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# Appeal Decision

Site visit made on 6 December 2022

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

**an Inspector appointed by the Secretary of State**

**Decision date: 02 February 2023**

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**Appeal Ref: APP/G5750/C/21/3280708**

**Land at 533 Barking Road, Plaistow, London, E13 9EZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jamroz Asghar (Owner/managers Simons) against an enforcement notice issued by London Borough of Newham.
  - The notice was issued on 13 July 2021.
  - The breach of planning control as alleged in the notice is without planning permission the erection of an extension.
  - The requirements of the notice are:
    1. Demolish the extension (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
    2. On completion of step 1 above, remove all materials and debris from the site.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (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 varied by:
  - Inserting the words 'associated with the extension' after the word 'debris' in paragraph 2 of section 5.
2. Subject to the variation, 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 Appeal on Ground (d)

3. For the appeal to succeed on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that the operations involved in the erection of the extension were substantially completed four years before the date of issue of the notice (13 July 2017<sup>1</sup>). However, the appellant acknowledges that the extension has only been in situ since March 2021.
4. The appellant suggests that it is similar to the pre-existing retractable awning. That may be construed as a hidden ground (c) appeal but he confirms that he does not seek to argue that it does not constitute a breach of planning control. In any case, having regard to its size, permanence and physical attachment, the structure is clearly a building for the purposes of the 1990 Act and cannot reasonably be compared to a retractable awning.

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<sup>1</sup> s171B(1) of the Town and Country Planning Act 1990

5. The appellant states that the use of the area within his ownership outside of the shop to display goods has not changed in the past 10 years and is therefore immune from enforcement action. Be that as it may, the enforcement notice is concerned with operational development as it seeks to address an extension rather than require that the use of the land on which the extension is built, cease being used for the display of goods.
6. The appeal on ground (d) fails.

## **The Appeal on Ground (a)**

### **Main Issue**

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

### **Reasons**

8. The character of the area reflects that of a busy, local centre location with modern shopfronts incorporating relatively large scale signage. The built form is primarily two or three storey scale set out in lengths of terraces of similar design. The main frontages run along a clear building line, behind a forecourt strip running between the front edge of the buildings and the back of the footway. The appeal extension is positioned to the front of a ground floor shop, within that forecourt strip.
9. It is a characteristic feature of the area for goods for sale to be displayed in front of the principal elevation of the commercial frontages, either in the open or beneath a retractable awning. Indeed, the latter was the pre-existing arrangement at the appeal site.
10. Given its siting forward of the principal elevation, in a busy local centre, the extension results in a highly prominent and intrusive feature within the public realm. It represents the sole, permanent interruption to the established building line in this stretch of shopfronts and because of the open forecourts on either side, the full depth of the structure is clearly visible. Moreover, because of its size and siting, the extension dominates the principal elevation of the host building.
11. Those harms remain even when the shop is closed. Consequently, the extension is not, as argued, more aesthetically pleasing than a canvas awning, which is characteristic of the area and which can be retracted when not in use.
12. Although, save for the profile steel roof, the materials used in the extension are not inherently substandard, they do not compliment the host building. In any case, the external face of the extension is almost entirely obscured by various signs, thereby compounding its prominent and harmful presence in the street scene.
13. Whilst, as evidenced in the examples presented by the appellant, there are a number of permanent front canopies in the wider area, they are very much in the minority and are not therefore a characteristic feature. Indeed, I saw no other example which is seen in conjunction with appeal extension.
14. In any case, those other developments referred to by the appellant are not good examples to follow, or to use for quality comparison purposes. Rather, they serve to confirm the harmful effects which arise. Moreover, I am unaware

of the planning status of those examples cited. They do not therefore precedent additional harm arising from the appeal development.

15. I therefore conclude that the development is harmful to the character and appearance of the area, contrary to the London Borough of Newham Local Plan (LP) Policies SP1 and SP3, London Plan Policy D4 and paragraph 130 of the National Planning Policy Framework. Those policies expect, amongst other things, high quality development which respects, takes advantage of, and enhances the positive elements and distinctive features of the Borough. Those conclusions are not affected by the appellant's ownership of the land.
16. The Council describes the development as unneighbourly, but limited reasoning is provided to that effect. Nevertheless, for the reasons explained, the development does not accord with LP Policy SP8 insofar as it expects development proposals to promote neighbourliness in addressing the need to ensure integration with the street scene.
17. The Council's reason for issuing the enforcement notice also refers to conflict with London Plan Policy D1. However, that primarily relates to Boroughs undertaking assessments to define capacity for growth and planning for growth. It therefore has limited relevance to the front extension. That is similarly so for LP Policy S2, which relates to over-arching strategic criteria and the spatial strategy.

