



Appeal Decision

Site visit made on 24 May 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/U5360/C/22/3304930

Arsenal Tavern Backpackers Hostel, The Arsenal Tavern, 175 Blackstock Road, Hackney, London N4 2JS

- 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 Stonegate Group against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 27 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of the replacement of the cornice and extension of the parapet wall and the installation of telecommunications equipment at roof level.
- The requirements of the notice are:
 1. Remove the telecommunications masts located at roof level – with ancillary development thereto – as shown in Appendix 1 attached below;
 2. Reinstate the rendered parapet wall on the south facing elevation to the design, material, size and proportions as pictured in Appendix 2 attached below;
 3. Reinstate the cornice on the south facing elevation of the building as pictured in Appendix 2 attached below;
 4. Make good all damage to the Property resulting from the removal of the unauthorised works listed above;
 5. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Reasons

The Notice

1. Since the notice was issued, the Council has taken the view that the roof level telecommunications equipment, referred to in the notice, constitutes permitted development. Therefore, by a letter dated 8 August 2022, the Council removed requirement 1 of the enforcement notice, drawing on powers available to it under section 173A(1) of the 1990 Act.
2. The Council has subsequently requested that I correct the breach of planning control alleged in the notice, to delete the reference to telecommunications equipment, drawing on my powers under section 176(1) of the 1990 Act.

3. Given that the Council has in effect taken the view that the telecommunications equipment is lawful, I consider the correction requested is necessary and it will avoid there being two inconsistent permissions for the telecommunications equipment, including that which would be granted as a consequence of section 173(11) of the 1990 Act if I were not to correct the notice.
4. Based on the cases put to me, I am satisfied the above correction will not cause injustice to any party. So I shall correct the notice in the way requested and I have dealt with the appeal on the basis of the corrected allegation, ie:

"Without planning permission, operational development consisting of the replacement of the cornice and extension of the parapet wall."

Ground (c)

5. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
6. According to the appellant, following collapse of part of the parapet and cornice, part of the remaining cornice was removed and the parapet was "rebuilt". This is consistent with the before and after photographs provided.
7. Section 55 of the 1990 Act is clear that the definition of development includes building operations and that building operations include "rebuilding". The appellant states the alleged breach of planning control relates to a very small element of a large pub building. But this is not a mathematical calculation. As a matter of my planning judgement, rebuilding has occurred (rather than just repair) and so development has occurred and planning permission is required, for the appeal development described in the notice.
8. The appellant has drawn on an analogy relating to a chimney or a wall falling down. But this is not helpful in the context of an appeal on ground (c) where it is clear that rebuilding has occurred.
9. For the purposes of ground (c), it makes no difference if any of the cornice was removed for safety reasons.
10. Having established that rebuilding has occurred, for the purposes of ground (c), I do not need to consider whether the rebuilding and extension of the parapet wall has materially altered the external appearance of the building. Although it is clear from the photographs provided that what has been rebuilt is materially different to what previously existed in any event. It is clearly lower and in the absence of the cornice it does not have the same appearance as before. It is not *de minimis* or like for like reinstatement, as has been suggested by the appellant.
11. The appellant states that there is no onus on them to reinstate the cornice. But I disagree in light of various powers available under the 1990 Act. Moreover, as rebuilding has occurred in any event and this is subject to planning control, it is a matter of what is acceptable in planning terms, which is for consideration in the ground (a) appeal, below.

12. I accept that painting, referred to by the appellant, may be permitted development. But this makes no difference as plainly painting the building is not all that has occurred in this case.

13. Considering all of the above, I conclude that the appeal on ground (c) fails.

Ground (a)

14. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.

15. The appeal building is within the Brownswood Conservation Area. So it constitutes part of a designated heritage asset and there is a statutory duty upon me under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

16. The appellant states that in heritage terms the critical consideration is securing the long-term conservation of the wider building. But for the purposes of this ground (a) appeal, taking into account the statutory duty noted above, the main issue is the effect of the appeal development on the character and appearance of the area, including the Brownswood Conservation Area.

17. In February 2020 the Council published the Brownswood Conservation Area Character Appraisal and Management Plan. This describes the conservation area as a high-quality Victorian suburb. Buildings in it are described in the character appraisal as being adorned with detailed decorative architectural features, which greatly enriches the overall character and appearance of the area. These features include ornate stucco work.

18. The character appraisal states that much of the conservation area's special character derives from the high number of interesting architectural features present. The loss of historic or traditional architectural features is identified in the document as a threat. It states that key architectural features such as decorative stucco work should be retained due to the valuable contribution they make to the character and appearance of the conservation area. I therefore consider such architectural features constitute a fundamental part of the significance of the conservation area as a designated heritage asset.

19. The appeal building is a locally listed 19th century public house. According to the character appraisal, this means it is of local architectural or historic interest, it has a significant level of local value and it makes a positive contribution to the special character of the conservation area. I have no reason to disagree with this assessment.

20. The character appraisal describes the building as prominently located facing onto both Blackstock Road and Mountgrove Road. So I do not accept the appellant's arguments that Blackstock Road is the more 'public facing' elevation or that the Mountgrove Road frontage is less prominent or 'clearly secondary'.

21. From my site visit and the evidence provided, it is clear that a deep dentilled cornice previously ran around the top of every part of every street-facing elevation of the appeal building. So I am not satisfied that, just because cornicing continues to feature on both frontages, the overall architectural impact on the host building has been 'successfully minimised and mitigated', as is suggested by the appellant.

