



Appeal Decision

Site visit made on 19 June 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/F5540/C/23/3320755

Premises known as 22 Devonshire Road, Chiswick, W4 2HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeal is made by Hangar 22 Ltd against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The notice was issued on 22 March 2023.
 - The breach of planning control as alleged in the notice is 'without planning permission, the unauthorised erection of a second single storey rear extension (shown cross-hatched in black on the attached plan)'.
 - The requirements of the notice are:
 - i. Demolish the second single storey rear extension
 - ii. Remove all resultant debris from the Land
 - The period for compliance with the requirements is: 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Act. 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.
-

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word "second" in paragraph 3 and paragraph 5(i) of the enforcement notice.
2. Subject to the corrections above, the appeal is 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 Act.

Matters concerning the notice

3. The enforcement notice describes the unauthorised development as a 'second single storey rear extension'. The inclusion of the word 'second' is unnecessary. The allegation is one of an unauthorised extension to the rear of the building. It is irrelevant how many extensions have gone before it. I therefore take the view that the notice can be corrected to remove the word 'second' from the allegation and requirements without causing injustice to either party.

Preliminary Matters

4. The appellant has appealed under ground (c). However, within their appeal form, they state that they have not erected a second single store extension but have just remodelled an existing roofed area which has been there for more than 20 years. It is not clear what the appellant means by the term 'remodelled'. Nevertheless, an argument that the alleged breach has not occurred as a matter of fact should be considered under ground (b). Since the

Council has addressed this matter in its statement of case, there would be no injustice in my dealing with it in this way.

Ground (b)

5. As set out above, the appellant suggests that they have not erected an extension but have remodelled an existing roofed area which has been there for more than 20 years. The appellant has provided little detailed information nor any plans for the 'existing roofed area', what it was comprised of, or how it had been constructed. Moreover, the extent of the building which was remodelled and thus retained has not been explained. Little information has been provided to describe the works that were carried out.
6. The Council suggests there was a timber lean-to pre-existing structure, which has been demolished. In support of its case, the Council has provided a number of photographs. These photographs are undated. Nevertheless, they appear to show a structure in the rear yard of the appeal site which is predominantly comprised of corrugated sheet metal for its sides and roof. This structure is seen to extend across the full width of the rear yard from the rear boundary up to the edge of the furthest projection from the host building.
7. In contrast, the appeal structure ('the extension') partly wraps around and attaches to the rear wall of the original outrigger of the host building. The current structure does not extend across the full width of the rear yard. Consequently, the position of the extension is altered from that of the position of the pre-existing structure.
8. A further photograph shows the pre-existing structure to have been largely demolished save for a number of lengths of wood or metal which can be seen to remain within the picture. However, based upon my observations at the site visit, those lengths of wood and metal have not been retained. I saw there was consistency in the condition, colour and age of the timber comprised in the frame of the extension which is currently in situ. In addition, the existing roof also stands at a greater height than the pre-existing structure. I therefore consider it is likely that much, if not all, of the internal frame of the pre-existing structure has been replaced.
9. Similarly, the photographs of the external facing materials of the building differ to the materials comprised in the current structure which were of a condition and age which suggested it was unlikely that they had been re-used from the pre-existing structure. The Council state that the current flat roof is felt-clad whereas the appellant states it is fibre glass. In any event, the roof has been constructed at a greater height and either of these roofing materials are different from the 'old' roof which, from the photographs, appears to have been predominantly constructed from corrugated metal sheets.
10. Taking everything into account, even if part of the fabric of the pre-existing structure remains, given the extent of works that have been carried out, including the rebuilding of the internal frame, external walls and roof, the breach has occurred as a matter of fact and the appeal under ground (b) must fail.

Ground (c)

11. An appeal under ground (c) is made on the basis that those matters stated in the notice (if they occurred) do not constitute a breach of planning control.

