



Appeal Decision

Site visit made on 12 September 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 2 October 2024

Appeal Ref: APP/N1920/C/23/3317650

Ground Floor Unit, 100 High Street, Potters Bar, Hertfordshire EN6 5AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Erdinc Or against an enforcement notice issued by Hertsmere Borough Council.
- The notice was issued on 3 February 2023.
- The breach of planning control as alleged in the notice is "without planning permission, erection of timber framed single storey rear extension with Perspex roof at ground floor level".
- The requirements of the notice are to: (1) Remove the unauthorised timber framed extension at the rear of the property; (2) Remove all fittings and fixtures associated with the unauthorised extension; and (3) 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 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. I have determined this appeal with regard to the latest version of the National Planning Policy Framework, published in December 2023 (Framework). I am satisfied that the updates do not materially affect its content insofar as it is relevant to the main issues of this appeal.

Ground D

2. Pursuant to ground (d), the appellant says that part of the extension was erected more than four years prior to the date of the enforcement notice (EN). On this basis, the appellant contends that this part of the development was immune from enforcement at the date of the EN, and therefore lawful¹.
3. To succeed on this ground, the appellant would need to demonstrate that the development, or part of it, was substantially complete on or before 3 February 2019. The burden is on the appellant to demonstrate their case, on the

¹ Since the EN was issued, the immunity period set out in s171B(1) of the TCPA has been updated to ten years. However, this updated immunity period only applies to operational development which was substantially completed on or after 25 April 2024.

balance of probability. As a legal ground of appeal, the planning merits of the development are not relevant.

4. The extension is formed of a roof canopy to the rear of the premises, which is comprised of a wooden frame and Perspex covering. The appellant says that part of this structure was already there when he first leased the premises in 2014. The extension was then extended in 2021 to increase the capacity of the covered space to the rear of the main premises. On my site visit, it was clear that part of the timber frame and Perspex covering was much newer than the rest, which attests to this timeline.
5. On the evidence before me, I have no reason to doubt that part of the extension had been in situ for more than four years at the time of the EN. However, in line with *Singh*², a development must be regarded holistically when determining when it was substantially complete. In this instance, the covered area to the rear of the premises forms one single space, with the newest part of the roof integrating seamlessly with the older part. The same is true of the deck on the floor, which covers the whole of the external space. Notably, if just the newest part of the extension were removed, the pre-existing extension would be incomplete, as it would be exposed to the rear without a new boundary enclosure.
6. Therefore, notwithstanding the staged process of the extension, when considered holistically, I do not consider the extension was substantially complete until its newest part was finished in 2021. In turn, the appellant has not discharged their evidential burden, and on the balance of probability, no part of the development was immune from enforcement action at the date of the EN. The appeal on ground (d) therefore fails.

Ground A

7. The main issues in respect of the ground (a) appeal, being the deemed planning application, are:
 - the effect of the development on the character and appearance of the host building and the wider area; and
 - the effect of the development on the living conditions of neighbouring occupiers.

Reasons

Character and Appearance

8. The appeal premises comprise the ground floor unit of a three storey mid-terrace property, which is located on the western side of Potters Bar High Street. The terrace is mostly made up of properties with commercial uses at ground floor level, and residential use on the floors above. The residential flats are accessed via external staircases to the rear of the terrace.
9. Whilst the terrace is not listed, it does occupy a prominent position on the High Street, and is listed as a Locally Important Building. Much of its local interest derives from its symmetrical mock-Georgian frontage, which features red brick, a hipped roof, uniform chimney stacks, and evenly spaced fenestration. Given the extension is located to the rear of the property, the

² *Singh v SSSCLG & Sandwell BC* [2010] EWHC 1621 (Admin)

significance of the terrace, which predominantly derives from this frontage, is largely unaffected.

10. Conversely, the rear of the terrace is characterised by a series of mismatched extensions, garages and outbuildings, of varying size, design and materials. This means there is significantly less uniformity along this aspect of the terrace, which broadens the scope for change without undermining its overarching character.
11. There are brick extensions on either side of the appeal property which project out much further than the new rear extension. This means the new extension is largely enclosed on either side, which allows it to integrate discreetly within the built fabric of the neighbouring buildings. The extension is also seen within the wider context of mismatched garages, extensions and outbuildings which characterise the rear of the terrace. Again, this allows it to assimilate effectively with neighbouring properties, without appearing incongruous or discordant.
12. In terms of materials, the extension is enclosed to the rear by a slatted timber wall and external gate, which are both consistent with the timber frame structure supporting the Perspex roof. These features, which have been constructed to a good standard, provide a welcome contrast which complements the red brick which typifies the main body of the terrace. Whilst the Perspex roof adds little to the overall design credentials of the building, it still manages to integrate without causing undue harm, given the mismatched materials comprised in other garages, extensions and outbuildings around the appeal property.
13. On account of these factors, I am satisfied that the development does not harm the character and appearance of the host property, nor of the surrounding area. It also preserves the character of the terrace as a locally listed building. The development is therefore consistent with Policies SP1, CS14 and CS22 of the Council's Core Strategy (2013) (Core Strategy) and Policies SADM29 and SADM30 of the Council's Site Allocations and Development Management Policies Plan (2016) (SADMPP). Together these seek to ensure development achieves a high-quality design, which is appropriate in scale, appearance and function, with regard to local context. The policies also seek to preserve the historic environment of the borough. The development is also consistent with the overarching design objectives of the Council's Planning and Design Guides and the Framework.

Living Conditions

14. The appeal premises are used as a café/restaurant, and the extension provides additional seating capacity to the rear of the main internal space. Whilst the entrance to the café/restaurant is along the High Street, there is an access gate from the rear extension.
15. It is possible that the extension leads to some intensification of the premises' use, which could have some minor impact in terms of increased noise or disturbance. However, use of the extension is consistent with the commercial nature of the ground floor units along the terrace, and any potential impact must be considered accordingly. Within this context, a condition restricting its opening hours should ensure any minor impacts are adequately addressed, by limiting its use to daytime trading hours.

16. Subject to such a condition, I am satisfied that the development would not cause undue harm to the living conditions of neighbouring occupiers. In turn, the development is consistent with Policy SADM30 of the SADMPP, which seek to ensure development has limited impact on the amenity of neighbouring occupiers, particularly in terms of disturbance.

Other Matters

17. The main entrance to the premises is along the High Street, which means most customers would access the café/restaurant from the front. Whilst the gate at the rear does provide an alternative means of access, its usage is likely to be limited. Even so, given access to the residential properties above the commercial units is also gained from the rear of the terrace, I do not consider that this access arrangement leads to any particular privacy concerns.
18. Any safety implications in respect of the development's construction would be a matter for building control. From observations made on my site visit, I also saw no evidence that the extension compromises access to any of the properties above, nor associated roof space.

Conditions

19. I have included a condition which restricts the hours of operation of the extension. As discussed, this is to help mitigate against the potential impact of minor increases in noise and disturbance arising from the increased capacity of the premises.

Conclusion

20. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed. In these circumstances the appeal on grounds (f) and (g) does not fall to be considered.

Formal Decision

21. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of timber framed single storey rear extension with Perspex roof at ground floor level at Ground Floor Unit, 100 High Street, Potters Bar, Hertfordshire EN6 5AT as shown on the plan attached to the notice and subject to the following conditions:

- 1) The extension hereby permitted shall only be open for customers between the following hours:

0800 – 1800 Mondays – Fridays; and
0900 – 1700 Saturdays, Sundays and Bank Holidays

James Blackwell

INSPECTOR