



Appeal Decisions

Site visit made on 15 August 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 8th November 2023

Appeal A Ref: APP/E5900/C/22/3308059

Appeal B Ref: APP/E5900/C/22/3308060

Appeal C Ref: APP/E5900/C/22/3308061

Rear Courtyard to 198 Brick Lane, London E1 6SA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (1990 Act).
- The appeals are made by Mr Mostafa Ali (Appeal A), Mr Mohammed Rafiq (Appeal B) and Mrs Saeeda Sultana Rafiq (Appeal C) against an enforcement notice issued by London Borough of Tower Hamlets.
- The notice was issued on 23 August 2022.
- The breach of planning control as alleged in the notice is “without planning permission, the construction of a roof over the rear courtyard area to the premises, shown in the approximate location outlined in blue on the attached site plan in Appendix 1”.
- The requirements of the notice are to: (1) Remove the covered area to the rear of the building, shown in the approximate location outlined in blue on the attached plan; (2) Remove all resultant materials from the site.
- The period for compliance with the requirements is: one month from the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
- Appeals B and C are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decision.

Preliminary Matters

1. Two different versions of the enforcement notice have been submitted as part of the parties’ evidence. In particular, both the address of the appeal property and the matters alleged are worded slightly differently between the two. The list of people served with the notice also differs. However, these discrepancies are minor and do not affect the substance of the matters alleged in the notice, the land to which it relates, nor its requirements. The Council has also confirmed that the notice has been served on all those persons necessary under s172(2) of the 1990 Act. On this basis, and given that the parties have been given the opportunity to comment on the differences, I am satisfied that I can proceed to determine the appeal without prejudice to either party. My variation to the requirements of the notice, as set below, applies effectively to either version.
2. I have varied the requirements of the notice so that they accurately reflect the wording of the matters alleged in the breach. This ensures the requirements are sufficiently clear. Given that the Council’s original requirement to “remove the covered area” would likely have been interpreted as a requirement to

remove the roof, I am satisfied that this variation would not cause injustice to either party.

3. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

Appeal on ground (a) (Appeal A)

Main Issues

4. The main issues are:

- the effect of the development on the character and appearance of the area, including whether it preserves the character or appearance of the Brick Lane and Fournier Street Conservation Area; and
- the effect of the development on the living conditions of neighbouring occupiers, with particular regard to natural light and outlook.

Reasons

Character and Appearance

5. 198 Brick Lane is a terraced property located on a corner junction with Bacon Street, and is situated within the Brick Lane and Fournier Street Conservation Area (CA). There is an Arabian Tea shop at ground floor level and residential accommodation above. The appeal site itself comprises a courtyard to the rear of the property.
6. The significance of the CA largely derives from its special architectural and historic interest, much of which is attributed to its rich and mixed cultural legacy. Brick Lane itself is a long, gently winding street, and is characterised by a general consistency of height and architecture, especially amongst the terraces. The character appraisal for the CA¹ notes that the differing shades of brick which are so prevalent along the road add a particular sense of richness to the area. This was evident on my site visit.
7. The development comprises a flat roof which has been constructed over the entirety of the courtyard to the rear of no. 198 Brick Lane. The scale of the new roof contrasts sharply with the modest size of the terrace, which means it fails to appear subservient to its host property. In turn, it appears dominant and bulky, and undermines the architectural consistency of properties along Brick Lane.
8. The new roof has been constructed using a wooden frame which is understood to have been covered in felt (albeit I was not able to see the top of the roof during my site visit). This choice of materials exacerbates the harmful impact of the new roof, as they again contrast with the materials used in surrounding buildings, which are generally typified by different shades of brickwork.

