



Appeal Decision

Site visit made on 14 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2023

Appeal Ref: APP/B5480/C/21/3281487

197 Ardleigh Green Road, Hornchurch RM11 2SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Cozy Cafe against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice, numbered ENF/83/21, was issued on 27 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a fixed means of enclosure and decking with tables and chairs.
 - The requirements of the notice are to:
 - (i) Remove all of the decking, the fixed means of enclosure, as well as any and all associated development, within the area hatched RED on the attached plan;
AND
 - (ii) Remove all materials, rubble and debris from the site as a result of taking step (i) above.
 - The period for compliance with the requirements is: 1 Month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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 the deletion of the words 'with tables and chairs' at section 3 of the notice so that the allegation reads 'Without planning permission, the erection of a fixed means of enclosure and decking, in the approximate area hatched red on the attached plan.'
2. Subject to the correction above, 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.

Applications for costs

3. An application for costs has been made by the Council of the London Borough of Havering against Cozy Cafe. This application is the subject of a separate decision.

Matters concerning the notice

4. The notice alleges the erection of a fixed means of enclosure and decking with tables and chairs. The appellant confirms that the tables and chairs are not fixed and I was able to see this during my visit. I do not consider the placing of tables and chairs, which are easily moveable, constitutes development. I shall correct the notice and delete reference to them. Since this would not expand the scope of the notice, there would be no injustice to the appellant were I to do this.

Preliminary Matters

5. Since the enforcement notice was issued, the Council has adopted the Havering Local Plan (2016-2031)(the HLP). The Council has identified those policies it considers of relevance to the appeal scheme and I am satisfied the appellant has had the opportunity to comment on the HLP through the appeal.

Ground (c)

6. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. The appellant's case under ground (c) appears to be that planning permission should have been allowed, however, planning merits are not relevant to a ground (c).
7. Section 55 of the Act sets out the meaning of development, which includes the carrying out of building operations. It is not disputed that the works which have been carried out are development and, having inspected the site, I consider the decking and enclosure are building operations for the purposes of the Act. Although the appellant has not referred me to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), I shall go on to consider whether it would be permitted development.
8. Part 2, Class A of the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, the enclosure has been constructed atop decking and so would not be permitted by the aforementioned Part of the GPDO. Furthermore, development is not permitted by Class A if the height of any enclosure constructed adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level, which the appeal scheme does. It is therefore not permitted by the GPDO. Consequently, the appeal under ground (c) must fail.

Ground (d)

9. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. As with a ground (c), it is for the appellants to make their case on the balance of probabilities.
10. The Planning Practice Guidance (PPG) advises that the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants' version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
11. Section 171B of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building...operations...no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
12. The appellant states that the outdoor eating space has been in place since at least 2006. However, the notice does not allege a material change of use, rather it alleges operational development. This ground of appeal will therefore

turn on whether the works were substantially completed on or before 27 July 2017.

13. A Google Streetview image dated November 2020 shows that the works had not been commenced by that time. I have no reason to doubt the authenticity of this image. While the area to the front of the premises may have previously been used as a seating area, in light of the photographic evidence provided by the Council, I therefore find on the balance of probabilities, that the enclosure and decking were not substantially completed on or before 27 July 2017 and so the appeal under ground (d) must fail.

Ground (a)

14. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach.

Main Issues

15. The main issues in the appeal are the effect of the appeal scheme on:

- The character and appearance of the area; and
- The comfort and safety of pedestrians using Ardleigh Green Road.

Reasons

Character and appearance

16. The appeal site comprises a café along a parade of shops which front onto Ardleigh Green Road. Commercial premises along this part of Ardleigh Green Road are generally set well back from the edge of the footway creating a spacious footway which makes a positive contribution to the character and appearance of the area.
17. To the front of the café, the appellant has erected a timber enclosure which sits above decking. Within the enclosure I saw there are a number of free standing tables and chairs. An awning, which does not form part of the notice, sits above which projects the full extent of the enclosure and provides shelter to patrons sitting outside. Where the enclosure and decking has been erected, the public footway appears narrower due to the presence of a parking bay, which makes the enclosure and decking appear particularly prominent.
18. While shopfront design varies, wooden enclosures and decking are not characteristic of the area. Although Café 108 opposite the appeal site has an outside seating area, there remains a substantial set back from Ardleigh Green Road, providing a sense of spaciousness which is characteristic of the area. Furthermore, Café 108 uses planters and signage to define the frontage rather than permanent fixed features.
19. The enclosure and decking constructed at the appeal site appears an odd feature which, given its projection towards the highway, diminishes the openness along this part of the footway. This is harmful to the character and appearance of the area, contrary to policy 13 of the HLP which seeks proposals that provide high quality shop front design that enhances the character and appearance of the town centre, amongst other things, policy 14 which requires consideration of the possible impact of the design and location of exterior

dining space and policy 26 which seeks high quality design which respects, reinforces and complements the local streetscene.

Pedestrian comfort and safety

20. The appeal scheme is asserted to have resulted in significant reduction in the footpath, having an adverse effect on the pedestrian comfort level at this section. The Council has drawn my attention to the Pedestrian Comfort Guidance for London (2010)(PCGfL) which sets out a methodology for undertaking a Comfort Assessment. However, no such assessment appears to have been carried out for the appeal site and so it is not clear which recommended footway width would be appropriate in this case.
21. The Council confirms in its officer report that the seating area would not encroach over public footway. Although there is a parking bay to the front of the appeal site, I saw that the pavement in this location is sufficiently wide that pedestrians, wheelchair users and buggies can safely pass.
22. While there are a number of commercial premises along Ardleigh Green Road, pedestrian use of the pavement appeared limited at the time of my site visit, around 11am. Although this is only a snapshot in time, given the nature of the commercial units in the area, which are modest in size and so are likely to serve a local need, I consider pedestrian movements are unlikely to be significantly higher at other times of the day.
23. I acknowledge that there is a school near the appeal site, which is likely to generate pedestrian movement along Ardleigh Green Road at certain times of the day. However, I have no substantive evidence to show that pedestrian movement in this location is such that pedestrian comfort or safety would be compromised, particularly since visitors to the school may choose to walk in a number of different directions and are not all therefore likely to pass the appeal site.
24. While a wider footpath may have been helpful when social distancing was required in response to the Covid-19 pandemic, such requirements are no longer in place. Furthermore, were I to uphold the notice, the appellant may still be able to use the space as a seating area and so it could remain unavailable for pedestrian access. Indeed, the PCGfL advises that café seating areas act like a wall, so the usable footway width is the width from the kerb to the edge of the café zone, plus a standard buffer.
25. Thus, for the reasons given above, I find there is no significant harm to pedestrian comfort or safety from the appeal scheme and no conflict with policy 13 of the HLP in this regard, which seeks development which supports street activity and policy 14 of the HLP, the requirements of which are set out above and policy 26 of the HLP which requires development to fully integrate with existing path and circulation networks and patterns of activity particularly to accommodate active travel.

Ground (a) conclusion

26. Although I have found that there is no significant harm to pedestrian comfort or safety, I have found that the appeal scheme harms the character and appearance of the area. I conclude that the appeal scheme conflicts with the development plan as a whole and there are no material considerations which

indicate that the decision should be taken otherwise in accordance with the development plan.

Overall conclusion

27. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR