



Appeal Decision

Site visit made on 5 February 2025

by **Felicity Thompson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/U5360/C/23/3324900

49 St. Kilda's Road, Hackney, London N16 5BS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Jehudah Baumgarten, Company Secretary of Cosmon (BELZ) Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 23 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a rear extension and outbuilding.
 - The requirements of the notice are to:
 1. Remove the single storey rear extension located in the rear garden of 49 St Kildas Road (as shown in Appendix 1) in its entirety.
 2. Remove the outbuilding located in the rear garden of 49 St Kildas Road (as shown in Appendix 1) in its entirety.
 3. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above.
 4. Upon completion of the above steps, 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 three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Deleting the words *and outbuilding* from section three of the enforcement notice (the breach of planning control alleged); and
 - 2) Deleting requirement number two from section five of the enforcement notice (what you are required to do) and renumbering the remaining requirements accordingly.
2. Subject to the correction and variations, 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 1990 Act as amended.

The appeal on ground (b)

3. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
4. I saw that the alleged outbuilding had been removed. However, it makes no difference whether the breach had been resolved. The question is whether the breach had occurred by the date of issue of the enforcement notice. If an

outbuilding had been constructed, the appeal on ground (b) in respect of the outbuilding could not succeed simply on the basis that it has been removed.

5. In respect of the alleged extension, the appellant does not dispute that the structure is a building. The appellant's case on this ground is essentially that the structure closest to the synagogue is a storage building and not an extension, and the alleged outbuilding (structure at the back of the yard) is not an outbuilding.
6. There are adjoining doors between the extension and synagogue and notwithstanding whether it is fixed to the walls of the synagogue, it abuts the rear wall such that there is no evident gap between the two buildings. Whilst it is not constructed of materials to match and may not appear as a typical extension, it would appear to a casual observer to be, attached to the synagogue. Consequently, as a matter of fact, an extension has been constructed as stated in the notice and the appeal on ground (b) must fail in this respect.
7. In respect of the outbuilding, as already stated, in an appeal on this ground, the onus of proof is on the appellant, and they provided no substantive contrary evidence or explanation about what the alleged outbuilding consisted of.
8. Nevertheless, the Council's photograph is not particularly clear, and their submissions take me no further in terms of describing the alleged outbuilding. From the photograph, the alleged outbuilding appears to consist of a collection of stored items and materials partially covered with some type of tarpaulin, it does not show what could ordinarily or reasonably be described as an outbuilding.
9. Accordingly, I conclude based on the evidence before me and the balance of probabilities, that the alleged breach of planning control consisting of the construction of an outbuilding has not occurred. The appeal on ground (b) succeeds to this extent and I shall correct and vary the notice accordingly.

The appeal on ground (a) the deemed planning application

10. The main issue is the effect of the extension on the character and appearance of the property and area generally.

Reasons

11. The appeal property is a traditional end of terrace property, in use as a synagogue, in a predominantly residential area which generally consists of traditional terraces. The properties in the terrace and surrounding terraces are constructed from brick and render in some cases. There is a fairly significant extension to the rear of the appeal property, with a rendered finish, which the extension adjoins.
12. Given the size of the existing extension, I do not consider the scale of the extension, subject of this appeal, is harmful. However, the extension relates neither in terms of form nor design to the host property. It is a rudimentary construction, consisting of poor-quality materials including wooden panels and a plastic covered roof, which does not represent high quality design.
13. Whilst the development is not prominent in wider public views and is screened to some extent by the tall surrounding fence, it will be visible from the upper floors of surrounding properties. In such views, the extension will appear as a significantly discordant feature.

14. The appellant suggested they would be willing to reduce the size of the extension however, no details were provided, and this is not something that could be secured by condition. They also stated that they would be willing to clad the extension and referred to options however, even if this were possible, this would not overcome the identified harm in respect of the form of the extension.
15. For the reasons given, whilst reasonably localised in its extent, the extension adversely affects the character and appearance of the host property and area generally, contrary to Policy LP1 of the Local Plan¹ and Policies D3 and D4 of the London Plan 2021. Together these require development to be of the highest architectural and urban design quality and to respond to local character and context, using attractive durable, high-quality materials which complement local character.

Other matters

16. I acknowledge that the synagogue is a focal point of religious and community life for many local families and the extension is used for the storage of essential Jewish festivals and synagogue related paraphernalia. However, since it has not been demonstrated that the appeal development is the only means by which such storage space could be provided, this is a matter of little weight.
17. Whilst I acknowledge the appellant's misgivings about the Council's handling of the case, these have no bearing on the planning merits and are a separate matter for the appellant and Council away from this appeal.

Conclusion on ground (a)

18. For the above reasons, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

19. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
20. As the enforcement notice requires the extension to be removed along with all resulting materials, I find the purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
21. I have considered the appellant's suggestions of reducing the size of the extension and cladding under ground (a).
22. In order to remedy the breach of planning control, it is not excessive to require the extension, and all resulting materials are removed from the land, and no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

¹ Hackney A Place for Everyone Hackney Local Plan 2033 Strategic Planning Adopted July 2020

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR