



Appeal Decision

Hearing Held on 31 March 2023 with the site visit made the same day

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal Ref: APP/T5150/C/21/3284105

539-541 and rear of 539-541 and land to rear of 533, 535 and 537 Kingsbury Road, London NW9 9EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Unal Kacmaz against an enforcement notice, ref E/21/0296, issued by the Council of the London Borough of Brent on 23 August 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of extensions to the rear of 533, 535 and 537 Kingsbury Road for use in connection with 539-541 Kingsbury Road (for the avoidance of doubt this includes all the extensions found within the hatched in black area shown on Plan A attached to the notice) AND Without planning permission, the erection of canopy extension, incorporating a wooden fence, which creates an area for plants and wooden/metal frames to the shop front at 539 and 541 Kingsbury Road.
 - The requirements of the notice are to:
STEP 1 Demolish the unauthorised extensions to the rear of 533, 535 and 537 Kingsbury Road for use in connection with 539-541 Kingsbury Road, for the avoid of doubt this means the demolition of all extensions within the area hatched in black on Plan A attached to the notice. **STEP 2** Remove the retractable canopy/awning to the rear of 533, 535 and 537 Kingsbury Road for use in connection with 539-541 Kingsbury Road. **STEP 3** Remove the timber frame canopies located on the roof of the rear extension at 537 Kingsbury Road. **STEP 4** Restore the land back to its original condition ensuring that all areas that were formally grass are turfed. **STEP 5** Remove the canopy extension, including the removal of a wooden fence, which creates an area for plants and wooden/metal frames to the shop front at 539 and 541 Kingsbury Road.
 - The period for compliance with the requirements is 6 months.
 - The appeal was made on the grounds set out in section 174(2) (a) (b) (c) (d) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended (the Act) falls to be considered.
-

Decision

1. It is directed that the enforcement notice be corrected by:
 - Removing the words "incorporating a wooden fence, which creates an area for plants and wooden/metal frames" in SCHEDULE 2; and
 - Removing the words "including the removal of a wooden fence, which creates an area for plants and wooden/metal frames" in STEP 5 of SCHEDULE 4.
2. Subject to these corrections, due to success on ground (d) to this extent, the appeal is otherwise dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. At the commencement of the hearing, the appellant withdrew the appeals that had been started under grounds (b) and (c).

Ground (d)

4. For an appeal to succeed under this ground, the burden of proof is upon the appellant to demonstrate to the standard of the balance of probabilities that no enforcement action could be taken as regards matters stated in the notice at the date it was issued.
5. Section 171B(1) of the Act provides that, in respect of the operational development constituted by the matters in the notice, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed. Therefore, as the notice was issued on 23 August 2021, the relevant date is 23 August 2017.
6. While the appellant accepts that canopy extension has been erected after the relevant date, a Google image shows the heavy wooden planters in place in June 2017 and in materially the same form and location (albeit with slightly different design with an added motif). Their size and mass provide a degree of permanency and I am satisfied that they constitute an earlier, separate act of operational development which was immune from enforcement action at the time the notice was issued. The fact that the support legs of the later canopy extension have been located within the planters does not affect this judgement. Accordingly ground (d) succeeds to this extent, and I am correcting the notice allegation and requirements accordingly so that there is no requirement to remove the planters.

Ground (a) and the deemed planning application

Procedural Matter

7. Since the appeal was made, the Council adopted the Brent Local Plan 2019-2041 (LP) which replaced the Brent Core Strategy 2010 and Development Management Policies Plan 2016. I must determine the appeal development against the current development plan, and the appellant has been given an opportunity during the appeal process to make comments upon it.

Main Issue

8. The main issue in the deemed planning application is the effect of the development upon the character and appearance of 539-541 Kingsbury Road ('the host building') and upon the character and appearance of the area.

Reasons

Rear extension(s)

9. The part of the appeal site (hatched in 'Plan A') where the extension(s) have been erected is located within a built-up area, sandwiched between various commercial activities and close to a railway line. Notwithstanding this context, the site had comprised a reasonably large extent of significantly open and relatively undeveloped land (grassed and vegetated to a degree) and I consider it would have materially contributed to the open and verdant local character associated with the vegetated railway embankment.

10. The amenable openness has almost entirely been lost; the land has been largely covered with an extensive degree of built form composed of a mix of materials (including timber and roofing elements of crude external appearance) which are harmfully incongruous when set against the host building.
11. This significant harm is not sufficiently mitigated by the lack of visibility from Kingsbury Road or the presence of the higher built form of the host building – indeed, the jarring incongruity caused by the contrasting materials of the development is reinforced by the height of the host building beyond. I also note apparently direct views of the unacceptable development from homes and gardens (including from those on Crundale Avenue across the railway line, a finding reinforced in third party representations).
12. While the appellant has suggested a condition to address concerns around the use of materials (proposing a condition which would require the Council's approval of wall cladding and roof tiles), this would not make the development acceptable due to the effects of the identified overdevelopment on the open space that had existed.