22. The rebuilt and extended parapet wall, with no matching cornice on the Mountgrove Road elevation, presents a large, flat, bland surface to the public realm. The rebuilding has omitted the cornice detail from nearly all of the prominent three storey Mountgrove Road elevation and this has spoilt the silhouette of the building at roof level.
23. Despite the materials used, the resultant arrangement is discordant, incongruous and harmful to the character and appearance of the area, including the Brownswood Conservation Area and its significance. I give this issue considerable importance and weight in my decision.
24. I appreciate that part of the missing cornice may have collapsed. But as a matter of my planning judgement, this is not sufficient justification for what has been rebuilt.
25. The appellant states that the parapet wall without the cornice is the 'safest' approach. Be this as it may, safety is entirely a matter of how the parapet and cornice are constructed and maintained. So I do not accept that safety in itself is a good enough reason for not reinstating the dentilled cornice.
26. I have taken into account the short structural report provided by the appellant. But it is a fact of life that, as time passes, building components may eventually fail and routine maintenance is therefore required, a point clearly made in paragraph 8.1 of the Council's character appraisal. So I am not satisfied the structural report provided is sufficient justification for the appeal development.
27. I appreciate the appeal building may have been in a poor state of repair for some time. But this is not sufficient justification for the appeal development either and to think otherwise may have the unintended consequence of encouraging poor maintenance.
28. A lack of community/public concern has been referred to by the appellant. But this is not a good enough reason to grant planning permission for the appeal development, in light of the harm identified above.
29. The appellant has raised whether it was expedient to take enforcement action. But this is not a matter for me to consider in an appeal under section 174.
30. According to the appellant, the works comply with the overriding intention of chapter 16 of the National Planning Policy Framework, through giving great weight to the heritage asset's overall conservation. But I am not satisfied that the appeal development in itself constitutes conservation, defined in the Framework as maintaining and managing change in a way that sustains and, where appropriate, enhances its significance.
31. Given the size and scale of the appeal development within the context of the conservation area as a whole, I consider it causes less than substantial harm to the designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 202 of the Framework, I must weigh the harm against the public benefits of the appeal development.
32. In this regard, my attention has been drawn to investment in the repair and refurbishment of the pub as a whole and the retention of its use. But these are not public benefits specific to the appeal development (which is just that described in the allegation in paragraph 3 of the notice, as corrected).

33. Whilst I accept the rebuilt parapet may facilitate the use of the building to some limited extent, so would the requirements of the notice as corrected. Moreover, rebuilding a parapet is not the same as securing a building's optimum viable use, ie the wording from paragraph 202 of the Framework.
34. Taking the above into account, I am not satisfied there are any public benefits of the appeal development of sufficient weight to justify a grant of planning permission in light of the harm identified above.
35. I conclude the appeal development harms the character and appearance of the area, including the Brownswood Conservation Area. This does not comply with Policy D3 or Policy HC1 of the London Plan 2021, Policy LP1, LP3 or LP4 of the Hackney Local Plan 2033 (2020) or the historic environment policies of the Framework.
36. My attention has been drawn to Policies D1 and D4 of the London Plan 2021. But it has not been explained how these are directly relevant to the main issue in this case and so I consider they weigh neither in favour of nor against the appeal development.
37. Taking all of the above into account I conclude that the appeal on ground (a) fails.

Ground (f)

38. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
39. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
40. Based on the requirements of the notice (as corrected and varied), the purpose of the notice is to remedy the breach. This is consistent with the Council's submissions.
41. The appellant considers requirement 2 to be onerous. But I am satisfied that what the notice seeks is restoration of the land to its previous condition. In this regard I appreciate that part of the parapet and cornice may have collapsed. But for me to vary the notice to account for this and instead require, for example, reversion to a collapsed state, would not preserve the character or appearance of the conservation area and so this would conflict with the aforementioned statutory duty.
42. The materials that have been used may well be acceptable. But as requirement 2 and appendix 2 of the notice make clear, the dispute in this case is about detailed design (ie including the cornice design) not just materials.

43. For the same reason, I do not accept the appellant's argument, put forward under ground (f), that the parapet has exactly the same appearance as the previous parapet. It is clearly lower in any event and in the absence of the cornice it obviously does not have the same appearance as before.
44. In light of the above, I do not accept the appellant's argument that there is no need for the entire parapet to be reinstated. The purpose of the notice would not be achieved without reinstatement of the parapet as it was, including the cornice.
45. I conclude no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

Ground (g)

46. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
47. The appellant asks for 6 months to comply with the requirements of the notice, in order to seek input from a structural engineer to ensure the reinstated cornice is structurally sound.
48. I am satisfied this is a reasonable request in the context of this case and so I shall extend the compliance period accordingly.
49. The appeal on ground (g) succeeds to this extent.

Conclusion

50. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

51. It is directed that the enforcement notice is corrected by the deletion of the phrase "and the installation of telecommunications equipment at roof level" from the breach of planning control alleged, in paragraph 3 of the notice.
52. It is directed that the enforcement notice is varied by the deletion of 4 months as the period for compliance and its substitution with 6 months, in paragraph 6 of the notice.
53. Subject to the correction and 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.

L Perkins

INSPECTOR