



Appeal Decision

Site visit made on 14 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2023

Appeal Ref: APP/G5750/C/22/3295980

Land at 98 High Street South, East Ham, London E6 3RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Zia Ullah against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice, numbered 20/00356/ENFC, was issued on 11 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a canopy.
 - The requirements of the notice are to:
 1. Demolish the canopy (as shown in the approximate location edged in blue on the attached plan and as shown edged in yellow in the photograph attached at Appendix 1).
 2. On completion of step 1, remove all materials and debris from the site.
 - The period for compliance with the requirements is: Three months.
 - 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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - At section 5 of the notice, the deletion of 'three' and the insertion of 'six' so that it reads 'Time for Compliance: six months from the date this notice takes effect.'
2. Subject to the variation 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.

Ground (a)

3. The appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issue

4. The main issue of the appeal is the effect of the appeal scheme on the character and appearance of the area.

Reasons

5. The appeal site is located along a parade of shops which front onto High Street South and comprises a commercial property which sells and fits tyres. The main building is constructed predominantly in brick, with other buildings along the frontage finished in a brick or render. The use of traditional materials

- makes a positive contribution towards the character and appearance of the area.
6. There is a yard to the rear of the property which is accessed by an access road running between the appeal site and its neighbour, No 106. The access road serves as a rear access to a number of retail units to the south of the appeal site. The appeal scheme comprises a canopy constructed of timber and corrugated Perspex sheets, which has been erected to the rear of the property. The structure was erected to enable the applicant to fit tyres and accessories sold from his property. It is not disputed that the yard area has historically been used in connection with the shop and the notice does not allege a material change of use.
 7. Policies SP1 and SP3 of the Newham Local Plan (2018)(the NLP) and D4 of the London Plan (2021)(the LP) seek high quality development and policy SP8 of the Newham Local Plan (2018)(the NLP) seeks development which integrates with the street scene, including the use of quality materials. However, the materials used in construction of the canopy contrast with the traditional materials used in construction of the main building and are not in my view high quality.
 8. Although views of the structure are limited from High Street South, it can be seen when walking along High Street South between the appeal building and No 106. Views of the structure are also possible from the access road itself and from the rear of nearby properties. The use of poor quality materials which contrast with traditional materials used in construction of the main building diminishes the character and appearance of the area. While the appeal site is a commercial property, this does not obviate the need to comply with the policies referred to above.
 9. I acknowledge that materials used elsewhere along the access road also contrast with the traditional materials used in construction of the main buildings. However, the existence of poor quality materials elsewhere does not, in my view, justify its use at the appeal site. Indeed, policy S6 of the NLP seeks to improve people's experience of moving through the area by, amongst other things, concerted efforts to upgrade design. The Council is clearly seeking to address previous deficiencies through policy.
 10. The Planning Policy Framework (2021)(the Framework) promotes the effective use of land. I recognise that the canopy enables the appellant to provide a service to customers which it may not consistently be possible to provide due to inclement weather. However, the appeal scheme is not the only means of providing protection from adverse weather. In my view, it would be possible to design a structure using high quality materials which complement the materials used in construction of the main building. Consequently, I find this matter does not outweigh the harm to the character and appearance of the area arising from the appeal scheme.
 11. For the reasons given above, I find that the appeal scheme harms the character and appearance of the area, contrary to policies S6, SP1, SP3 and SP8 of the NLP and policy D4 of the LP, the requirements of which are set out above. It is also contrary to the design aspirations of the Framework, which seeks well designed places.

Other Matters

12. The Council has referred me to policy H1 of the NLP. However, policy H1 concerns residential quality rather than commercial quality and in my view is not determinative in this case. The Council has also referred to policy D1 of the LP in its enforcement notice, however this policy sets out how boroughs should understand capacity for and plan for growth. It is therefore not determinative to the appeal scheme before me.

Ground (a) conclusion

13. The appellant has drawn my attention to paragraph 11 of the Framework, which states that decisions should apply a presumption in favour of sustainable development. However, I have found the appeal scheme harms the character and appearance of the area. Furthermore, I have no evidence to show that the policies of the development plan which are most important for determining the application are out of date.
14. Thus, for the reasons given above, I find 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.

Ground (g)

15. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant acknowledges that it would be possible to remove the appeal structure within the compliance period, however, they raise concern regarding the impact this is likely to have on their business and request a period of 6 months to enable an alternative proposal to be put forward.
16. I saw during my visit that the yard is well used and don't doubt the canopy enables the appellant to carry out work which would otherwise not be possible due to inclement weather. The appeal site comprises a retail unit which is likely to make a positive contribution to the vibrancy of the local area and the local economy. As such, I consider it would be reasonable and proportionate to extend the compliance period to 6 months to give the appellant sufficient time to put forward alternative proposals to cover the yard and for the Council to consider any such proposals. This would enable continuity for the business and limit any effect compliance with the enforcement notice has on the viability of the business.
17. Thus, for the reasons given above, the appeal under ground (g) succeeds.

Conclusion

18. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR