



Appeal Decisions

Site visit made on 19 December 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal A Ref: APP/M5450/C/23/3319098 & Appeal B 3319099

5 Canons Corner, Edgware HA8 8AE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Khosha Ltd (Appeal A) and Mr Pesarlay Bakhtani (Appeal B) against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The notice was issued on 22 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission:
 - 2.1 The material change of use of a restaurant (use class E) to a banqueting hall (use class Sui Generis ("the unauthorised use"))
 - 2.2 The unauthorised construction of a wooden and perspex single-storey rear extension as shown hatched red on the attached Plan 2 ("the Unauthorised Development").
 - The requirements of the notice are to:
 - 4.1 Cease the Unauthorised Use of the Land;
 - 4.2 Demolish the Unauthorised Development;
 - 4.3 Make good any damage caused to the building as a result of the above steps and in doing so ensure that all materials used shall match those used in the existing building;
 - 4.4 Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of this notice.
 - The period for compliance with the requirements is: Three (3) months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) 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.
 - Appeal B is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. 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.

Applications for costs

2. An application for costs was made by the Council of the London Borough of Harrow against Khosha Ltd and Mr Pesarlay Bakhtani. This application is the subject of a separate decision.

Preliminary Matters

3. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. The parties have been given the opportunity to comment on the implication of the revised Framework on the appeal.

Ground (c)

4. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. Section 191(2) of the Act sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). Planning merits are not relevant to an appeal under ground (c).
5. Planning permission P/4042/20 was granted on 13 May 2021 for a single storey rear extension to restaurant/takeaway. The Council advises that conditions 3 and 4 of permission P/4042/20, which require certain things to be done prior to the commencement of development, have not been discharged. The appellant does not dispute that pre-commencement conditions have not been discharged, rather the appellants' case is that they have not built the approved extension but have simply covered the outside space with a temporary structure for storage.
6. The alleged unauthorised rear extension (which I shall refer to as the 'rear extension') comprises a structure constructed of plywood, with a corrugated Perspex roof. The rear extension wraps around a pre-existing outbuilding (described by the appellants as a 'rear shed' and which itself is not attacked by the notice) and projects from the rear of the main building. The rear extension projects further towards the rear compared with the scheme approved under permission P/4042/20 and has a different internal layout and a different roof form to the approved scheme. I would therefore agree that what has been constructed is not what was approved under permission P/4042/20.
7. Section 55(1) of the Act sets out that "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 336 of the Act defines "building" as any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. The rear extension is physically attached to both the main building and the pre-existing outbuilding. Whether intended to be temporary or not, the works which have been carried out comprise part of a building and in my view, are development for the purposes of the Act.
8. Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. Development is not permitted by Class A if planning permission is required for those operations but is not granted or deemed to be granted.
9. As set out above, the appellants are not in the process of constructing the extension approved under reference P/4042/20, but have constructed something different. Permission is therefore not granted by virtue of Schedule 2, Part 4, Class A of the GPDO. Furthermore, Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if (b) in the case of permission granted in connection with an existing use, that use is unlawful. The

appellant does not dispute that a material change of use has occurred at the site and since planning permission has not been granted for that material change of use, that use is unlawful.

10. While the appellants may not have been aware planning permission was required for the rear extension, I have found it comprises development for the purposes of the Act and is not permitted by the GPDO. Planning permission is therefore required and since no planning permission has been granted, the appeal under ground (c) must fail.

Ground (a)

11. An 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 Issues

12. The main issues of the ground (a) appeal are the effect of the appeal scheme on:
- The living conditions of nearby occupants, having particular regard to noise and disturbance; and
 - Highway and pedestrian safety; and
 - The character and appearance of the area.

Reasons

Living conditions

13. The appeal site comprises the ground floor of a mid-terrace building which is located along Cannon Corner, fronting towards London Road. The terrace generally comprises commercial uses at ground floor level, with living accommodation above. Policy DM38.A(b) of the Harrow Development Management Policies Local Plan (2013)(the DMP) supports appropriate town centre, community and economic uses within neighbourhood parades which would not be detrimental to, amongst other things, the amenity of neighbouring occupiers and policy D14 of the London Plan (2021)(the LP) seeks to avoid significant adverse noise impacts on health and quality of life.
14. The appellant suggests that the use of the appeal site as a restaurant allows for the same 'amount' of customers to use the restaurant as the banqueting hall. However, while similar number of customers may be likely to be accommodated within the site, customers attending a banqueting hall use are likely to enter and exit the site at similar times, rather than throughout the day or evening, as is typical with a restaurant use.
15. As a result, noise arising from users of the site is likely to be more significant compared with a restaurant use, as individuals, who are likely to be in high spirits greet each other, or say farewell outside. I consider it likely that some visitors to the appeal site would choose to park their vehicles along Court Drive and surrounding residential roads, close to residential properties which is likely to lead to noise and disturbance when people leave the venue.

