



Appeal Decision

Site visit made on 22 March 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/V5570/C/22/3291201

236 Hornsey Road, Islington, London N7 7LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr. Yohanes Nagasi against an enforcement notice issued by London Borough of Islington.
- The notice was issued on 6 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber shelter with supporting wooden posts and plastic corrugated roof in the rear garden.
- The requirements of the notice are to: 1. Demolish the timber shelter structure, including its corrugated roof and all supporting posts and fixings. 2. Remove all resulting debris from the site and return the area to its state prior to the unauthorised development taking place.
- The period for compliance with the requirements is: 1 (one) calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Decision

1. It is directed that the period for compliance with the requirements is deleted and substituted with "2 (two) months".
2. Subject to this variation, the appeal is 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.

Ground (a) and the deemed planning application

Main Issues

3. These are the effect of the development on the character and appearance of the area and on the living conditions of local residents in respect of noise and outlook.

Reasons

Character and appearance

4. The appeal relates to a ground floor covered seating area to the rear of a restaurant. The appeal property is a terraced, three storey building on the east side of Hornsey Road, close to its junction with Seven Sisters Road. It is located within an area where businesses mainly occupy the ground floors and there are residential units above. The covered area is accessed through the

restaurant via a fire escape door and via a lockable wooden door from the yard area to the rear. The yard area provides pedestrian and vehicular access to several buildings within this commercial enclave to the rear of the main streets and to residential units above street level. The area is characterised by buildings which display an array of architectural styles.

5. The structure appears to be constructed using a timber frame, timber sheeting and Perspex corrugated sheeting. Internally, the space has a wooden boarded floor and is furnished with drapes which cover the inside of the Perspex roof, banquette seating, chairs, tables and artificial greenery hangs from the walls. In one corner is a sink around which was stored a collection of shisha equipment. The timber shelter is open on one side where there is a gap of approximately 1m between it and the brick wall of the neighbouring building. To the rear, the structure is enclosed behind an existing brick wall which forms part of the premises rather than the structure.
6. There are limited views of the structure from the public realm, this is because from the yard area to the rear, the blank façade of the existing brick wall and sections of plywood boarding, which have been tacked above and to the side of the doorway, block views from the ground level. Although there may be views from the upper levels of neighbouring buildings, visually the development has a limited effect on its immediate surroundings. Nevertheless, while the timber shelter has limited external visual impact, it is a garden-style structure of poor design, use of inferior materials and basic construction in immediate contrast to its host and surrounding properties. This has a negative effect on the building to which it is attached. I note the appellant suggests that a condition could be attached to a permission to the effect that materials match those of the building. However, it is likely that to match the materials in the main building, the resultant structure would be significantly different to the matters which form the allegation.
7. Overall, I find that there is conflict with Policy DM2.1 of Islington's Local Plan: Development Management Policies (2013) and guidance in the Council's Urban Design Guide Supplementary Planning Document (2017) which requires all forms of development to be of high quality and amongst other things, be sustainable, durable and adaptable. This complies with guidance provided by the National Planning Policy Framework which champions good design, a key aspect of sustainable development that creates better places in which to live and work. While Policy CS8 of Islington's Core Strategy (2011) is a strategic spatial policy which considers enhancing Islington's character, its direct relevance to the appeal development is limited in this context.

Living conditions

8. The Council's reasons for issuing the notice state that 'the development has resulted in an intensified use of the garden area harming the amenity and outlook of local residents'. From its submissions, the Council consider that the structure has resulted in the back garden/yard area also being used by customers to smoke shisha late into the evening. This is said to be to the detriment of those living locally. I note the Council's submissions provide that 'the intensified use of the rear of the property due to the structure and being able to smoke shisha is a matter to be addressed by Environmental Health smoking legislation'. While this is not a matter for me to address in the context of this appeal, it is possible that using the premises for shisha

smoking would probably lead to a material change of use of the restaurant and this would likely require express planning permission.

9. Nevertheless, the submissions point to the fact that the construction of the partially covered space to the rear of the restaurant, has resulted in an increase in noise and disturbance. This has a negative effect on the occupants of residential premises, particularly those on the upper floors of surrounding buildings. The structure has, as a matter of fact and degree, facilitated the use of the area for restaurant customers. While I consider that there would be limited effect on the outlook for local residents due to living accommodation being at a higher level, it is likely that the issue that would impact their amenity would be derived from a potential increase in disturbance from customer movements, conversations and general noise and smells associated with the use.
10. While the ground floors of the surrounding buildings provide predominantly commercial space, businesses that operate within the yard are more likely to be doing so during normal working hours. The restaurant may operate during lunchtime hours, but it does so also into the night-time when noise levels within the surrounding rear yard area would naturally be lower. In this respect, and with no cogent evidence to demonstrate otherwise, the use of what was previously a quieter space to the rear of the restaurant has since become harmful to the living conditions of surrounding residents through noise and disturbance.
11. Policy DM2.1 of Islington's Local Plan: Development Management Policies (2013) (the LP) requires all forms of development to be of high quality and amongst other things, improve the character and quality of an area and the way it functions and provide a good level of amenity including consideration of noise and the impact of disturbance. Policy DM4.3 of the LP relates to the location and concentration of cafés, restaurants, drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses. As such, it is not relevant to the appeal development.

Conclusion on ground (a) and the deemed planning application

12. There are no material considerations that indicate that the deemed planning application should be determined other than in accordance with the Development Plan. For the reasons given, I conclude that the appeal on ground (a) should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

Ground (g)

13. The appeal on ground (g) is that the period for compliance specified in the notice falls short of what should be reasonably allowed. The notice gives a period of one month. The appellant considers the period for compliance is not reasonable given that the appellant operates a popular, well-patronised restaurant business and would need to appoint building contractors to remove the structure and it is suggested that a period of at least 3 months is more reasonable.
14. I accept the restaurant may be well-patronised, however the timber structure is located to the rear of the restaurant and can be separated from the main

space by closing the fire door. Any impact of the demolition of the structure would in my opinion be minimal. Nevertheless, an extension of the compliance period to 2 months as suggested by the Council, would seem a reasonable amount of time to comply with the requirements of the notice.

15. Accordingly, the appeal on ground (g) succeeds to that extent.

S A Hanson

INSPECTOR