Frontage

13. While the planters are immune from enforcement action due to my finding on ground (d), and while bearing in mind that there was a previous canopy in place¹, the total effect of the frontage development including the current extensive canopy extension with its leg supports and frame is to create a heavily enclosing and dominant structural arrangement which imposes itself some way into a streetscene which is largely characterised by significantly more open and less developed frontages (despite some nearby examples of, albeit less extensive, canopy arrangements). The effect is heightened by the proximity of the development to the nearby bus stop², and overall causes significant harm to local character and appearance through visually deleterious overdevelopment.
14. For the above reasons, the appeal development causes significant harm to the character and appearance of the host building and local area. Accordingly, it is in conflict with Policies BD1, DMP1 and BE7 of the LP, as supported by the Brent Design Guide (SPD1), which together aim to ensure that developments are well-designed. It is also in conflict, for the same reasons, with the design principles of the National Planning Policy Framework (the Framework).

Other Matters

15. The Framework is supportive of building a strong, competitive economy and says at paragraph 81 that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
16. I accept that the appeal development, through the creation of a significantly extended covered outdoor seating provision, provides economic benefits and a greater capacity to provide such restaurant services to customers in this central commercial location.

¹ although the Council says it was unlawful and I have seen or heard nothing to demonstrate otherwise.

² I am not however satisfied from my site visit, or from anything the Council has submitted, that the development impedes or obstructs pedestrians on the footway to the extent that there is a highway safety issue.

17. However, such business needs (albeit not on such a large scale) could be met without the harm caused by the overdevelopment represented by the appeal scheme. Further, the operational development referred to by the appellant as the '2011 consented smoking lounge'³ (accepted by him under this appeal not to have been implemented) demonstrates that there are wider, acceptable, opportunities for development.
18. Accordingly, due to the above tempering factors, I afford moderate weight to the economic benefits and they do not outweigh the significant harm and conflict with the development plan as a whole which I have identified.
19. As agreed by the Council, the noise concerns of local residents – were I minded to grant permission – could be overcome by conditions relating to controls to emissions and opening hours. However, this is now otiose given that the appeal does not succeed on the main issue.
20. Accordingly, ground (a) fails and I will not grant planning permission.

Ground (f)

21. For an appeal to succeed on this ground, I must be satisfied that the notice requirements are excessive in achieving its purpose.
22. The appellant's argument under this ground is somewhat confused as he says that it is excessive to require the demolition of the '2011 consented smoking lounge' yet accepts by way of the withdrawal of his ground (c) appeal that it was never built (or the associated permission implemented).
23. Rather, there is an unauthorised single-storey extension to the restaurant which consumes a substantial part of the land to the rear of 537 Kingsbury Road and which forms a significant constituent part of the unauthorised development – which I have found unacceptable in planning terms on ground (a). The unauthorised extension, even were it disaggregated from the wider unauthorised operational development to the rear of the properties, is not materially similar in planning terms to the substantially open structure of the '2011 consented smoking lounge' and accordingly has a more deleteriously enclosing effect upon the land and upon its character and appearance.
24. It is clear from the way the notice has been drafted that its purpose is to remedy the breach of planning control by restoring the land to its condition before the breach took place. Removing the requirement to demolish the single-storey rear extension would not achieve that purpose and, even were the purpose of the notice to remedy harm to amenity, it would not do so for the above reasons.
25. I therefore do not find the notice requirements, as corrected, to be excessive and therefore for the reasons above I do not find that the appeal succeeds on ground (f).

Ground (g)

26. For success on this ground, I must be satisfied that the compliance period as set out in the notice falls short of what is reasonable.

³ 10/2865; Rear of 537 Kingsbury Road.

27. Notwithstanding the stated disruption that might be caused in complying with the notice, 6 months is an ample and reasonable time to meet all the requirements of the corrected notice (work to remove the planters is no longer required). The appellant's argument concerning the uncertainties of the earlier Covid-19 period no longer applies.

28. Accordingly, ground (g) does not succeed.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed, except to the limited extent on ground (d). I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Smyth (Barrister)
Ian Coward MRTPI (Planning Agent)

FOR THE LOCAL PLANNING AUTHORITY:

Tom Wicks MRTPI

INTERESTED PERSONS: None

DOCUMENT submitted at the hearing
1 Proposed Conditions