16. Furthermore, while a restaurant may choose to play music, this is likely to be background music which is played at a level far lower than would be played in a banqueting hall. Although the appeal property is located along a parade of shops and fronts onto an A road, it is suggested by an interested party that as most of the shops are closed during the evening/nights, the area is usually peaceful and quiet.
17. I note significant objection was received by the Council in respect of application P/2952/22¹, citing concern about, amongst other things, noise and disturbance. Concern regarding the noise arising from the appeal site has also been raised by members of the public in respect of this appeal, including individuals who live above some of the shops along the parade.
18. Given the proximity between the appeal site and the residential properties above, I consider that music and other noise generated by users of the premises is likely to cause noise and disturbance which is significantly harmful to the living conditions of occupants of the terrace, particularly during the evening when occupants of nearby residential properties may be trying to sleep.
19. The National Planning Policy Framework (2023)(the Framework) advises that decisions should ensure that developments create places... with a high standard of amenity for existing and future users. Policy D13(c) of the London Plan (2021)(the LP) states that new noise and other nuisance generating development proposed close to residential...uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses.
20. However, no measures have been proposed as part of this appeal. While it may be possible to limit hours of operation or the use of music within the site by condition, in the absence of a noise assessment, I do not know whether this would address the harms raised above and if so, what would be reasonable or necessary in this case. Given the nature of the use, I consider it would be unreasonable to prevent the playing of music entirely. Moreover, this would not address noise generated by users of the appeal site.
21. Thus, for the reasons given above, I find the use of the premises as a banqueting hall causes significant harm to the living conditions of nearby occupants by reason of noise and disturbance, contrary to policy DM38 of the DMP, policies D13 and D14 of the LP, the requirements of which are set out above, and the relevant expectations of the Framework.

Highway and pedestrian safety

22. The appeal property fronts onto London Road, which is an A road which appeared well used by a variety of vehicles at the time of my visit. Limited parking is provided to the front of the parade, which is restricted to 2 hours paid parking between 8am and 6.30pm Monday to Sunday. A bus stop is also located in front of the parade. To the rear of the property is service road, however, given its limited width, it is not possible to vehicles to enter and exit in a forward gear, and so is unlikely to be used by visitors to the appeal site.
23. Policy T4 of the LP states that development proposals should not increase road danger and policy DM1 of the DMP seeks to ensure proposals will not create

¹ For the Change Of Use Of Restaurant (Use Class E) To Banquet Hall (Use Class Sui Generis) [sic]

significant on-street parking problems, prejudice highway safety or diminish the convenience of pedestrians and cyclists. The appellant suggests there is 'not much difference' between the restaurant use and the banqueting use in terms of the maximum number of people who would use the site and so it 'won't have a very significant impact' on the existing parking arrangements around the site.

24. However, visitors to a restaurant are likely to arrive and leave over the course of the evening whereas visitors to a banquet hall event are likely to arrive at a similar time, spend a number of hours at the venue and then leave at a similar time. The effect of this pattern of use is, in my view, different to that of a restaurant and is likely to place greater pressure on on-street parking within the area, particularly during the evening when residents are more likely to be at home and may be utilising on-street parking within the area.
25. The appellant has drawn my attention to on-street parking provision along London Road, Court Drive and Stonegrove. Parking along London Road in particular was well used during my visit, despite the appeal premises not being in use. Indeed, in the photographs provided by the appellant there appear limited spaces available, suggesting this is unlikely to meet the parking needs of occupants visiting the appeal site. I note interested parties have raised concern regarding the effect of the use of the site on parking in the area, with one individual suggesting the use has resulted in 'parking chaos'.
26. It is asserted that the appeal site is within a very well developed area close to an underground station and bus stops. However, while I saw there is a bus stop to the front of the parade, the appellant has provided no details of public transport provision in the area, or the times at which it would operate. The Council advises the appeal site is located in a PTAL area of 2, which in my experience suggests public transport connectivity is likely to be more limited compared with some other parts of London. Furthermore, while visitors to the site may choose to use public transport, they would not be obliged to do so.
27. The appellant suggests the majority of customers are 'very local'. However, they have provided no evidence to support this assertion. Although some of the users of the venue may be local, events such as a birthday party or a wedding, are likely to draw people from a much wider area. Where users of the appeal site access the appeal site by private vehicle, they are likely to wish to park nearby, which given the limited parking provision on London Road and surrounding areas, may result in individuals parking in locations which interrupt the free flow of traffic or interrupt views and harm highway and pedestrian safety, contrary to policies T4 of the LP and DM1 of the DMP, the requirements of which are set out above.
28. Policy DM44 of the DMP states that non-residential proposals will be required to make arrangements for servicing that maintain or improve the safety and flow of traffic on the public highway, and which protect the amenity of neighbouring occupiers. In respect of the servicing of the facility, I agree there is unlikely to be a significant difference between a restaurant use and a banqueting use. Both use types are likely to require deliveries of food and other goods which would be used within the premises. As such, the servicing arrangements are unlikely to be significantly different and would therefore maintain the safety and flow of traffic on the public highway. I therefore find there is no conflict with policy DM44 in this regard.

Character and appearance

29. The rear extension is single storey and has been erected to the rear of the main building. Nevertheless, users of the service road, and individuals passing the service road, along Court Drive, are able to see the extension. The use of corrugated Perspex and plywood contrasts with building materials used elsewhere along the service road, including brick and render, and gives the extension a makeshift appearance which is harmful to the character and appearance of the area, contrary to policy D3 of the LP and CS1 of the Core Strategy (2012) (the CS), which seek development which responds to the existing character of a place and policy DM1 of the DMP, which seeks high quality design.

Other Matters

30. The Council referred to the Residential Design Guide in its enforcement notice, which provides advice and guidance for new residential development, conversions and householder extensions, including outbuildings. While I have considered the implications of the RDG on the appeal scheme, since it does not relate to residential development, it is not determinative to the appeal before me.

Ground (a) conclusion

31. Thus, 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.

Overall conclusion

32. For the reasons given above, I conclude that the appeals should not succeed. 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.

M Savage

INSPECTOR