



Appeal Decision

Site visit made on 1 November 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2022

**Appeal Ref: APP/N5090/C/22/3304479
1338-1340 High Road, London N20 9HJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr. Mussie Gebremedhin against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/0261/22, was issued on 24 June 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a front canopy and associated steel structure shown edged in red in the attached drawing.
 - The requirements of the notice are to:
 - 1 Demolish the front canopy and associated steel structure (shown edged in red in the attached drawing) and all other canopy fittings and fitments.
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by (a) the deletion of the words '*shown edged in red in the attached drawing*' from Section 3, (b) the deletion of the words '*(shown edged in red in the attached drawing)*' from Section 5.1 and (c) the deletion of the word '*steel*' from Sections 3 and 5.1 and its replacement with '*metal*'
2. Subject to the corrections, 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 Notice

3. The Council have confirmed that the drawing referred to in Sections 3 and 5.1 of the notice was not in fact served with it. However, it appears to me that the works targeted by the notice would have been clear even without the plan and it is evident from the submissions of the appellant, including plans showing a potential alternative scheme, that there was no uncertainty regarding this. It is not therefore necessary that the drawing be attached to the notice, and I shall therefore correct the notice to remove references to the drawing edged in red.
4. The notice refers to an associated steel structure, but the appellant advises that it is in fact constructed from aluminium. However, either way it is a metal structure and therefore varying the notice to that effect will address any doubt

on the matter. I am satisfied that this can be done without causing injustice to either party.

Reasons

Ground a)/the deemed application for planning permission

5. The main issue is the effect of the development on the character and appearance of the host building and the surrounding area.
6. The appeal property is located in Whetstone town centre within a long parade of buildings that are predominantly in commercial use at ground floor level. It has a double width frontage and therefore is wider than many other units in the vicinity. Whilst there are examples of other units which have front canopies along the parade, these generally project to a lesser depth than that at the appeal property and are of a lesser width, are made of fabric which can be fully retracted and have an absence of any permanent supporting frames. This allows those canopies to integrate onto their host buildings and into the street scene in a more visually appropriate manner.
7. In contrast, the appeal development has five permanent frames projecting from its frontage, the middle one of which is of a substantial width. The frames have supports which are anchored above, and which partially obscure, the facia of the unit and there is a bar running across its front. These features collectively give the frame a bulky appearance. This is compounded by the considerable width and depth of the frame overall and its permanence. There are no comparable examples in the surrounding area, which adds to the incongruity of the development. As a result of these factors, the development is visually obtrusive and has caused significant harm to the character and appearance of the host building and the surrounding area.
8. There is a wide pavement outside the appeal property which means that the canopy is set back from the road. Vision is possible through the frame when the roof is retracted and no architectural features on upper floors have been obscured by the development. It is also the case that pedestrian movement is not impeded. However, these considerations do not overcome the harm that has arisen from the development, taken as a whole.
9. It is suggested that the projection of the canopy could be reduced from 4 metres to 3 metres to reduce its visual impact. However, the plan submitted shows that the frame would remain as a permanent feature and, as with the current situation, it would only be the insert parts of the roof that would be able to retract. The substantial width of the installation would also remain. As a result, a bulky frame would still be present to the frontage on a permanent basis. Although of a lesser projection, the impact would be similar to that of what has already been erected and it would again be a standalone type of development in its surroundings. It too would therefore have a harmful impact on the character and appearance of the host building and the surrounding area.
10. The appellant also refers to a previous planning permission that was granted in 2018¹ that, based on the plans provided, permitted a seating area of 3 metres and a retractable canopy of 1.5 metres. However, that permission has by the appellant's own admission now expired and is not implementable. It cannot therefore be held to be a fallback that might justify the appeal development

¹ 18/3856/FUL

but, in any event, it would have had a materially different visual impact due to the differences in its form and projection from the front elevation.

11. The presence of the canopy provides shelter for people sitting outside to eat and drink, which offers an alternative to sitting inside the premises. This might be preferable to some people especially in the aftermath of the Covid pandemic, but it does not justify such a harmful development. I acknowledge that the business occupying the unit contributes to the vitality and viability of the town centre and provides employment, which are aims of the development plan and the National Planning Policy Framework. However, there is nothing before me to demonstrate that such benefits would not exist without the presence of the canopy, or with a more sympathetic installation. This consideration therefore also does not justify the harm that has been caused by the development.
12. My attention has been drawn to other examples where the Council has granted planning permission for canopies to commercial premises. However, none of those examples are located close to the appeal site or within the confines of Whetstone town centre. They do not therefore make any contribution to the character and appearance of the area surrounding the appeal site and accordingly do not provide support for the appeal development.
13. For these reasons, I conclude that the development has caused significant harm to the character and appearance of the host building and the surrounding area. Consequently, it fails to accord with Policies CS1 and CS5 of the Core Strategy 2012 and Policy DM01 of the Development Management Policies Development Plan Document 2012, where they seek to protect character and appearance. Whilst the enforcement notice also refers to a conflict with the Residential Design Guidance Supplementary Planning Document 2016, that document does not relate to commercial properties and is therefore not relevant to the assessment of the appeal.

Ground f)

14. Section 173(4) of the Town and Country Planning Act 1990 (as amended) (The Act) sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the unauthorised development in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a). Accordingly, the requirement is not excessive.
15. The appellant proposes a reduction to a canopy depth of 3 metres. However, I have considered that possibility in my assessment of ground a) and found that it would also cause harm to character and appearance. It therefore would not be an acceptable alternative. Since it has now expired, the 2018 planning permission cannot provide any justification for such an approach.
16. In light of the above, I conclude that the demolition of the canopy and associated structure together with all other canopy fittings and fitments and their permanent removal are necessary steps to remedy the breach of planning control. Accordingly, they are not excessive requirements and the appeal on ground f) fails.

Ground g)

17. The appellant states that it is difficult to find builders quickly as there is a long booking time for their services. Furthermore, the canopy and structures are a big help to the viability of the unit and, without stopping the operation, the removal of the canopy and its replacement with an alternative would take more than two months. A compliance period of one year is therefore requested.
18. However, there is no substantive evidence to suggest that the canopy is essential to the viability of the business or that it would not be possible to secure someone to remove it within the period stated. Furthermore, the requirements of the notice only necessitate the removal of the canopy and not its replacement. A period of two months is reasonable to comply with this requirement and therefore the appeal on ground g) does not succeed.

Conclusion

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

Graham Wraight

INSPECTOR