### **Other Matters**

18. LP Policy SP8 also states, amongst other things, that all development is expected to achieve good neighbourliness and fairness from the outset and that change brought about by development must not cause problems for existing lawful neighbours.
19. I note the objections received from the landlord and leaseholder of the adjacent shop, that the extension has disrupted their business which relies heavily on passing trade. They say that potential customers are unaware of their shop as the extension blocks view of it, and that is unfair to small businesses on the street. A similar objection is made by another shop owner.
20. Although I have no substantive evidence of loss of trade, due to its permanence and the degree of solidity derived from the structure itself and the advertisements attached to it, the extension is more likely to block views along the street and of other commercial premises at ground floor level, than which would have occurred from goods stored below a retractable awning.
21. I note the appellant's concerns over the authenticity of one of the objectors, but I have limited evidence to justify disregarding the comments as suggested. The appellant also suggests that another objector has been influenced by her tenant. Be that as it may, I have considered the matters on merit and although the potential effect on neighbouring uses adds to the harm set out above, it has not been determinative in my decision.
22. Having regard to my findings on the main issue, I do not agree that the development has a positive impact on neighbouring businesses by displaying goods in a more refined setting and therefore attracting more customers to the area.

23. Clearly, for the goods placed forward of main shop frontage in particular, the extension improves security and as such contributes to the criteria expectation of LP Policy SP8 to create a safe and secure environment. However, a similar level of security would be achieved by moving the goods into the main building when the shop is closed, as was previously the case. No evidence is provided to show that a double layer of security is necessary for the main area of the shop or that additional security cannot be achieved by other measures. Moreover, I have limited evidence that the extension reduces other forms of anti-social behaviour, so as to materially contribute towards the social objectives of sustainable development in that regard.
24. I note the appellant's submission that he has supported neighbouring businesses by providing shelving, allowing a shed to be built on his land and by providing advice on trustworthy contractors. Whilst such matters are commendable, they are not matters for this appeal.
25. In overall terms, the extension conflicts with LP Policy SP8.
26. I accept that the development makes effective use of the space within the demise of the commercial property. However, that would be the case without the building, with goods displayed beneath a retractable awning, albeit with lesser security and weather protection. I further accept that the extension is more durable than the previous awning and to that end is more sustainable. The extension also allows for goods to be displayed during periods of inclement weather, whereas the previous arrangement did not.
27. I recognise, having regard to the amount of goods stored outside, that the extension saves time and effort moving the same in and out of the main shop every day and on that basis is beneficial to the convenient and effective operation of the business, which itself makes a positive contribution to the local economy.
28. Moreover, I sympathise that the appellant has suffered a shoulder injury which until resolved means he cannot repeatedly move stock in and out of the main part of the shop. I also appreciate that as a small family business, he may not be able to afford to pay someone else to do that job on his behalf. I further sympathise that the appellant's business will have been adversely affected by the pandemic. However, the development represents a permanent and harmful change to the street scene. Moreover, it has not been shown that there are no other options, such as retaining heavier items within the main shop, or that a front extension is a particularly innovative solution.
29. To the extent explained, the extension makes very modest contributions to the social and economic objectives of sustainable development. However, 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*<sup>2</sup>'. Given my findings on the main issue, the development does not contribute to the environmental objectives of sustainable development and does not represent sustainable development as envisaged by the NPPF.
30. I therefore conclude that the harm is not outweighed by the benefits advanced and that the extension does not accord with the development plan, read as a whole. For the reasons given above, and having had regard to all other matters

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<sup>2</sup> Paragraph 126

raised, I conclude that the appeal should fail on ground (a) and the deemed planning application should be dismissed.

### **The Appeal on Ground (f)**

31. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
32. As noted, the breach in this case is the erection of an extension. The requirements of the notice are to demolish the same and remove all materials and debris from the site. The purpose of the enforcement notice is therefore to remedy the breach.
33. The appellant argues that the use of words 'materials and debris' is too undefined and should only refer to the materials of the structure's construction and not the materials/goods for sale in the area outside of the shop front, so as to avoid any conflation between operational development and use.
34. Although the requirement does not actually refer to goods, given the purpose of the notice and to avoid any possible ambiguity I will vary the notice to explicitly refer to materials associated with the extension.
35. The ground (f) appeal succeeds.

### **The Appeal on Ground (g)**

36. The ground (g) appeal is that the three months given to comply with the notice is too short. A period of six months is requested on the basis that it may take longer to arrange the required trades people and because the appellant is awaiting treatment for his shoulder injury. I am also mindful of the likely disruption to the appellant's business from complying with the requirements of the notice.
37. A period of six months would therefore strike a reasonable and proportionate balance between the public interest in this case and accounting for those issues highlighted.
38. I shall vary the enforcement notice accordingly. The appeal on ground (g) succeeds.

*Richard S Jones*

INSPECTOR