



Appeal Decisions

Site visit made on 17 January 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal A Ref: APP/V5570/C/23/3321554

340-342 Essex Road, Islington, London N1 3PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Damian Benjamin against an enforcement notice issued by the Council of the London Borough of Islington.
 - The notice was issued on 4 April 2023.
 - The breach of planning control as alleged in the notice is the erection of an enclosed structure within the front forecourt of the public house. The structure has a green aluminium frame with extensive glazing.
 - The requirements of the notice are:
 1. Demolish the green aluminium framed structure with glazing on the front forecourt of the public house and permanently remove the resulting materials from the land.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/V5570/W/23/3323081

Lord Clyde Public House, 340-342 Essex Road, London N1 3PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Damian Benjamin against the decision of the Council of the London Borough of Islington.
 - The application Ref P2023/0742/FUL, dated 10 March 2023, was refused by notice dated 4 May 2023.
 - The development proposed is the erection of a metal and glass screen to enclose the outside seating area to the front of the building.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - In schedule 2 the deletion of the alleged breach in its entirety and substituting instead the words "the erection of a metal and glass screen to enclose the outside seating area to the front of the building".
 - In schedule 4 the deletion of the requirements in their entirety and substituting instead the words "Demolish the metal and glass screen enclosing the outside seating area to the front of the building and remove all resulting materials from the land".
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. The appeal is dismissed.

Procedural Matters

4. In relation to Appeal B, the description of development is usually taken from the planning application form ("the form"). However, the description on the form includes reference to the application being retrospective which is not an act of development and is therefore unnecessary. The parties are clear that the development relates to a metal and glass screen which is erected around the external seating area to the front of the building. I have therefore taken the description of development from the Council's decision notice and the appeal form as it more accurately describes the appeal proposal.
5. The development that has occurred is described in the enforcement notice ("the notice") as '*the erection of an enclosed structure within the front forecourt of the public house. The structure has a green aluminium frame with extensive glazing*'. Both the notice and application for planning permission relate to the same development. Using the same words to describe the development in the notice as described in the planning application would provide clarity and consistency, as well as being more succinct. I shall correct the allegation accordingly, along with the wording of the corresponding requirement.
6. Since the appeals were lodged, a revised version of the National Planning Policy Framework (the Framework) was published (December 2023). However, the parts of the Framework most relevant to the appeals have not substantially changed from the previous iteration and, consequently, it has not been necessary for me to seek further comments from the main parties in this respect. I have determined the appeals accordingly.
7. Since the Council determined the planning application and issued the enforcement notice, it has adopted the Islington Local Plan Strategic and Development Management Policies (ILP) in September 2023. The policies in the new Local Plan supersede policies from Islington's Local Plan: Development Management Policies (June 2013) and Core Strategy (February 2011) which were included in the Council's reasons for refusal of the planning application and reasons for issuing the enforcement notice. I have determined the appeals based on the current applicable policies in the ILP.
8. In relation to Appeal A, the appellant ticked ground (e) on the appeal form. However, it is evident from the appellant's submissions that he did not wish to pursue an appeal on this ground. This was clarified by the appellant's agent who confirmed that the box had been ticked in error. I have therefore dealt with the appeal on this basis.

Appeal A

Ground (b)

9. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.

10. The appellant does not dispute that the metal and glass screen has been erected around the seating area to the front of the building. However, he contends that the screen does not enclose this area as it does not have a roof.
11. Whilst the structure does not have its own roof, I do not accept that this results in it not enclosing the seating area it surrounds. To enclose something is to surround or contain it, and it is common for structures such as fences and walls to be described as enclosing external areas such as gardens and other land.
12. In view of the above I find that the breach of planning control alleged in the notice is accurate and has occurred as a matter of fact. Accordingly, the appeal on ground (b) fails.