¹ Brick Lane and Fournier Street Conservation Area, Character Appraisal and Management Guidelines (2009)

9. For these reasons, the development harms the character and appearance of the area and fails to preserve the character and appearance of the CA. Whilst I consider the harm to be less than substantial, as per paragraph 199 of the Framework, great weight must be afforded to any harm to a heritage asset, irrespective of whether such harm is less than substantial or otherwise. Paragraph 202 of the Framework goes on to say that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
10. I acknowledge that the covered courtyard does provide greater storage space and additional useable space in conjunction with the business accommodated within 198 Brick Lane. However, this benefit alone is not sufficient to outweigh the great weight which must be attributed to the harm to the CA.
11. The development conflicts with Policy S.DH1 of the Tower Hamlets Local Plan 2031 (Local Plan), which says development must meet the highest standards of design, layout and construction. In this regard, development should be appropriate in scale, mass and bulk to its context. Materials should also complement and enhance their immediate surroundings. The development also conflicts with the overarching design and heritage objectives of the Framework.

Living Conditions

12. Given the corner location of 198 Brick Lane, the courtyard also sits to the rear of residential properties along Bacon Street, most notably no. 24. The window into the kitchen of no. 24 looks directly out over this courtyard, and is the main source of natural light into this room. Photos submitted by the occupiers of this property demonstrate that the roof severely impedes levels of natural light within this property. It also creates a claustrophobic sense of enclosure, by precluding any outlook to outdoor space.
13. I consider that this impediment to natural light and sense of enclosure causes unacceptable harm to the living conditions of the occupiers of this property. The development therefore conflicts with Policy D.DH8 of the Local Plan, which says development must protect and where possible enhance the amenity of new and existing buildings and their occupants. This includes a requirement to ensure new development does not result in unacceptable material deterioration of sunlight and daylight conditions in surrounding development.

Appeals on ground (f) (Appeals A, B and C)

14. Pursuant to ground (f), the appellants allege that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control.
15. Whilst the appellants have now installed large rooflights to improve levels of natural light into the courtyard, the very presence of a covered roof in this location still causes a notable deterioration to the levels of natural light experienced in the kitchen to no. 24 Bacon Street. In turn, the roof still has an unacceptable impact on the living conditions of its occupiers. Even if the existing roof was replaced with transparent sheeting, the unacceptable sense of enclosure would also still remain. Photos also show that the roof previously in situ attracted debris and grime, which would have also obstructed natural light

into the courtyard. Such impact would be likely to remain, whatever materials were used.

16. In terms of design, irrespective of the materials used in the construction of the roof, its sizeable extent would still contrast with the modest scale of the terrace. In turn, its impact on the character and appearance of the area and on the significance of the CA, would again remain.
17. Notwithstanding these points, as per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control, being the unauthorised erection of a roof. The requirements set out in the notice must therefore achieve this purpose. Together, the requirements of the EN require removal of the unauthorised roof and the resultant materials. These steps go no further than remedying the original breach of planning control as described in the EN. Indeed, any lesser steps would not properly achieve this purpose.
18. As set out in the preliminary matters to this decision, I have made a minor variation to the requirements of the notice. This is to ensure sufficient clarity in terms of what the appellants are required to do. The appeals on ground (f) therefore succeed, but to that extent alone.

Other Matters

19. In their evidence, the appellants have suggested that the courtyard has been covered for a period in excess of 10 years. Whilst some photographs and correspondence have been submitted to demonstrate this, the photographs are undated, which limits their evidential value. The correspondence refers to corrugated sheets having been installed well over a decade ago. Whilst this may be the case, the Council contend that the previous roof has been removed and replaced: the allegation in the notice being the construction of a roof. There is no challenge, by way of an appeal on ground (b), to the accuracy of the Council's allegation. Nor is there any appeal on ground (d) which is to say that it is not claimed that the existing roof, or any part of it, is immune from enforcement action. Any pre-existing roof would not authorise the one that is there now, however long it had been there for, because that previous roof was voluntarily removed.

Conclusion

20. I have varied the requirements of the notice, and the appeals on ground (f) succeed to that extent alone. Otherwise, for the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall therefore uphold the enforcement notice with a 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 Decisions

21. It is directed that the enforcement notice is varied by deleting the words "covered area to the rear of the building" from paragraph 5.1 and substituting them with the words "roof over the rear courtyard area to the premises".

22. Subject to this variation, the appeals are 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.

James Blackwell

INSPECTOR