As part of that, I considered whether it would be appropriate to grant a temporary planning permission but, in the absence of a permanent proposal coming forward at this time, these are not circumstances where the Planning Practice Guidance indicates that a temporary permission may be appropriate.

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

27. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan when read as a whole. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
28. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeal on ground (g)

29. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
30. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. There is, in addition, a further aspect to consider in this case: the benefit derived by members of the local community, as evidenced in the considerable level of support expressed in representations.
31. The appellant has not contended that there is any difficulty in physically removing the structures within the time period stated in the notice. The essence of appellant's case on this ground of appeal is that, given the serious viability challenges faced by the appellant, the three-month compliance period would have very serious commercial implications in terms of keeping the public house trading. The appellant does not specify a period of compliance that in

his view would be reasonable, but instead seeks a temporary planning permission for two years which, he considers, would be appropriate to allow patterns of trade to settle and for society to adapt to living with Coronavirus.

32. It is not possible to grant a temporary planning permission under ground (g): that option is only available under an appeal on ground (a) and, for the reasons set out above, I have already concluded that granting a temporary planning permission would not be appropriate in this case. Nevertheless, I must still consider whether there are sound reasons to extend the period of compliance under the appellant's appeal on ground (g).
33. The restrictions imposed during the Coronavirus pandemic have now been eased, and therefore the financial implications of trading under those restrictions does not provide an imperative to extend the period of compliance at this time. It seems to me, however, that the benefits of the covered seating areas expressed in representations go beyond considerations relating to the Coronavirus pandemic and relate to an enhanced customer experience.
34. The Council has indicated that it considers the enclosing of each of these areas may be acceptable in principle. Obtaining planning permission for a permanent structure(s) would enable the Pub on the Park to offer an enhanced customer experience and to provide the benefit expressed in representations from the local community. Without prejudice that any decision that the Council may ultimately make, it therefore seems to me that an appropriate and proportionate response would be to extend the period of compliance to allow the submission a planning application for a permanent structure(s). Sufficient time needs to be allowed for the preparation and submission of a planning application, and for the consideration of that application by the Council. To this needs to be added the original period of compliance stated in the notice to physically remove the existing structures in the event that the planning application is not successful. I consider that a period of compliance of nine months would be sufficient but, should that prove not to be the case and/or to facilitate the temporary retention of the structure(s) pending the implementation of any planning permission that may be granted, section 173A(1)(b) of the 1990 Act provides the Council with discretion to extend the period of compliance.
35. The appeal on ground (g) succeeds to that extent.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

37. It is directed that the enforcement notice is corrected by:
- In paragraph 3 of the notice, delete the words 'side balcony' and substitute there the words 'side seating area'
 - In paragraph 4 of the notice, delete the words 'LP3 (Designated Heritage Assets)' and substitute there the words 'LP4 (Non-Designated Heritage Assets)'.

38. It is directed that the enforcement notice is varied by:

- In paragraph 6 of the notice, delete 'three months' and substitute there 'nine months'.

39. Subject to the corrections and variation, the appeal is dismissed, 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.

Paul Freer
INSPECTOR