



Appeal Decision

Site visit made on 14 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/T5150/C/21/3272594

232-234 Kingsbury Road, Kingsbury, NW9 0BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Thevarajah for Marco Polo Properties Ltd against an enforcement notice issued by the Council for the London Borough of Brent.
 - The notice was issued on 4 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a smoking shelter/wooden structure to the rear of the premises.
 - The requirements of the notice are to:
 - STEP 1 Demolish the unauthorised smoking shelter/wooden structure to the rear of the premises.
 - STEP 2 Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is: 3 Months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a smoking shelter/wooden structure to the rear of the premises at 232-234 Kingsbury Road, Kingsbury NW9 0BH as shown on the plan attached to the notice.

Applications for costs

2. An application for costs was made by the Council for the London Borough of Brent, against Marco Polo Properties Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant suggests that the thick black line shown on the plan that accompanies the enforcement notice is imprecise and that it does not therefore comply with the requirements of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. With respect to some matters additional to other legislative requirements, regulation 4(c) requires an enforcement notice to "specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise." The appellant has not made their view about any inaccuracy clear. I have not, for example been provided with an alternative plan showing the suggested degree of imprecision to assist in me. The appellant makes some suggestions about how best to show this on a plan but those appear to be nothing more than opinion beyond

what the regulations say. From my inspection of the site and understanding of the plan, I consider that it is sufficiently precise.

4. The precise location of the smoking shelter/wooden structure within the land is not highlighted on the plan but there is only one structure on the site that could be reasonably considered to fall within that definition. It is clearly distinguishable from other buildings within the site which appeared to me to be constructed primarily of materials other than timber. When I visited, I knew which structure the notice referred to and from what the appellant writes, they did too. Although it is possible to construe the words on the notice differently, I consider that on a reasonable interpretation they are sufficiently clear. Although the appellant asks me to change the wording, an alternative is not provided and I do not consider that it is necessary.

The Appeal on ground (c)

5. The appeal on this ground is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.
6. The appellant has provided sworn statutory declaration from the premises manager which included 2 photographs. One photograph shows the structure which is said to be from 2015 before a fire that happened on 22 June 2020. The second photograph is said to be from 1 November 2020. There is no direct evidence to dispute these dates or the facts. The buildings in these 2 photographs look very similar in terms of the appearance and materials used on the roof, in terms of the size of the supporting timbers and other general proportions. The later photograph shows a part completed building with supporting timber poles not yet stained the dark brown as I saw them at my visit or as were shown on the original building. Those timbers look fresh and not obviously fire damaged. There are some other differences with current building such as the less solid balustrading along the front.
7. Even though the present building looks similar to that which existed before the fire, photographs are provided by the Council which show the more immediate aftermath. Photographs are also provided by a neighbouring landowner which show an additional view of the devastated remnants of the timber-frame. The frame of the shelter as shown on those photographs, demonstrates the substantial charred state of all of the timbers. There is no evidence from the appellant to indicate these photographs are unreliable. Nor is there evidence that the same timbers were re-used in the re-construction of the building or whether that was structurally possible. The photographs show the building looking severely damaged, with no cladding and the roof is not present at all. These must have either have burned away or have been removed following fire damage. The Council has set out its view of the work that was undertaken including the installation of a new concrete foundation and supporting timber uprights; installation of new horizontal timber wall plates and cross beams; new timber rafters to form a pitched roof; new plyboard, roof felt/ties and ridge ties; and new fascia board. There is no evidence to dispute this.
8. Section 336 of the Act defines amongst other things, that "building" includes "part" of a building. That is consistent with the interpretative section of the GPDO¹ referred to by the appellant which relates to definitions for the purposes of that order. Section 55 of the Act defines "development" and "new

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

development". This includes the "carrying out of building, engineering, mining or other operations, in, on, over or under land." Subsection (1A) defines "building operations" as including at (b) "rebuilding", (c) "structural alterations of or additions to building" and (c) "other operations normally undertaken by a person carrying on business as a builder". Section 55(2) then defines some operations and uses which are not "development". Sub-section (a) refers to the "carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

9. There may be parts of the original structure that still exist and that have been utilised within the present structure. I am not presented however with a detailed survey of what precisely has been re-used and so must determine this ground of appeal based upon the information that I have been provided with. Even if some original parts remain in place, they appear, as a matter of fact and degree, to have been very minor elements. Significant numbers of new supporting timbers have been utilised and the building has been completely re-roofed, re-clad and then re-decorated.
10. Even if some of the building was retained, it was a small proportion. Reconstruction work started very soon after the fire but the works were not minor repairs. A substantial degree of rebuilding was clearly required that in my view would be operations normally undertaken by a person carrying on business as a builder. This would have involved development within the meaning of the Act. I am not provided within any other reason why that would not have required planning permission such as "permitted development" rights under the provisions of the GPDO.
11. Given the evidence provided, on the balance of probabilities and as a matter of fact and degree, I consider that the process of rebuilding the structure involved development requiring planning permission. The appeal on ground (c) fails.

