



Appeal Decision

Site visit made on 31 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 13 December 2023

Appeal Ref: APP/U5360/C/22/3304666

Unit 7 Lounge, 2 - 4 Orsman Road, Hackney, London N1 5QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hande Sezgin against an enforcement notice issued by London Borough of Hackney.
- The notice was issued on 8 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of the Land to the rear of the property to a drinking establishment in association with the ground floor premises and operational development consisting the installation of two air conditioning units and awning on the south facing elevation of the property.
- The requirements of the notice are to:
 1. Cease the use of the canalside and car park at the rear of the Property as a drinking establishment, including either ancillary to or in connection with any other drinking establishment.
 2. Remove the two air conditioning units and awning from the south facing elevation of the Property (highlighted in Appendix 1);
 3. Remove all fixtures and fittings that facilitate the use of the canalside and car park at the rear as a drinking establishment (including either ancillary to or in connection with any other drinking establishment) from the rear of the Property including the wooden fencing, outdoor bar, seating pods (highlighted in Appendix 2);
 4. Make good all damage to the Property resulting from the removal of the unauthorised works as 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 (four) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act). 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. 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.

The appeal on ground (a) and the deemed planning application

Main Issues

2. The main issues are:
 - Whether the development preserves or enhances the character or appearance of the Regent's Canal Conservation Area (RCCA) in terms of its visual impact;

- The effect of the development on the living conditions of neighbouring residents in terms of noise and disturbance; and
- The impact of the development on biodiversity.

Reasons

Character and appearance of the RCCA

3. The appeal site is situated within the RCCA which is defined as a linear green corridor of amenity space along the towpath and on the water, and a place of ecological diversity in an important environmental landscape. The RCCA Appraisal describes the immediate area where the surviving wharves, warehouses, factories and other industrial buildings impart a feeling of what the canal was really like as an industrial working artery that ran through Hackney, providing employment for hundreds of people. The location of those buildings adjacent to the canal serves as a reminder of the important role that the canal once performed in terms of the foundation and servicing of that industrial heritage. For these reasons, I consider that the unique industrial heritage along the canal and in the industrial buildings makes an important contribution to the character and appearance of the RCCA.
4. The appeal relates to a three-storey historic industrial building that comprises a mix of residential and commercial units including artist studios and U7 Lounge, a bar and eatery on the ground floor. The building is formally recognised as Canalside Studios. It fronts onto Orsman Road and to the rear is Regent's Canal. Dating back to the early 19th Century, the building is historically significant.
5. The development which is the subject of the appeal includes the material change of use of outside space between the building and the canal. The space was formerly a docking area and in later days had been used, according to a local resident as community space, and the Council as a car park. The area is currently set up for customers and provides an extension to the drinking establishment. To facilitate the use of the space, outdoor furniture consisting of a pod, tables, chairs, brightly coloured parasols displaying advertising and a small bar have been installed. Wooden fencing of various heights has been erected around the outdoor area to define its boundary and provide screening, and what was previously an unobstructed route through to the residential units beyond, is now fenced with a walkway through the outdoor seating area.
6. Policy LP3 of the Hackney Local Plan 2033 (the HLP) sets out the standard for new development in Conservation Areas (CA) and states that development proposals affecting CAs or their settings will be permitted where they preserve or enhance the character and appearance of the area including, the established local character of individual buildings and groups of buildings (in terms of height, massing, scale, form, design, materials, detailing and use) and the rhythms and historical form of the area.
7. The use of the outdoor space has resulted in an area that is cluttered with development which is visually obtrusive and unsympathetic to the appearance of the area. The wooden fencing, which is domestic in style, is an alien feature that is incongruous in its setting and the extent and design of the development overall detracts from the character of the canalside setting and the historical industrial provenance of the area.

