



Appeal Decision

Site visit made on 21 March 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/T5150/C/21/3278720

The Lodge Restaurant, The Lodge, Kingsbury Road, London NW9 9HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Hamid Farooqi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 2 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a brick boundary wall to the premises.
AND
Without planning permission, the erection of a metal frame canopy extension to the premises.
AND
Without planning permission, the installation of a shipping container to the side of the premises.
AND
Without planning permission, the installation of a UPVC dormer window facing onto Kingsbury Road.
 - The requirements of the notice are:
STEP 1 Demolish the brick boundary wall.
STEP 2 Remove all debris, dig rip the land so that it consists of top soil and then plan a hedge where the brick boundary wall formerly stood.
STEP 3 Remove the unauthorised metal frame canopy extension.
STEP 4 Remove the container and its content from the side of the premises.
STEP 5 Replace the dormer window facing onto Kingsbury Road with wooden windows, which exactly replicate the original windows, in terms of opening mechanism, materials, and design.
STEP 6 Remove all items and debris, arising from the compliance of the above steps, and remove all materials associated with the unauthorised developments from the premises.
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
 - (1) Deleting STEP 1, STEP 2 and STEP 3 and replacing them with the following: *STEP 1 Remove the unauthorised metal frame canopy extension and demolish the brick boundary wall and restore the land to its previous condition.*
 - (2) Deleting STEP 5 and replacing it with the following: *Remove the UPVC window from the dormer facing onto Kingsbury Road and replace with a*

window in accordance with planning permission reference 19/3413 dated 21 April 2020.

2. Subject to these variations, 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.

The Enforcement Notice

3. In this case I consider that the purpose of the notice is to remedy the breach of planning control (s173(4)(a) of the Act).
4. The recipient cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that the requirements can seek to achieve is compliance with a planning permission or restoration of the land to its previous condition. Therefore, there is no scope for an enforcement notice to require some improvements to the land.
5. Consequently, I shall delete STEPS 1, 2 and 3 and replace them with a new STEP 1 which requires the canopy and wall to be removed and the land restored to its previous condition. I shall vary STEP 5 so that it requires the removal of the UPVC window and replacement with a window in accordance with planning permission reference 19/3413 since there is no suggestion that the planning permission is no longer extant.

Preliminary Matters

6. Since the appeal was made the Brent Local Plan¹ has been adopted and replaces the London Borough of Brent Local Plan November 2016 Development Management Policies and the Brent Core Strategy 2010. However, the Council referred to the relevant policies from the then emerging Local Plan in the enforcement notice upon which the appellant has had the opportunity to comment.
7. The shipping container had been removed at the time of my visit. On this occasion since I have few details about the container, in particular its siting and bearing in mind the Council's reason for taking action related to access and delivery arrangements, I see no need for me to consider this further.

The appeal on ground (b)

8. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
9. The appellant's case on this ground only relates to the shipping container. They do not dispute that a container was sited on the land. Consequently, notwithstanding that it was removed prior to the enforcement notice being issued, as a matter of fact, the matters stated in the notice have occurred. The appeal on ground (b) therefore fails.
10. The appellant's argument that *the shipping container was in situ for less than 28 days* appears to be a reference to Article 3 Schedule 2 Part 4 Class B of the Town and Country Planning (General Permitted Development) (England) Order

¹ London Borough of Brent Brent Local Plan 2019-2041 Adopted February 2022

2015 (as amended) which is more pertinent to an appeal on ground (c). However, there is no substantive evidence regarding the length of time the container was on the land, so even if an appeal on ground (c) had been made, it would not have succeeded.

The appeal on ground (c)

11. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
12. The appellant's case on this ground only relates to the UPVC window and is made on the basis that planning permission was granted for this window, reference 19/3413.
13. That approved is a triple pane casement with each pane divided into eight smaller panes with glazing bars. The window that has been installed is a double pane casement each divided into six smaller panes.
14. Since the window installed is not in accordance with the approved plans, the appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

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

15. The main issue is the effect of the wall, canopy and UPVC window on the character and appearance of Kingsbury Lodge (The Lodge) and the area generally.
16. The Lodge is a traditional red brick building under a red tiled roof with hipped roof forms to either end and architectural features which include a substantial chimney and dormer windows. The building has been recently extended however, notwithstanding the inclusion of modern glazing, the extension reflects the traditional character and appearance of the original building.
17. The Lodge occupies a prominent position on the edge of Roe Green Park which the Council state is locally listed, with this part of the park once forming part of the grounds to Kingsbury Manor. The Lodge is a non-designated heritage asset the significance of which, based on the submissions, is in its historical association with Kingsbury Manor, being the former home of the gardener.
18. Although there are buildings of various modern design and use within the vicinity of the site, The Lodge stands alone with the park as a backdrop.
19. The canopy has been erected over the areas around the broadly eastern end of the building and is highly visible in the streetscene and views from the park. Whilst the wall is built from matching materials, the chunky metal frame and retractable roof of the canopy have a distinctly modern appearance which does not respect and is unsympathetic to the generally traditional architectural style of the building.
20. Additionally, because of the scale and siting, close to the mesh fence, the wall and canopy cause the area around the eastern end of the building to appear

overdeveloped and cluttered. Overall, due to the scale, design and siting, the wall and canopy appear as an incongruous addition which have a materially harmful effect on the character and appearance of The Lodge.

21. The wall and fence are not comparable with the previously approved awnings since they would be entirely retractable and more traditional in appearance.
22. The UPVC window has an engineered and modern appearance with chunky framing, which does not reflect the character of a traditional timber window, particularly their slim, delicate profiles. It adversely affects the traditional integrity of the appeal building and consequently does not sustain or enhance the non-designated heritage asset.
23. Overall, I conclude that the wall, canopy and UPVC window do not accord with the design and heritage protection aims of Policies DMP1 or BHC1 of the Local Plan and Policies HC1, D3 and D4 of the London Plan 2021. Together these policies require high quality design which sustains and enhances the significance of heritage assets. It also fails to accord with the National Planning Policy Framework which requires development to sustain and enhance the historic environment.

Other matters

24. The appellant stated that the canopy provides greater capacity within the site, as well as more appropriate outdoor seating in response to the COVID-19 pandemic. Undoubtedly the availability of additional space will have aided the business during the exceptional circumstances associated with the pandemic and will be of continuing benefit to the business. However, since there is no longer any requirement for social distancing and as it has not been demonstrated that the appeal scheme is the only means by which additional seating could be provided, these matters can only be afforded limited weight.
25. For this same reason I afford little weight to the argument that the canopy has removed the need to have excessive outdoor umbrellas which previously occupied the site.
26. I acknowledge the support from third parties including some councillors however, this is a neutral matter which cannot outweigh my findings.
27. The appellant referred to Policies GG2, GG6 and D1 of the London Plan 2021, the strategic aims of which I find are not directly relevant to the detailed considerations in this case.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations 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