



Appeal Decisions

Site visit made on 20 September 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal A Ref: APP/N5090/C/22/3290285

Land at 290 Hale Lane, Edgware, HA8 8NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jeton Voka against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/0049/20, was issued on 29 November 2021.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref 20/0769/RCU, granted on 14 October 2021.
 - The development to which the permission relates is: *Use as Cafe (formerly Use Class A3/ current Use Class E) (Retrospective Application) Removal of front canopy and decking.*
 - The condition in question is no 2 which states that: *The existing front canopy and decking must be removed entirely in accordance with the details shown on drawings Zaavia/290HL-106-Rev A and Zaavia/290HL-107-Rev A within 28 days of the date of this decision.*
 - The notice alleges that the condition has not been complied with in that: *the erection of a canopy extension and decking to the front elevation of the building without complying with condition 2 of planning permission reference 20/0769/RCU, dated 14.10.2021.*
 - The requirements of the notice are to:
 1. *Dismantle and remove the canopy extension with signage and decking from the front of the property, in accordance with drawing numbers Zaavia/290HL-106-Rev A and Zaavia/290HL-107-Rev A of planning permission reference 20/0769/RCU, dated 14.10.2021.*
 2. *Permanently remove all constituent materials resulting from the works in 1. above from the property.*
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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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Appeal B Ref: APP/N5090/W/22/3297348

290 Hale Lane, Barnet, Edgware, HA8 8NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dominic Dear (ADARA) against the decision of London Borough of Barnet.
 - The application Ref 22/0987/FUL, dated 23 February 2022, was refused by notice dated 20 April 2022.
 - The development proposed is to reduce depth of existing single storey canopy.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - Deleting '171A(1)(a)' in section 1 and substituting with '171A(1)(b)'.
 - Deleting the allegation in section 3 and replacing it with 'On 14 October 2021 planning permission was granted under reference 20/0769/RCU for use as Cafe (formerly Use Class A3/ current Use Class E) (Retrospective Application) Removal of front canopy and decking, subject to conditions. Condition 2 is that the existing front canopy and decking must be removed entirely in accordance with the details shown on drawings Zaavia/290HL-106-Rev A and Zaavia/290HL-107-Rev A within 28 days of the date of the date of the planning permission. It appears to the Council that the condition has not been complied with because the front canopy and decking have not been removed.
 - Deleting 'four' above paragraph 1 in section 4 and substituting with 'ten'.
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.

Appeal B

3. The appeal is dismissed.

Appeal A

The Enforcement Notice

4. S173(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) provides that an enforcement notice shall state '*the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls*'. In this case, the Council has identified s171A(1)(a), which is '*carrying out development without the required planning permission*'.
5. However, the alleged breach is the erection of a canopy extension and decking to the front elevation of the building without complying with condition 2 of planning permission reference 20/0769/RCU for use as a café and removal of front canopy and decking¹. Condition 2 of that planning permission requires the existing front canopy and decking to be entirely removed in accordance with specified drawings, within 28 days of the date of the decision. The requirements of the notice include removing the canopy and decking in accordance with those drawings.
6. Accordingly, the enforcement notice should be corrected to refer to s171A(1)(b) which is '*failing to comply with any condition or limitation subject to which planning permission has been granted*'.

¹ Full description: Use as café (formerly Use Class A3/ current Use Class E) (Retrospective application) Removal of front canopy and decking

7. Moreover, the canopy and decking have not been erected in breach of condition as alleged; they were already erected. The breach of planning control is that development has been carried out without compliance with the condition requiring the removal of the canopy extension and decking.
8. Where an enforcement notice alleges a breach of condition, it should recite details of the relevant planning permission and condition. Also, the reasons for issuing the enforcement notice should state that the breach of planning control occurred within the last ten years, rather than four, as per s171B(3) of the 1990 Act.
9. I am able to make those corrections, which merely put the notice in order, under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

Main Issues

10. When an enforcement notice is issued under s171A(1)(b), the planning application deemed to have been made is to carry out the development subject to the planning permission without complying with the condition(s) being enforced against.
11. Consequently, the main issue is the effect of not complying with Condition 2, requiring the front canopy and decking to be removed, on the character and appearance of the area.