8. I note there are tables and chairs positioned to the front of the neighbouring apartments along the canalside, but these are minimal in number and the area is not dominated by wooden fencing. Furthermore, their use would be for residents rather than customers of a commercial business. An example of outdoor seating to the front of a nearby restaurant and café has also been provided by the appellant. From the photographs it is apparent that the situations differ regarding the scale of the area and the visual impact these have on their setting. Nevertheless, I am not aware of the circumstances of these individual examples and thus am not able to make a true comparison with the appeal development.
9. Further to the material change of use and subject to the notice are two air conditioning units which have been installed on the front of the building, and an awning above the main entrance doorway. The air conditioning units are positioned above the windows and have been painted black to match the painted frontage. While their colour may go some way to blend with their background, due to their design and their projection from the building on the central brick course that separates the original crittall windows, they are conspicuous in appearance and viewed as an incongruous addition to the front elevation of this important historic building.
10. The awning, which is dark grey in colour and appears to consist of lightweight material with a scalloped edge, provides a degree of shelter for door staff. However, although it is a modest addition above the doorway, it is of a design that is unsympathetic to the industrial form of the building. Both additions are visually harmful and detract from the historic and the architectural appearance of the building and the character of Orsman Road and the wider CA. While awnings can be a feature along retail frontages, as noted by the appellant, the context is very different.
11. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a CA, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area. In addition, Paragraph 199 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.
12. The significance of a CA is largely dependent upon how it is experienced. Proposals must be judged according to their effect on a CA as a whole and must therefore have a moderate degree of prominence. The use of the outdoor space as an extension to the drinking establishment introduces a discordant form of development that is unsympathetic to the architectural and historic setting when assessed against design related policies. Similarly, the addition of the air conditioning units and awning to the frontage introduces alien features on an historic and architecturally pleasing important elevation within the CA.

13. The development to the front and rear of the building is highly conspicuous and readily perceived from the private and public domain of adjacent buildings, waterways and streets. It weakens the special interest and significance of the CA, as a whole, given the contribution that the building and its immediate surroundings make to the CA and the valued local scene which is one of an industrial heritage. The development neither preserves or enhances the character or appearance of the RCCA in terms of its visual impact.
14. While the development has a harmful effect on the RCCA, given the scale of the impact, the harm is less than substantial. Paragraph 202 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case the appellant considers that the outdoor seating has converted an under-utilised area which has had a positive impact on the business and has improved the vitality and vibrancy of this stretch of the canal. The premises are said to provide a facility for the community and thus these are perceived as public benefits which outweigh the less than substantial harm.
15. It is acknowledged that outdoor space is highly beneficial to many venues especially in the aftermath of the pandemic. However, although vitality and vibrancy of the locality may have been improved and local community members may use the venue and benefit from its attractive location along the canal, the overall benefit is for the business which would likely gain from an increase in customers and income. Consequently, in these circumstances, I consider that there are no public benefits suggested and none that are apparent that would outweigh the harm to the designated heritage asset that I have found in this instance. In this respect, I find the development conflicts with Policies LP1 and LP3 of the HLP and Policies D3, D4 and HC1 of the London Plan 2021 (the LP21) which require all new development to be sympathetic to the assets' significance and surroundings, responding to the site's context and be of the highest architectural and urban design quality.

Living conditions of occupants of neighbouring properties

16. The aims of Policy LP2 of the HLP are to ensure that all new development is appropriate to its location and designed to ensure there are no significant adverse impacts on the amenity of occupants of neighbouring properties. This is supported by Policy LP38 of the HLP and Policy D14 of the LP21 which seek to protect quality of life by permitted development where there is no negative impact on an adjoining or adjacent residential accommodation.
17. The appellant states that, according to the Council's policy map, the site is within a 'Priority Office Area'. That, and given the surrounding land uses and proximity to the A10 Kingsland Road and the East London railway line to the east, they suggest that the appeal development is acceptable in this context.
18. The immediate surroundings are in a mixed use with evidence of several residential properties, office, retail and commercial. It is acknowledged that a main road passes close by, and the proximity of the railway will create noise and disturbance. However, these are sounds that form the background noise that is familiar to those in the area. I noted at the time of my visit that Orsman Road, despite being close to the busy Kingsland Road, is a relatively quiet side street and this was similarly experienced on the canal side.

