



Appeal Decision

Site visit made on 15 November 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/Y5420/C/22/3306480 365-369 Green Lanes, London N4 1DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Garip Toprak against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 27 July 2022.
 - The breach of planning control as alleged in the notice is 1. The alleged unauthorised erection of a single storey rear extension with a retractable roof, 2. The alleged unauthorised use of the premises as a mixed use restaurant/shisha lounge (sui generis), and 3. The alleged unauthorised installation of 12 canopies at first and second floor levels on the front elevation of the building.
 - The requirements of the notice are:
 1. Remove the single storey rear extension with a retractable roof in its entirety OR modify the development to accord with the approved drawings associated with planning permissions HGY/2019/2317 and HGY/2021/0293.
 2. Remove all resultant debris.
 3. Cease the mixed use of the premises as a restaurant/shisha lounge.
 4. Remove all canopies that have been installed at first and second floor levels on the front elevation of the property in their entirety.
 - The period for compliance with the requirements is: 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In sections 3.1 and 3.3 the deletion of the words "alleged unauthorised".
 - In section 3.2 the deletion of the alleged breach in its entirety and substituting instead the words "The material change of use of the premises to a mixed use of restaurant and shisha lounge"
2. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of "5 month(s)" and the substitution of the words "Nine months".
3. Subject to the above corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

4. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or

variation will not cause injustice to the appellant or the local planning authority.

5. In section 3 of the notice the use of the words “alleged unauthorised” when describing the alleged breaches of planning control is unnecessary and can be deleted. I have also corrected the notice in order to add the words “material change of use” into the allegation set out in section 3.2. This is necessary to provide clarity and in order to reflect section 55 of the 1990 Act, which identifies that the making of a material change of use of any buildings or other land is development.
6. The above-mentioned corrections do not fundamentally change the notice. Consequently, they would not cause injustice to either party.

Ground (f)

7. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
8. The requirements of the notice are to cease the unauthorised mixed use of the premises, remove the canopies in their entirety, and to either completely remove the single storey rear extension or modify the development so that it accords with planning permissions HGY/2019/2317 and HGY/2021/0293. I am satisfied, therefore, that the purpose of the notice is to remedy the breach of planning control.
9. The appellant’s case is focused upon the single storey rear extension, and that the harm caused by its retractable roof could have been overcome via the submission of either amended plans or a new planning application detailing a more suitable design. The appellant also claims that the Council were unwilling to accept any new applications in relation to the development.
10. I have not been provided with any evidence to suggest that the Council formally declined to determine any new applications under Section 70C of the 1990 Act. I have also not been provided with any amended plans or alternative schemes. In any event, as there is no appeal under ground (a) there is no deemed planning application in this matter, and the planning merits of the development is not something which I am able to consider.
11. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

Ground (g)

12. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of five months after the notice takes effect.
13. The appellant argues that the compliance period is insufficient due to the need to shut down the venue and terminate contracts, obtain design and structural engineering plans, locate and appoint a suitable contractor, and physically carry out the works on site. A compliance period of thirteen months has been suggested.

14. I acknowledge that carrying out the works required by the enforcement notice, and in particular those works to remove or modify the single storey rear extension, are significant and will inevitably lead to disruption for the business. However, a period of thirteen months would be tantamount to a temporary planning permission. It would not provide the necessary balance between the public interest in securing expeditious compliance with the notice and the private interest bound up in the development.
15. I shall therefore extend the compliance period to nine months, which in my view strikes the appropriate balance and represents an appropriate and reasonable compliance period.
16. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

17. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have therefore upheld the enforcement notice with corrections and variations.

David Jones

INSPECTOR