



Appeal Decision

Site visit made on 7 May 2025

by **R Curnow MA(TCP), BSC(Hons), CMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/V5570/C/23/3334969

137 Newington Green Road, Islington, LONDON, N1 4RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr. Ahmet Kozan against an enforcement notice issued by the Council of the London Borough of Islington.
 - The notice was issued on 1 November 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a two-storey full width rear extension.
 - The requirement of the notice is: Demolish the two-storey rear extension and permanently remove the resulting materials from the land.
 - The period for compliance with the requirement is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.
-

Decision

1. It is directed that the enforcement notice is varied by: the deletion of 4 months and the substitution of 6 months as the time for compliance.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Ground (a) and the Deemed Application

Main Issues

3. The main issues are the effect of the development on:
 1. The character and appearance of the Newington Green Conservation Area ('NGCA'); and
 2. The living conditions of the occupants of neighbouring properties by way of noise, disturbance and odour arising from the commercial use, and a loss of daylight and sunlight from the erection of the extension.

Character and appearance of the NGCA

4. The NGCA is a designated heritage asset, for which section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty for those making decisions on development proposals to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. This 'statutory test' is reflected amongst the terms of Policies DH1 and DH2 of the Islington Local Plan - Strategic and Development Management Policies, September 2023 ('ILP') and Policy HC1 of the London Plan, March 2021, ('LP').

5. The Council has adopted the Newington Green Conservation Area Statement, March 2014, as Supplementary Planning Guidance ('SPG'). It details the history of the development of the NGCA as well as its character and appearance and is a document that attracts substantial weight.
6. The NGCA was originally composed of two elements: one centred on the Green and the other on a C20th local authority flats development on Matthias Road. The NGCA was subsequently expanded southwards towards, and encompassing, the North London railway line. Its land use is primarily residential; whilst this has been developed in a number of forms, it is the NGCA's multi-storeyed terraces dating mostly from the C19th that add most to its character and appearance.
7. The SPG identifies 6 'Character Zones' across the NGCA; the property in which the appeal site lies is within the 'Newington Green Road' zone. It is a mid-terrace property that is part of a group of buildings dating from the 1860s, with accommodation set over a number of floors.
8. The appeal site itself is a restaurant that occupies the ground and lower ground floors of 137 Newington Green Road ('No 137'). At its upper level, which is the level of Newington Green Road, the extension to which the Notice relates ('the extension') contains a seating area for the restaurant. The lower ground floor of the extension appeared to be used as ancillary accommodation to the restaurant and its kitchen. Above the restaurant, the building contains residential units. This pattern of commercial enterprises with residential accommodation over is repeated along the terrace.
9. The extension has been built in the yard area to the rear of the property. Prior to its erection, there was a single-storey element here, although there is some disagreement as to the degree to which the extension projects beyond the rearmost plane of the original element.
10. What has been built is a two-storey extension that has walls finished in what appeared to be mineral felt, commonly used on flat roofs. At its upper level, the extension has windows on the side looking towards the rear of 139 Newington Green Road ('No 139'), as well as an external door on its rear elevation. There were no stairs from that door to the rear yard, below, though a door at lower ground level does access the yard.
11. The extension that has been built covers the majority of the yard. There is a very narrow gap on its north side; between it and an extension to the rear of No 139 and the rear wall of a multi-storey contemporary residential building that lies on Ferntower Road. The extension to the rear of No 139 is a similar height to the extension that has been built at No 137, whilst the contemporary property is considerably higher.
12. To the rear of No 137 is the flank wall of a residential property in Ferntower Road, which lies adjacent to the aforementioned contemporary building. That wall is built to their shared boundary. Beyond this, that property has a garden area. The flank wall is significantly higher than the extension, and the garden is at a level slightly lower than the top of the extension. On its fourth side, to the rear of 135 Newington Green Road, the extension abuts an addition to that property that projects out much the same distance as the extension but appeared to be somewhat higher.

13. This is an area of quite dense development, where extensions and infilling have occurred. As I have described, the built form abutting the extension is either of much the same height or significantly higher. Therefore, I find that its scale and massing are appropriate to this location. Its flat-roofed design, whilst being decidedly utilitarian, is similar to others in the area and, again, is appropriate. In reaching these findings, I have taken account of the guidance in the Council's 'Urban Design Guide' Supplementary Planning Document, January 2017 ('SPD').
14. The finish to the walls of the extension and the haphazard manner in which it has been attached gives the extension an unfinished appearance. Furthermore, it is a material that one would expect to be used on roofs, rather than walls. It is not appropriate to development within the NGCA. I find this finish, which is seen from neighbouring properties, to be harmful to the character and appearance of the NGCA and this harm would not be overcome by its being painted. The reason for the use of this inappropriate material has not been submitted. Had a Heritage Statement ('HS') been submitted by the Appellant, as is required by ILP Policy DH2, this might have been explained. There was no HS, nor was there any attempt in submissions to explain why it has been used.
15. Given the scale of the development, I find that the harm to the NGCA is less than substantial, as defined by the National Planning Policy Framework ('the Framework'). That document sets out that 'great weight' should be given to the conservation of designated heritage assets and that any such harm should be weighed against the public benefits of the proposal, including, where appropriate, its optimum viable use.
16. Although not specifically put forward in this regard, the Appellant refers to the economic contribution that the business makes and the staff it employs. I take these to be public benefits. However, whether, or to what extent, these arise from the extension is not explained. In the circumstances, these benefits carry limited weight and do not outweigh the harm I have identified.
17. Although I find the design, scale and massing of the extension to be acceptable, its external finish fails to preserve the character and appearance of the NGCA. Paint would not overcome this harm, and whilst other materials might do so, none have been put before me.
18. For the reasons given above, I find that the extension fails to preserve or enhance the character and appearance of the area. Therefore, it fails the statutory test and does not accord with the terms of ILP Policy DH1 and LP Policy HC1. By way of its external finish, it does not represent the good quality development that is required by ILP Policies PLAN1 and D4, and is promoted in the Council's SPG and SPD. It is contrary to these and the terms of the Framework that relate to design and 'Conserving and enhancing the historic environment'.