19. The use of the space in association with the drinking establishment has introduced noise and disturbance to surrounding residential areas during hours which are said to be unregulated. The area is expansive and can accommodate many customers where noise levels would likely be significant through conversations and laughter, moving of tables and chairs and servicing the area by staff. Such noise levels inevitably rise in volume as more customers enjoy the space and as the evenings progress. The cumulative noise would be significant and constant, and disturbance is likely to be exacerbated into unsocial hours. Being situated on the waterfront, the space is not physically contained, and noise levels are likely to be experienced further afield.
20. The introduction of an outdoor drinking establishment has created a disturbance to those living nearby and such evidence has been documented in third party submissions which detail the level of disturbance experienced. I acknowledge the appellant's willingness to restrict the use to between the hours of 11.00 and 21.00 and their efforts with the posting of signs to encourage their customers to respect the neighbourhood. However, I consider the level of noise and disturbance created by the use to be detrimental to the living conditions of those residing in proximity of the venue and that restricted hours would not adequately overcome the harm caused. For these reasons, I find that the development conflicts with Policies LP2 and LP38 of the HLP and Policy D14 of the LP21 which primarily seek to protect the amenity of the occupants of neighbouring properties.

Biodiversity

21. Development along canal banks can have a detrimental effect on the biodiversity of the waterway corridor. It can also destroy the habitats of reptiles, causes shading which reduces aquatic plant growth, and increase light pollution which affects bats and moths, while hard surfaces adjacent to the water can cause run-off into the canal¹. Policy LP52 of the HLP seeks to protect the water corridor and stipulates that new development adjacent to water spaces and riparian areas must protect and where appropriate enhance the natural habitats and the setting of the water space. Policy LP46 of the HLP seeks to enhance the network of green infrastructure and water spaces across the Borough through new development and to improve access to open space, particularly in areas of deficiency.
22. From the evidence provided, vegetation has been cleared to create part of the outdoor seating area by the canal. This removal of vegetation is likely to have resulted in a loss of habitat which would have a negative impact upon the biodiversity of the site and surrounding natural environment. I acknowledge the appellant has introduced some container planting and that they are willing to add 'further foliage' and that this is of some benefit. Nevertheless, I consider that the use of the space has resulted in increased light and noise to the area. This would undoubtedly degrade the biodiversity of the area and this would conflict with the policies which seek to protect the natural environment around the waterways.

Conclusion on ground (a)

23. For the reasons given above, I conclude that the appeal on ground (a) fails and the deemed planning application should be refused.

¹ Regent's Canal Conservation Area Appraisal

The appeal on ground (f)

24. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the cessation of the use of the land as a drinking establishment and the removal of all fixtures and fittings that facilitate the use, and the removal of the air conditioning units and awning on the front elevation, the purpose is to remedy the breach. For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.
25. The appellant considers that the requirements are excessive and requests that the notice is varied to allow the retention of the air conditioning units and/or awning and/or the use of the land to the rear of the property as a drinking establishment. The planning merits of the development have been considered under the ground (a) appeal and the conclusions reached in respect of the individual aspects. Overall, the harm identified would not be rectified by the appellant's suggested lesser steps.
26. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

27. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The period for compliance with the notice is four months. The appellant states that four months would not be sufficient to find a suitable contractor and raise the funds to undertake the works. They suggest that a period of six months would be more reasonable. While I appreciate the reasons stated for requesting an extension of time to comply with the notice, there is no evidence to support the request.
28. As I have found that the use of the land has a negative impact on the character and appearance of the CA, biodiversity and the living conditions of the occupants of neighbouring properties, I consider that the period for compliance with the notice is reasonable.
29. Therefore, the ground (g) appeal cannot succeed.

Overall Conclusion

30. The development results in conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal is dismissed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR