
Appeal Decision

Site visit made on 20 August 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal Ref: APP/U5360/C/22/3297970

Land at 46 Fanshaw Street, Hackney, London N1 6LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andre King of Plug Inn Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2020/3149/ENF, was issued on 17 March 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a roof extension at front, side and rear of the site and the erection of 9 perimeter fence posts.
 - The requirements of the notice are:
 - (1) Remove the timber roof extension and the 9 perimeter fence posts from the roof terrace, and
 - (2) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is six 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.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction as set out in the Formal Decision below

Procedural matters

1. Photographs attached to the enforcement notice show the roof extension to be constructed of unpainted plywood sheeting and the 9 perimeter fence posts in situ. At the time of my site visit, the plywood sheeting of the roof extension had been painted matt black to match the external walls of the main building. The 9 perimeter fence posts had also been reduced in height, such that they were practically flush with the roof extension.
2. The appellant suggests that the photographs attached to the notice are misleading, and show images of elements which were rectified a long time before the enforcement notice was issued. The appellant sets out a narrative which explains the sequence of events, but that is not supported with photographic or documentary evidence. However, the Council has not challenged the appellant's version of events. I am therefore prepared to give the appellant the benefit of the doubt and approach this appeal on the basis of the breach of planning control as it appeared at the time of my site visit.
3. I note that following discussion with Council officers the appellant believed that painting the roof extension to match the walls of the main building and removing the fence would resolve matters. However, that is a matter between the appellant and the Council, and is not a matter that is before me.

4. The reasons for issuing the notice at paragraph 4.3 allege that the addition of the fence posts around the perimeter of the roof is indicative of the owner's previous endeavour to create a roof terrace to form part of the public house. It appears from evidence provided by the Council that this is an accurate statement and is one that has not been challenged by the appellant. Nevertheless, that can form no part of my consideration of this appeal, which must be determined solely on the basis of the breach of planning control as it existed on the date on which the notice was issued.

The enforcement notice

5. The land to which the enforcement notice relates is stated in paragraph 2 of the notice as 46, Fanshaw Street, Hackney, London N1 6LG. It is the convention with enforcement notices to cite the land to which the notice relates as 'Land at...'. I will correct the notice to follow that convention here. 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 are:
- the effect of the development on the appearance of the host property, and
 - the effect of the development on the living conditions of the occupiers of surrounding residential properties, specifically in terms of outlook and loss of light.

Appearance of the host property

7. I note firstly that the reason for issuing the note at paragraph 4.3 only alleges harm to the appearance of the host property, and not to the character or appearance of the wider area. I have approached this ground of appeal on that basis.
8. Secondly, on my reading of the reasons for issuing the notice and the Council's Appeal Statement, the Council's objection to the roof extension is purely in relation to the materials used in its construction, which the Council consider to be of poor quality. I agree. Although now painted black, the underlying poor quality of the material used remains evident. As a result, the roof extension represents a poor-quality addition to the building that harms its overall appearance.
9. At the time of my site visit, the fence posts had been crudely reduced in height. As a result, the residual stumps of the fence post added to impression of poor quality exhibited by the roof extension.
10. I conclude that the development unacceptably harms the appearance of the host property. I therefore conclude that the development is contrary to Policy D4 of the London Plan 2021 and Policy LP1 of Hackney's Local Plan 2033. These policies require, amongst other things, that all new development must be of the highest architectural quality.
11. For the same reasons, the development also fails to accord with the importance attached to good design in the National Planning Policy Framework.

Living conditions

12. In its Appeal Statement, the Council states that the roof extension causes loss of outlook in addition to a loss of residential amenity as the ground floor properties are partially overshadowed by the adjacent building as a result of the roof extension and perimeter posts. To my mind, and notwithstanding the objections of the occupier of one of surrounding properties, neither concern is made out. I note that there are windows, including windows at ground floor level, in surrounding residential properties. But none are close enough for the occupiers of those properties to be adversely affected in the manner described by the Council and the objector.
13. I conclude that the development does not harm the living conditions of the occupiers of surrounding residential properties. I therefore find no conflict with Policy LP2 of Hackney's Local Plan 2033 which, amongst other things, states that development should ensure that there are no significant adverse impacts on the amenity of occupiers and neighbours.

Other considerations

14. 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 roof extension and fence posts subject to the notice fail 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.
15. The appellant explains that water damage had rotted much of the previous roof, such that it was in danger of collapsing. The appellant goes on to explain that, in his view, the only solution was to replace the entire roof with a new and better roof that also incorporated new and improved soundproofing. This was the catalyst for installing the roof subject to the notice. The appellant then explains that, after completing the new roof, it was inspected by the Council and deemed it to be very effective soundproofing which entirely eliminated any noise pollution issues from the venue. The appellant explains that being made to remove this roof would be disastrous for his business.
16. I have a great deal of sympathy for the appellant in these circumstances, particularly taking into account the difficulties faced by the hospitality sector in recovering from the Coronavirus pandemic. Nevertheless, and notwithstanding any benefits arising from the structure in relation of other areas of legislation (i.e. noise pollution), the use of such poor-quality materials cannot be justified. Not only is that contrary to local planning policies set out in an adopted development plan, it is contrary to a key aspect of national policy aimed at improving good design.

Conclusion on the appeal on ground (a)

17. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. 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. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

Conclusion

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

Formal Decision

19. It is directed that the enforcement notice is corrected by:
- In paragraph 2 of the notice, insert the words 'Land at' before the address stated there.
20. Subject to the correction, 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