The Appeal on ground (d)

12. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development. In this case, operational development has taken place and the relevant period as defined by s171B(1) of the Act is 4 years beginning with the date on which the operations were substantially completed.
13. The development was undertaken following the fire in June 2020. The building as reconstructed was not substantially completed more than 4 years prior to the issuing of the notice. The appeal on ground (d) therefore fails.

The Appeal on Ground (a) and the deemed planning application

14. Under this ground of appeal, planning permission is sought for what is alleged on the notice.

Local Plan

15. Since the notice was issued, the Brent Local Plan 2019-2041 (LP) was adopted in February 2022. The main parties were given an opportunity to comment on the implications of this. I will take into account the policies from the LP rather than those policies quoted within the reasons for issuing the notice.

Main issue

16. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

17. The appeal site is within an urban area close to a range of land uses with a variety of building styles. It is located along the busy Kingsbury Road and the large building that forms the 'Carlton Lounge', is positioned close to that road behind a parking area and driveway. The building takes up much of the width of the frontage of the appeal site and is high, with a series of pitched roofs. It is also a deep building with 2 large hipped-ends to the roofs that extend into the site with the grey roof of the shisha lounge behind that.
18. The land to the west includes a number of commercial activities and structures. When looking towards the site from the west along the busy Kingsbury Road, the appeal site can be seen across the areas used for various vehicle related activities. These structures included, at the time of my visit, a canopy for a valeting and hand car-wash business and another more substantial canopy for a vehicle rental business. To the rear of that adjoining site are some other buildings, some with flat roofs including the print-shop which was also damaged in the 2020 fire.
19. The smoking shelter which is largely constructed of timber but with a pitched, slate or tiled roof, is located close to the western side boundary of the site. The rear external elevation does have a non-timber board, possibly fibre-cement, below the eaves but that is only obvious when looking along the gap between the building and the western boundary fence. It is within the neatly landscaped gardens that form the amenity area connected to the 'Carlton Lounge' with the shisha lounge positioned between the smoking shelter and the dominating, more traditional building at the front of the site. The gardens are very level and enclosed by retaining structures and the land around the apartments or flats within Meade Court to the north are significantly higher.
20. The smoking shelter is discretely positioned within the site in terms of views from Kingsbury Road. It is shielded from that direction by the adjoining commercial buildings and also the large buildings on the site itself. The highest part of the structure is around the height of the robust timber fence along the northern boundary and is off-set from the fence along the western boundary. The roof slopes away from that fence. There may be views of the structure from the higher parts of adjoining buildings, however, generally these views are very limited. Within the context of adjoining commercial and residential buildings surrounding the site and more significantly in the setting of the site itself, the smoking shelter looks appropriate.
21. The siting, scale, materials, detailing and design of the building compliment the locality and the visual amenity of the area. This is a simple building which primarily has a subservient functional role as a shelter for people using the garden for the existing use. In this context, the architectural and urban design qualities of the building are of sufficiently high quality.
22. In relation to the main issue, the development has a satisfactory effect on the character and appearance of the surrounding area. This complies with LP Policies DMP1 and BD1.

Other matters

23. Fire-risk is not given as a reason for the Council issuing the notice. I have been provided with some information about the previous building and the fire which also affected the adjoining property. I am not however provided with evidence of any integral fire-risk caused by the presence of the current building, the precise details of what caused the previous building to ignite or any differences or integral similarities between the buildings, apart from the obvious superficial resemblances. The rear elevation of the building is separated from but close-to the timber side boundary fence and is intended for people to smoke under. However, I do not have sufficient evidence that this presents an unreasonable degree of danger to the adjoining occupiers and it does not therefore outweigh my conclusions on the main issue.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a smoking shelter/wooden structure to the rear of the premises as described in the notice. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Andy Harwood

INSPECTOR