Living conditions

19. In its Notice, the Council does not specify the occupants of which properties would be affected, only the harm that it says arises from the development. However, a number of third-party representations have been made in which this issue has been highlighted, and I have taken these into consideration.
20. As a result of the density of development in the area around the appeal site, there are a number of residential properties in close proximity to the extension, including

above No 137 itself, in the floors above Nos 135 and 139, and in those properties I refer to in Ferntower Road.

Noise and disturbance

21. The evidence from third parties shows, on the balance of probability, that the development has led to noise and disturbance adversely affecting the living conditions of occupants of neighbouring properties. I understand the Appellant's point that some of this arose from the construction process, and I agree this is to be expected to a degree during building works. However, there is reference in third-party comments to the noise of the commercial use emanating from the extension.
22. In his Statement of Case, the Appellant states that the extension benefits from insulation in its ceiling and walls, as shown in the drawings attached as its Appendix 3. This might be the case, but I was unable to see this at my visit. In any event, I have not been provided with any professional evidence to substantiate the claim that what has been provided would overcome noise and disturbance generated from the use of the extension.
23. The Appellant's submissions state that there are no openings in the roof and that the windows and doors in the restaurant are fixed and non-opening. I saw that the door there can be opened. It might be opened to provide ventilation in hot weather. Control over its use, the nature of the windows and doors installed on both floors, and the provision of new openings could be controlled appropriately through the use of conditions, so I do not find against the development on these matters.
24. In the circumstances, I find that it is for the Appellant to demonstrate that the insulation he has provided would successfully address the issue, in the manner advocated in ILP Policy PLAN1. He has not done so. This is a matter on which I should take a precautionary approach, and thus I find that for the above reasons the development is contrary to the terms of DMP Policy PLAN1 that requires, amongst other things, that a good level of amenity must be provided, including in respect of noise and disturbance.

Odour

25. Odour nuisance might arise from open doors and windows and, again, this is a matter that could be controlled through the use of conditions controlling the opening of those that exist and those that might be installed.
26. I note from the third-party representations that reference is made to noise, vibration and odour arising from the flue that serves the restaurant's kitchen. The submissions show that a flue has been allowed to the rear of No 137, but what has been erected is not in the correct place. However, as that flue is not referred to in the Notice, my decision cannot address those issues.
27. For the above reasons, I find that odours arising from the restaurant can be controlled and, thus, not cause harm to the living condition of occupants of neighbouring properties. In this respect, I find that it accords with the terms of SDMP Policy PLAN1.

Outlook, daylight and sunlight

28. Occupants of residential properties above commercial premises in Newington Green Road look down to the flat roof of the extension. Being above it, I find that it cannot cause harm to their living conditions by reason of the effect its mass and scale has on their outlook.
29. Of the properties to the north, that in the contemporary building on Ferntower Road has windows that look to the appeal site. The majority are set well above the extension and, similarly, the outlook from those rooms is not adversely affected. That property does have a side window at its basement level, opening onto and looking into the rear of the appeal site. It is affected by the increased length of the extension, compared to that which it replaced. However, being set below ground level, in close proximity to the original single-storey element and the flank wall to its neighbouring property in Ferntower Road, its outlook, and light reaching it, would have been greatly affected before the development took place. In the circumstances, I find that the mass and scale of the extension would not cause harm to the living conditions of the occupants of neighbouring properties by way of a loss of light or outlook.
30. The garden area immediately adjacent to the site that I have referred to, in Ferntower Road, is set well above the yard area at the appeal site. It is, however, a little lower than the height of the extension, as well as the two-storey element to the rear of No 135. Given that the difference in height between the extension and the garden area is minimal, I find that it does not cause harm to its users by way of effects on their outlook or access to daylight or sunlight.
31. For the above reasons, I find that the development does not cause harm by reasons of its effect on the outlook, daylight and sunlight of the occupants of neighbouring properties. In this regard, the development accords with ILP Policy PLAN1.

Conclusion on Ground (a) and the Deemed Application

32. For the reasons set out, above, I find that the development causes harm to the character and appearance of the NGCA, and it has not been demonstrated that the insulation that I am told has been installed would sufficiently mitigate noise generated from the extended restaurant. This harm is not outweighed by the benefits arising from the development; therefore, the Ground (a) appeal and Deemed Application fail.

Ground (f)

33. The case made here is that the harm arising from the development might be addressed through the use of conditions relating to retaining insulation, the positioning and nature of windows and doors and the colour of the extension.
34. I have covered these matters in my reasoning on the Ground (a) case and, therefore, the Ground (f) case fails.

Ground (g)

35. The Appellant's case is, as the extension is part of a working restaurant that employs 6 people, 4 months is insufficient to carry out the required works in a manner that would not affect the business or its staff. 12 months is requested.

36. I give considerable weight to the need to reduce the ill-effects of the requirements on the business and its employees. However, this has to be weighed against the significant harm that I have found in my Ground (a) decision. On balance, I find that 4 months would be insufficient, but that 12 months would unnecessarily prolong the harm. I will, therefore, extend the period for compliance to 6 months.
37. To this extent the Ground (g) case succeeds.

Overall Conclusion

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

R Curnow

INSPECTOR