Ground (d)

13. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. The matter alleged is operational development and the relevant period is four years. It is for the appellant to show, on the balance of probability, that the development was substantially completed over four years prior to the issue of the enforcement notice. As the notice was issued on 4 April 2023, the relevant date is therefore 4 April 2019.
14. The appellant contends that the enforcement notice should not have been issued as that decision was, in his view, based upon incorrect information. This relates to the Council's Planning Enforcement report (PER) which stated that *"to date, no application or pre-app enquiry has been submitted"* which the appellant contends was incorrect. Given that the date on the application form for Appeal B pre-dates the date on the PER, I find it highly likely that the appellant is correct, and the application had been submitted at the time of the report.
15. Nevertheless, whether it was expedient for the Council to issue the enforcement notice is not a matter before me in this appeal. A challenge to a Council's decision to take enforcement action on the grounds of expediency can only be made by way of judicial review. Furthermore, the points raised by the appellant do not assist the ground (d) appeal.
16. No evidence has been provided by the appellant to demonstrate that the development was substantially complete prior to 4 April 2019. On the contrary, the appellant states that following a letter from the Council on 13 February 2023 an architect and planning consultant were appointed to prepare a planning application, and at this time the development was still under construction. This also correlates with the PER which states that the structure was under construction when a Council Officer visited on 19 January 2023.
17. The appellant has therefore failed to show, on the balance of probability, that the development was substantially completed over four years prior to the issue of the enforcement notice. Accordingly, the ground (d) appeal fails.

Ground (f)

18. An appeal on this ground is that the steps required to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. The notice seeks to remedy the breach of planning control by requiring the demolition and removal of the structure.

19. The appellant has not suggested any lesser steps but instead argues that demolition is excessive as there is, in his view, no harm being caused by the development and no health and safety issues arising. These arguments however relate to the planning merits of the development which are dealt with under Appeal B.
20. As the notice does no more than seek remedy of the breach, it is not excessive. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice. Therefore, the appeal on ground (f) fails.

Ground (g)

21. 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 three months after the notice takes effect.
22. It is argued that the appellant would be prejudiced if the effective date of the enforcement notice pre-dated the determination of the planning appeal (Appeal B). However, following the submission of this appeal the enforcement notice was held in abeyance and the two appeals are being determined together. The appellant has not raised any concerns regarding the ability to physically carry out the works and remove the structure within three months.
23. I therefore find that three months is a sufficient and reasonable period of time to comply with the requirements of the notice. Accordingly, the appeal on ground (g) fails.

Conclusion on Appeal A

24. For the reasons given above I conclude that the appeal fails. I have therefore upheld the enforcement notice as corrected.

Appeal B

Main Issue

25. The main issue is the effect of the development on:
 - the character and appearance of the area, having particular regard to whether or not it preserves or enhances the character or appearance of the East Canonbury Conservation Area, and the setting of nearby locally listed buildings.

Reasons

26. The appeal site is located on the eastern side of Essex Road, a busy throughfare within an area of mixed character. The appeal property occupies a prominent position on the corner of Essex Road and Englefield Road. This part of Essex Road is relatively commercialised with shops, hot food takeaways and other commercial units making up the majority of uses at street level, with predominantly residential uses above.
27. The site is within the East Canonbury Conservation Area (CA). The CA covers a relatively compact area of predominately residential properties, interspersed with small parades of shops and other commercial uses. The buildings are typically mid-19th century with an attractive blend of terraces and groups of

properties arranged along regularly laid out linear streets. Given the above, I consider that the significance of the CA is derived from the historic layout and linear form of development, the attractive mix of commercial and residential properties of traditional appearance, and the use of traditional, high quality building materials.

28. There are locally listed buildings in the vicinity of the appeal site, including 155 Englefield Road and 344 Essex Road. No. 155 immediately adjoins the appeal site and is a white rendered four-storey building located at the end of a group of semi-detached villas. No. 344 is located on the opposite side of Englefield Road to the appeal site and is a former bank which has retained its decorative frontage and other traditional and historic features. Due to their proximity, in my view the appeal site forms part of the setting of these locally listed buildings.
29. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Furthermore, paragraph 205 of the Framework states that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
30. In respect of the locally listed buildings, paragraph 209 of the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account when determining the application. It goes on to advise that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
31. The appeal property itself is an attractive three-storey Victorian building which fronts onto Essex Road. Due to its corner plot location the appeal property is particularly exposed and prominent within the street scene, particularly when approaching from the north. Despite some changes and alterations, the property remains a traditional and attractive building that makes a positive contribution to the character and appearance of the CA.
32. The screen that has been erected around the outdoor seating area is a green metal framed structure with large glazing panels that runs along the entire front elevation of the building. The development is noticeably contemporary both in terms of its design and materials. Whilst its glazing affords some views through to the existing exterior walling, the ground floor of the front elevation remains largely obscured from view. As a result, it appears as a discordant feature that is at odds with the traditional design of the host property, which is harmful to the CA and the setting of nearby locally listed buildings.
33. Although it is considered that the development could be easily removed without causing any damage to the fabric of the building, it is nevertheless of substantial bulk and projects significantly forward of the host building's front elevation and the building line of the adjacent properties. This forward projection interrupts the consistent building line and results in an overly dominant and visually prominent form of development causing harm to the character and appearance of the CA.
34. The appellant has referred to the modern mixed-use development located opposite the appeal site. However, this development is located outside of the CA on the western side of Essex Road which does not consist of the same

