



Appeal Decision

Site visit made on 1 March 2023

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2023

Appeal Ref: APP/T5150/W/22/3306379

104-106 Windermere Avenue, Wembley HA9 8RB

- 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 The Nest against the decision of London Borough of Brent.
 - The application Ref 21/4671, dated 21 December 2021, was refused by notice dated 7 March 2022.
 - The development proposed is a glass enclosure to forecourt seating area.
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Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues. These are the effect of the proposed development on a) the character and appearance of the area; and b) highway safety with specific regard to the free flow of pedestrians.

Reasons

Character and Appearance

3. The appeal site is the ground floor of a terrace of three storey buildings set back from and facing the road. Together, the group is an early 20th century shopping parade with commercial units on the ground floor and residential above. The wider area is a dense residential estate. Whilst the shop fronts vary in their outward appearance, the terrace has a pleasant uniformity to its design, siting and layout which contributes positively to a spacious feel in the street scene.
4. Whilst visually permeable due to its extensive use of glass the appeal scheme would be, whilst described as an enclosure, as near as makes no difference a front extension of the building. This would interrupt the uniformity of the terrace and protrude from the characterful flush frontage, accordingly, impinging on the area's speciousness.
5. It would therefore be harmful to the character and appearance of the area, contrary to Policies DMP1, BD1 and BE7 of the Brent Local Plan 2019-2041. Amongst other things, these policies seek to ensure that development compliments the locality and is of the highest quality design.

Highway Safety

6. The Council do not cite any relevant policies of the development plan and, in regard to this main issue, emphasise the point that the proposed development

would be on highway land which, as a result, would prevent access over and enjoyment thereof. The appellant contends this, providing a plan showing the extent of their landownership which includes, according to said plan, an area of forecourt between the shop front and the back edge of the footway.

7. It is not for my decision to determine the extent of the maintained highway as part of this decision. However, and as can be seen on site with the current position of the timber and fabric enclosure, there remains ample space between it and the back edge of the vehicular carriageway, for members of the public to pass and re pass. This would include bicycles being pushed, pedestrians with prams/pushchairs and those with mobility needs.
8. I remain to be convinced therefore, given the proposed extension would occupy no materially greater a space as the current arrangement, that it would detrimentally affect the free flow of pedestrians and thus have an adverse effect on highway safety. It would therefore comply with the aims of section 9 of the National Planning Policy Framework (2021) in this regard.

Other Matters

9. There are a number of awnings that are attached to the appeal building and other units which also protrude into the street, along with some displays of produce and wares on forecourts. These are however more traditional lightweight retractable features and temporary arrangements which, on the whole, have a markedly different effect to the proposed extension which would be stark, substantial and permanent. They do not therefore lead me to allowing the appeal.
10. The appeal building, at the time of my site visit, had an enclosed area to its forecourt. I have referred to this in my consideration of the main issues. It is formed of wrapped timber pallets with a fabric awning over the top. It has a definite temporary feel to it, with picnic style benches dotted about. The glass extension would be an improvement on it but there is some ambiguity in the evidence as to when it was erected and for what purpose and I have nothing before me confirming that it has the benefit of express planning permission. I am therefore unable to place any firm fallback value on it.
11. The appeal scheme would be acceptable in some regards, such as in terms of the second main issue and the living conditions of surrounding occupiers, amongst other things. These are however, in each case, a lack of harm which cannot be used to weigh against harm. The fact that some shop fronts have been changed over time has been acknowledged above but does not change my overall findings on the first main issue. Whether something such as this has been done without express planning permission, should it be needed, is a matter for the Council's planning enforcement function.
12. The appellant has explained that the premises is the only sit down restaurant in the area and the additional seating provided by the current outside area, and by association the proposed development, would both continue to support what is evidently a popular restaurant. Positive though I have no doubt these measures would be economically; I can attach only limited weight to it as justifying the proposed development both in light of the harm I have found and the fact that I have no compelling evidence before me that the business would suffer without it.

13. I am aware of a scheme having been approved for telecommunications equipment close by to the appeal site, but this would have a materially different impact to the proposed development and, given what it provides, arguably has different circumstances surrounding it being permitted. I am not therefore led to allowing the appeal on this basis.

Conclusion

14. I acknowledge some local support for the scheme but neither this, or those matters above for the reasons I have given, would lead me to allowing the appeal. I have found that the proposed development would be acceptable on the second main issue, but this would be insufficient to make it acceptable overall. It would, for the reasons set out in regard to the first main issue, conflict with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance therewith. The appeal should therefore be dismissed.

John Morrison

INSPECTOR