
Appeal Decision

Site visit made on 18 September 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/T5150/C/23/3319247
210 Preston Road, London, HA9 8PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Shabbir Alam against an enforcement notice issued by the Council of the London Borough of Brent ('the Notice').
 - The enforcement notice, numbered E/21/0573, was issued on 15 February 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a raised decking to the front and side of the premises ("the unauthorised development").
 - The requirements of the notice are STEP 1 Permanently demolish and remove the unauthorised development from the premises; and STEP 2 Remove all items and debris, arising from the demolition and removal works, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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 a raised decking to the front and side of the premises at 210 Preston Road, London, HA9 8PB as shown on the plan attached to the notice.

Ground (a)

2. An appeal made under this ground is that planning permission should be granted for the development alleged in the Notice.

Main Issues

3. The main issues are the effect of the development on: the character and appearance of the area; the living conditions of occupants of neighbouring residential properties; and highway safety.

Reasons

Character and appearance

4. Near the appeal site, Preston Road slopes downhill from north to south. In the vicinity of Preston Road underground station, the road is a busy commercial area. 210 Preston Road ('No 210') lies a short distance to the south of the

station, where the road is flanked by properties with shops, cafes and takeaways at ground floor level with what appears to be two-storeys of residential accommodation above. No 210 is an end of terrace property, situated at the junction of Preston Road and Elmstead Avenue, a residential street. It presents commercial frontages to both roads.

5. The decking that has been constructed runs along both frontages, and projects a short distance from them. At its northern end it is level with the footway, gradually rising above it as one goes south. Its height above the footway at its southern end is minimal, with only two steps required to reach one from the other. It is constructed from timber. Planking faces the void where the decking rises above the land, and its edge is bounded by a trellis fence supported by timber uprights. I would describe its design as utilitarian, though it is not harmful.
6. It is not a large feature. Its projection from the building and its height make it a minimal feature in the street scene, rather than a prominent one. It is clearly seen when one is in close proximity to it, but any effect that it has is soon lost as one moves away from the site. The Council does not explain what it meant when it says the decking results in the "overdevelopment" of the site. However, it is not overly-large and does not cause harm to the character and appearance of the area.
7. I see no reason to suppose that the development would be likely to deteriorate very quickly, nor is any given by the Council. As the Appellant states, it is in his interest to maintain the decking in order to make his business attractive to customers.
8. I did not see any other similar structures in the area, but I was not given any evidence of pressure for similar development in the area for which this development might set a precedent. In any event, each development would have to be assessed on its merits and applying that test here I find that the development is appropriate to its setting.
9. The development accords with the terms of Policy DMP1 of the Brent Local Plan 2019-2041, adopted February 2022 ('BLP'). This is a general policy that sets out a number of criteria that developments should accord with. Of relevance here is criteria (a) that refers to the need for siting, scale, materials and design to complement the area. It is a development of a design quality that meets the tests in BLP Policies BD1 and BE7, Policies D1 and D5 of the London Plan 2021 ('LP') and the terms of the National Planning Policy Framework ('the Framework').

Living conditions

10. Although not mentioned in the Notice, in its Statement of Case ('SoC') the Council refers to the harm to the living conditions of the occupants of neighbouring residential properties by way of noise generated by users of the decking.
11. It has supplied no evidence of any complaints from neighbours, nor have I received any third-party letters of objection citing noise nuisance. In this regard, I note a large number of residents were notified of the appeal. This is a busy commercial street, with a large number of pedestrians on the footways and a constant flow of vehicular traffic. When I assessed the development from

close-by, although there were people using the decked area there was little noise generated from it. Given the level of activity in the street, noise generated from the development would not, to my mind, cause significant harm to residents' living conditions and the Council has supplied no evidence to lead me to find otherwise.

12. For the above reasons, the development accords with the terms of BLP Policy BE7 and Principle 5 of the Council's Supplementary Planning Document 3 that require that forecourt trading does not cause nuisance to neighbouring residential occupiers.

Highway safety

13. In its reasons for issuing the Notice, the Council stated that the development encroaches onto the highway, and this causes an obstruction. This, it said, is particularly problematic to pushchair and wheelchair users and visually impaired people, who are prevented from passing freely and safely.
14. The Appellant states that the development does not encroach on the highway, but the land on which the decking has been constructed is wholly within his ownership. That was not countered by the Council.
15. I saw how the area between the front of the commercial premises in the terrace of which the appeal site is a part and the carriageway was finished in two quite different ways. Roughly two-thirds of this, from the carriageway back, was uniformly finished in paviers. These finished in a straight line running parallel to the carriageway and frontage of the terrace. The remainder of the area in front of the commercial premises, lacked uniformity and was finished in a variety of materials that were of varying standards of repair. The variously finished areas coincided with the width of the frontages of the commercial premises, and the front of the decking runs continuously with the boundary of the paviers.
16. On the basis of the information before me, and the evidence of my site visit, I find that the decking has not been constructed on the highway. Therefore, the decking does not cause an obstruction to the public nor does it adversely affect what the Council terms the "movement network" in BLP Policy DMP1.
17. The development is, therefore, in accordance with the terms of BLP Policies DMP1 and BE7, LP Policy D5 and the Framework that seek to ensure that developments do not adversely affect the free flow of pedestrians. The Council referred to BLP Policy BD1 in its reason for issuing the Notice; however, that relates to good urban design generally and neither it, nor its supporting text, refer to pedestrian or highway safety.

Other Matters

18. The Appellant set out that the corner of the building on which the decking has been constructed was subject to anti-social activities before he undertook the development. He says that his investment has stopped this and, thus, contributes positively to the character of the area. This has not been countered by the Council. Although the Covid pandemic has passed, I understand the point made by the Appellant that many customers still have concerns about entering buildings and the decking offers them an alternative. Both are points that weigh in favour of allowing the appeal.

Conditions

19. Neither the Council nor the Appellant has proposed any conditions. Given that the development has been undertaken and is in accordance with policy, I see no need to attach any to my decision to allow the development.

Conclusion

20. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a raised decking to the front and side of the premises as described in the notice. The appeal on ground (f) does not therefore fall to be considered.

Roy Curnow

INSPECTOR