12. Section 57 of the Act states that planning permission is required for the carrying out of any development of land, subject to the provisions set out therein. Section 55(1) of the Act provides the meaning of 'development' which includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 55(1A) of the Act clarifies that the term 'building operations' includes - (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. The works that have been carried out comprise the erection of a structure and are likely to have been carried out by a person carrying on business as a builder.
13. Section 55(2) of the Act provides a list of operations which shall not be taken for the purposes of the Act to involve development, which includes the carrying out for maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.
14. As set out above, I have found that the matters alleged in the notice have occurred, which comprise the erection of a single storey extension. Whether or not alterations to the exterior of a building constitute development for the purposes of the Act will involve consideration of the change to the external appearance of the building as a whole and not a part in isolation. The degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations/works.
15. The extension is substantial in size and, although not visible from public vantage points, it is clearly visible from a number of private properties. The materials which have been used in construction of the extension contrast significantly with those used in construction of the main building and so an observer outside the building is likely to interpret this as a new addition to the building. Whether it is described as a shed or an annex, in my view, the extension materially affects the external appearance of the building and, given the above, is development for the purposes of the Act.
16. The appellant suggests that the structure is not permanent. Although the appellant has not specifically mentioned the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), the GPDO grants permission for temporary buildings 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.
17. However, the permission under this Part does not apply in respect of activities which represent the use of land rather than operational development. The appellant advises the structure is used for storage, in connection with the use of the restaurant. As such the permitted development rights granted by Class A of Part 4 of the GPDO do not apply.
18. Although not specifically raised by the appellant, I have also considered whether permission would be granted by Part 7 of the GPDO, which permits non-domestic extensions, alterations etc. However, given the location of the site within a Conservation Area, its proximity to the boundary of the curtilage and the use of contrasting materials, it would not benefit from permitted development rights granted by Part 7 of the GPDO.
19. While the appellant suggests the existing roofed area had been there for 20 years, from their own evidence it seems they carried out works in 2021 (in

their final comments, the appellant states they decided to make it cleaner and more suitable in 2021). Since I have found the works constituted the erection of a new structure rather than 'remodelling' of an existing structure, there is no need for me to consider whether the appeal structure is immune from enforcement action by virtue of the passage of time, which is a matter which would be considered under ground (d). Thus, for the reasons set out above, I find the appeal scheme is development for which planning permission is required. Consequently, the appeal under ground (c) must fail.

Ground (a)

20. 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.
21. The appellant suggests that the extension is not complete. However, section 177(1) of the Act only allows for a grant of planning permission for the whole or part of the matters. Planning permission cannot, therefore, be granted for more than the partially constructed structure and another grant of planning permission would be required to complete the building. I shall therefore consider the appeal under ground (a) on the basis of the structure which has been erected.
22. Having regard to the reasons for issuing the notice, the main issue is the effect of the extension on the character and appearance of the host building and wider terraced row and whether the appeal scheme would preserve or enhance the character or appearance of the Chiswick High Road Conservation Area.

Reasons

23. The appeal site is located within the Chiswick High Road Conservation Area (CA), and more particularly, the Devonshire Road Character Area as identified within the Chiswick High Road Conservation Area Appraisal (October 2021). Devonshire Road is predominantly characterised by two storey terraced properties with shop and/or restaurant uses on the ground floor and residential uses situated above. These properties comprise a strong and consistent character which is in part derived from the consistent scale and height of buildings, the use of a common palette of materials, high quality detailing and the survival of original features such as pilasters and corbels separating the shop fronts.
24. From the evidence before me and based upon my observations at the site visit, I consider that the significance of the CA is, in part, derived from the historic layout of development, fine architecture and detailing and the use of traditional and high-quality materials.
25. The appeal property is located mid-way along a row of properties of similar age, appearance and external materials. It appeared to be constructed from yellow stock brick and slate roof tiles. As a consequence of sharing a number of the characteristics that are common to the area, I therefore find that the appeal building makes a positive contribution to the special character of the CA.
26. To the rear of the host building, the unauthorised development has been constructed at ground floor level to provide an 'area for dry storage'. The building projects from the elevation of the rear outrigger and it includes a

height of some 2.5 metres and a footprint of approximately 12 square metres, taking the Council's measurements, which have not been disputed by the appellant. By reason of its size, the extension covers a significant part of the rear yard of the host building.