Reasons

12. The canopy extension and decking are positioned to the front of an attractive two storey, semi-detached property towards the edge of a busy mixed use town centre location as it transitions towards a predominantly residential area.
13. The canopy provides shelter to the decking area used in connection with the ground floor use of the property as a café. Although the street scene in and around the appeal site is generally mixed with buildings of differing size and design, large canopies over decked areas are not characteristic of the area.
14. Despite the lack of side enclosure above railing height, the robust canopy frame with the decking and enclosure (and box type signage across the frontage) combine to create a relatively substantial structure in its own right. I appreciate that attempts have been made to soften the appearance, but limited gains are derived from the planting within the lower level trellising attached to the railings.
15. Because of its size and design, the canopy relates poorly to the host building, which incorporates a number of attractive and well detailed architectural features including a two storey bay with hipped gable above and tile banding across the full width of the principal elevation. Moreover, because of its size and siting forward of the main building line, the structure dominates that principal elevation and given the largely open forecourts on either side, the full depth of the structure is clearly visible.
16. Whilst due to intervening features, views from the east are largely restricted to closer views and views from the southern side of the street, the structure is clearly visible for a greater distance in views from the west, and in overall terms amounts to a prominent and intrusive feature in the street scene.

17. I note the appellant's reference to the extent of the projection being similar to the store canopy to the three storey building to the west. However, the development is primarily seen in relation to the row of four, two storey semi-detached properties where the difference is marked. Moreover, the store canopy has no solid element below it and as such is less imposing at pavement level. Furthermore, the relative presence of the three storey building in the street scene is not a reason to allow smaller scale development which is harmful.
18. I therefore conclude that non-compliance with condition 2 requiring removal of the canopy and decking results in unacceptable harm to the character and appearance of the area, contrary to Development Management Policies² (DMP) Policy DM01 which states, amongst other things, that proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. As local residents will see and experience the effects of the decking and canopy more often, they will experience a greater degree of harm.
19. The National Planning Policy Framework (the NPPF) states that '*Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities*³'. Accordingly, the development does not amount to sustainable development as envisaged by the NPPF.

Other Matters

20. The main reason for issuing the enforcement notice also cites conflict with DMP Policy DMO2. However, that relates to development standards and has limited relevance to the main issue identified.
21. I have noted the appellants submissions on noise and disturbance, but the Council has clarified that it considers the negative impact on amenity to be due to the character and appearance of the development in relation to the host site and the local area, which I have considered above.
22. Even if there is development plan support for restaurants in town centres, the enforcement notice is concerned with operational development rather than use and presumably the use of the main building as a café will remain.
23. I appreciate the concerns raised by a neighbouring resident regarding indiscriminate customer parking and the resultant effects on the safe and free flow of traffic. However, I have limited evidence to show that any existing harm can be attributed to customers attracted to the decked area of the café, or that the situation would be materially different without it given the ground floor café use would presumably remain, in this busy town centre location.
24. Although the decking and canopy may have resulted in the loss of a car parking space, that in itself is unlikely to materially relieve any issues arising in the context of a busy town centre location. I do not therefore find unacceptable harm to parking and highway safety.

² Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012)

³ Paragraph 126

Conclusion

25. 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.

Appeal B

Main Issue

26. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

27. The appeal proposal seeks to reduce the depth of the existing canopy and decking by about a half. Whilst that would clearly lessen the degree of harm, the canopy would still relate poorly to the main building.
28. Reducing the depth of the canopy as proposed would bring it in line with the front extensions at Nos 292 and 294 Hale Lane. However, those semi-detached properties have been extended together in a coordinated manner, whereas the adjoining semi-detached property to the appeal property has not been extended beyond its principal elevation. Consequently, even with a reduced depth, the canopy would sit significantly forward of that building line and its full depth and disparity would be visible.
29. As noted above, the character of the area in and around the site is mixed with a variety to the size and design of buildings as it transitions from the edge of a busy town centre to a more residential character. Although I saw other café type uses with outside seating under retractable canopies, fixed front canopies with a substantial frame over an enclosed decked area are not characteristic of the area. Even with a reduced depth, the proposal represents a permanent and visually imposing way of providing outdoor seating, that would be harmful to the property to which it is attached and to the street scene.
30. It follows that I conclude that the proposed development would result in unacceptable harm to the character and appearance of the area, contrary to Core Strategy⁴ Policies CS1 and CS5 and DMP Policy DM01. Those policies seek, amongst other things, to ensure that development respects local context and distinctive local character creating places and buildings of high quality design. The Council also cite conflict with its adopted Residential Design Guidance SPD (2016), however, that has little direct relevance to the commercial proposal.

Other Matters

31. I have noted the appellant's submission on noise but the Council confirms that it does not find harm in that regard. I find no reason to come to a different view. Also, because there would remain a significant forecourt area and the footway would be unaffected, there would not be an overuse of the footway or an adverse effect on the free flow of pedestrians.

⁴ Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

Conclusion

32. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N5090/C/22/3290285	Mr Jeton Voka
Appeal B	APP/N5090/W/22/3297348	ADARA