traditional and historic built form as found within the CA. My attention has also been drawn to the variation in the appearance of other shop fronts along the eastern side of Essex Road. There is however no substantive evidence before me as to the circumstances of these shopfronts in terms of when or if planning permission was granted, and what the planning policy background was at that time. In any event, these shopfronts remain largely visible and contribute to the commercial character of the immediate locality. Consequently, these matters do not offer weight in support of the appeal development or provide any justification for the harm caused.

35. Consequently, I find that the development fails to preserve or enhance the character or appearance of the CA. Whilst this harm would be less than substantial, paragraph 208 of the Framework makes clear that this harm should be weighed against the public benefits of the proposal.
36. The appellant contends that the screen reduces the potential for users of the outdoor area to be subject of crime and theft, whilst also preventing patrons from spilling out across the pavement area during busy times. Whilst I accept that the screen affords protection for users of the outdoor area, no specific details have been provided regarding any such incidents or their regularity prior to the development. It has also not been demonstrated that similar protection for customers could not be provided by alternative means which would be less harmful to the heritage asset. The appellant also considers that the development supports the viability of the public house as it improves the outdoor seating area for customers. However, as the public house already benefits from the outdoor seating area which could remain even following the removal of the metal and glass screen, this benefit would not be significant.
37. When taken together, and for the reasons I have given, the public benefits would not be sufficient to outweigh the harm caused to the CA, the conservation of which I attribute great weight to.
38. I therefore conclude that the development harms the character and appearance of the area and the setting of nearby locally listed buildings, and fails to preserve or enhance the character or appearance of the CA. The development is therefore contrary to policies PLAN 1 and DH2 of the ILP, policies D3, D4 and HC1 of the London Plan 2021, and guidance contained in the Islington Urban Design Guide (January 2017), the East Canonbury Conservation Area Design Guidelines (January 2002), and the Framework. These seek, amongst other things, to ensure that development is of a high quality that conserves or enhances the significance of the CA.

Conclusion on Appeal B

39. For the reasons given above, I find that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

Other Matters

40. In reaching my decision I have had regard to the representations by local residents in relation to noise and disturbance from the outside seating area. Some of these representations state that there has been an increase in noise

disturbance since the development took place, whereas others state they consider that it has led to a reduction in noise disturbance. I am also aware that whilst the potential for noise disturbance was included in the Council's reasons for issuing the enforcement notice, the Council's delegated report in relation to the planning application concluded that the development was acceptable with regard to noise and its effect on the living conditions of nearby residents.

41. As such, I have no technical evidence regarding whether the development materially increases or decreases the likelihood of noise and disturbance when compared to the previous situation. Furthermore, I am reassured that environmental legislation provides adequate protection should any instances of noise nuisance arise.
42. The Council has also referred to policies R10 and R11 of the ILP. These relate to, amongst other things, where new cultural uses should be located, the loss and/or change of use of cultural facilities, where new night-time economy uses will be acceptable, and the re-development, demolition and change of use of public houses. The Council however refused the application on the basis of the developments effect on the CA and nearby locally listed buildings. These policies are therefore not determinative in terms of the appeal before me.

Overall Conclusions

43. Having considered all of the matters raised, I conclude that Appeal A does not succeed. I have therefore upheld the enforcement notice with corrections.
44. For the reasons given above, I conclude that Appeal B should be dismissed.

David Jones

INSPECTOR