27. The extension includes a timber frame and walls that consist partly of PVC panels and wooden sheet. There is some dispute over the construction of the flat roof. The Council alleges it is a felt construction, whereas the appellant states it is fibre glass. In any event, either of those roofing materials together with the use of PVC sheeting for the walls is at odds with the traditional materials and refined architectural character of the host building and terraced row.
28. The piecemeal use of materials to clad the walls of the building has resulted in several gaps between the frame and external materials such that glimpsed views into the building were possible. Consequently, the extension has a utilitarian, makeshift and unfinished appearance which is, in part, due to the modern, functional and lightweight nature of the external materials and the contrasting finishes together with the poor external condition of the development.
29. This contrasts with the high quality materials and finish used in the host building and others along the terraced row. As a result, the extension appears as a dominant and incongruous addition to the detriment of the host property and the wider terraced row.
30. The appellant states that other businesses in close proximity to the appeal site have a similar outside area. However, no specific examples have been provided. In any event, notwithstanding that my observation of other properties within the terraced row was limited to what I could see from the appeal site, where properties had been extended to their rear, these were generally constructed in materials that matched their host property and thus were in keeping with the character of their host building.
31. By reason of being positioned to the rear of the host building, the extension is well screened in views from the public realm. However, notwithstanding that the extension is a single storey in height, it is readily visible above the existing boundary treatment when viewed from the windows and balcony terraces of neighbouring properties. The appellant has drawn my attention to a tree in a neighbouring garden, however, its screening effect is modest given its size and, in any event, this position would worsen during the winter months when foliage is reduced.
32. Overall, I consider that the extension has an erosive and harmful effect on the character and appearance of the CA. The appellant suggests that the extension is not permanent. However, they have not indicated how long it should be retained. Even if the development were to be retained for a temporary period, I consider it is still harmful to the character and appearance of the CA. It therefore fails to preserve or enhance the significance of the heritage asset and thus it conflicts with Policies CC1, CC2 and CC4 of the Hounslow Local Plan (September 2015)(LP) insofar as these policies require high quality development that contributes to local distinctiveness and preserves the significance of a heritage asset.

33. The harm to the CA identified would amount to “less than substantial harm”. The National Planning Policy Framework (December 2023)(the Framework) requires the harm to be balanced against the public benefits of the proposal. I have had regard to the submitted photographs and the appellant’s desire to provide a dry storage area that is more suitable to their business needs. The business will provide benefit to the local economy through, for example, employment, and indirect benefits from people visiting the premises and spending money in the local area. However, the business is not required to cease and therefore these benefits are likely to continue to be realised which therefore limits the weight to be attached to this as a public benefit.
34. The appellant also asserts that the extension is cleaner than the one that it replaced and thus should be regarded as an improvement on what was there originally. However, that structure has now been removed and so, were I to uphold the notice, it would not be possible for the appellant rebuild it. Furthermore, while the extension provides dry storage for the appellant’s business, the appeal scheme is not the only means of securing dry storage. I therefore afford this matter very limited weight.
35. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. It goes on to state that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. In this instance, I find that there are limited public benefits which are insufficient to outweigh the identified harm to the CA, the conservation of which I attribute great weight to. Therefore, in addition to the conflict with the policies of the development plan, the appeal scheme also fails to comply with the relevant expectations of the Framework.

Other matters

36. The appellant suggests that the Council’s building control department were satisfied with the building that has been constructed. However, whilst a building may be satisfactorily constructed for the purposes of the building regulations regime, this does not provide adequate justification for a poorly designed scheme which fails to preserve the character and appearance of the host property, wider terraced row and the surrounding area.
37. The appellant states that the business has a large customer base in Annadale Road who have not complained about the unauthorised development. However, this is unsurprising given the position of the unauthorised development to the rear of the host building and the likelihood of customers observing the appeal scheme from the public realm being limited. In any event, a neighbouring resident has provided their comments about their experience of the impact of the unauthorised development and the absence of complaint from business customers does not provide adequate justification for the harm that has been caused.

Conclusion on ground (a)

38. Thus, for the reasons given above, 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. The appeal under ground (a) therefore fails.

Appeal on ground (g)

39. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
40. The enforcement notice specifies a period of three months for compliance with the steps contained therein. The appellant has not suggested what alternative length of time they would require in order to comply with the steps set out within the notice.
41. Whilst the appellant suggests the Council could have taken other steps before issuing the enforcement notice after planning permission was refused, it does not specify what these steps would have involved. Moreover, this is a matter for the Council.
42. The appellant has not provided any detailed information to explain why it would not be practically and safely possible to undertake the physical operations necessary to demolish the unauthorised extension and remove the resultant debris from the land within the stated three month period.
43. No explanation has been provided to explain what, if any, effect the works would have on the business operation. Given the small scale of the extension and its basic construction, in the absence of any detailed information about what problems may be encountered, I consider that it should be relatively easy for the appellant to remove it in the three month time frame.
44. I consider that a period of three months is a reasonable timescale to carry out the required steps of the enforcement notice. Accordingly, the appeal under ground (g) must fail.

Overall Conclusion

45. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as corrected, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

E Brownless
INSPECTOR