



Appeal Decision

Site visit made on 1 May 2025

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

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Appeal Ref: APP/X5210/C/23/3321948

48 Rosslyn Hill, London NW3 1NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mitch Tillman of First Restaurant Group against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 30 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the replacement of a shopfront, installation of a retractable glazed roof to the rear of the premises and heat lamps attached to the front of the premises.
 - The requirements of the notice are to:
 1. Remove the unauthorised shopfront and heat lamps.
 2. Reinstall a shopfront to replicate the material, design, proportions, and openings of the pre-existing shopfront.
 3. Remove the unauthorised retractable rear roof to the rear of the premises.
 4. Reinstall the rear roof to replicate the material, design, and proportions of the pre-existing rear roof; and
 5. Remove all associated debris from site and make good any damage caused.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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 allegation in section three of the enforcement notice (the breach of planning control alleged) and replacing it with the following allegation: *Without planning permission, the replacement of a shopfront and the installation of a glazed roof to the rear of the premises.*
 - 2) Deleting the words *and heat lamps* from requirement number one in section five of the enforcement notice (what you are required to do).
 - 3) Deleting the words *retractable rear* and substituting with the word *glazed* in requirement number three in section five of the enforcement notice.
2. Subject to the corrections 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.

Preliminary Matters

3. The appellant's appeal on ground (b) relates to the heat lamps and is made on the basis that planning permission has been granted, references 2013/1672/P and 2013/1673/A. The Council did not dispute that planning permission has been granted and conceded that the enforcement notice should be corrected and varied

to delete reference to the heat lamps. The Council also agreed that the roof is not fully retractable. I have therefore corrected and varied the notice as set out in my decision above.

4. The appellant's case that the roof is a like for like replacement is an argument more pertinent to an appeal on ground (c). Since the Council has had the opportunity to comment I shall deal with this as though that ground had been pleaded.

The 'hidden' appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control, with the burden of proof on the appellant.
6. There is no dispute that the replacement roof amounts to a building operation as defined by section 55(1) of the Act. Section 55(2), however, goes on to clarify at subsection (a)(ii) that the carrying out of operations which do not materially affect the external appearance of the building shall not be taken to involve development of the land.
7. The roof is visible from the street, although only glimpsed by pedestrians, but is clearly visible from the path which leads to the Rosslyn Hill Unitarian Chapel and from the upper floors of surrounding buildings – which are in use as offices and for residential purposes.
8. Evidence of the pre-existing roof is limited to a Google image in the Council's statement. Although not obvious from the image, I understand the roof was glazed with the units being hinged. The replacement roof consists of glazed panels which are sliding.
9. The replacement roof appears to sit on top of the boundary wall and to be slightly taller than the pre-existing, albeit the pitch appears shallower. The principal differences are the shape of the glazing and the framing, which is much chunkier. Whilst the change to the glazing shape is only likely to be appreciable in elevated views from surrounding buildings and those changes to the frame are unlikely to be noticeable to by passers on the street, as their eye is more likely to be drawn to views of the Chapel or to the shop frontages at street level, the much chunkier framing will be clearly appreciable to those visiting the Chapel.
10. Accordingly, I find, as a matter of fact and degree, that the replacement roof materially affects the external appearance of the building. Thus, the works constitute development requiring planning permission and since there is no record of permission having been granted, the replacement roof constitutes a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a) the deemed planning application

Main issues

11. These are (i) whether the replacement shopfront and glazed roof preserve or enhance the character or appearance of the Hampstead Conservation Area (HCA) (ii) the effect of the glazed roof on the setting of the grade II listed Rosslyn Hill Unitarian Chapel and (iii) the effect of the glazed roof on the living conditions of surrounding residents with particular regard to noise and disturbance.

Replacement shopfront

12. As recognised in the Hampstead Conservation Area Statement, the HCA retains much of its 18th century village charm, with narrow passageways, steep lanes, and small squares at the heart of the Conservation Area, with the surrounding streets largely developed in the 19th century. Moreover, it is the diversity of architectural style and consistently high quality in design which makes Hampstead special, while its proximity to Hampstead Heath, lush gardens and street trees all contribute strongly to the leafy village character. The HCA therefore derives its significance from the wide range of areas within it and its diverse mix of buildings.
13. It is also noted that many original shopfront features survive such as pilasters, corbels, cornices, stall risers. Policy D3 of the Camden Local Plan 2017 (Local Plan) states that where an original shopfront of architectural or historic value survives, in whole or substantial part, there will be a presumption in favour of its retention.
14. The appeal property was built as the Rosslyn Arms public house in 1869 in a Ruskinian gothic manner. As a Victorian public house with its characteristic frontage, it made a positive contribution to the significance of the HCA. This is recognised by its identification in the HCA Statement, as a building which makes a positive contribution to the character and appearance of the HCA.
15. The replacement shopfront has retained many of the original features including the pilasters, fascia, and the large panes above what would have been the original doorways. However, the loss of the original door-window-door arrangement, together with the minimal recess in the openings which provide no visual relief and the multi pane doors, which do not reflect the style of the building, has resulted in the erosion of its character as a Victorian public house, and the evidential value it made to the significance of the HCA.
16. I therefore find that the development has resulted in an appreciable degree of harm to the character and appearance of the building and area. It follows that the replacement shopfront, does not preserve or enhance the character or appearance of the HCA.
17. Given the scale of the development within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that the National Planning Policy Framework (the Framework) says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
18. Moreover, that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the proposal.
19. I note the appellant's comments regarding the Council's delay in validating and determining a planning application for the works to the shopfront however, these have no bearing on the planning merits of the development.
20. I have little evidence to indicate that there are any public benefits associated with the development. Consequently, there are no public benefits to outweigh the great weight that I am required to attach to the heritage asset's conservation. The

replacement shopfront does not accord with the design and heritage protection aims of policies D1, D2 and D3 of the Local Plan and policies DH1 and DH2 of the Hampstead Neighbourhood Plan¹. Together these require high quality design which respects local character and context, and which preserves or enhances the historic environment and heritage assets. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Glazed roof

21. The Council has not sought to describe or provide explanation about what they consider the setting of the Grade II listed Rosslyn Hill Unitarian Chapel consists of. The Chapel and appeal property are both Victorian buildings and there is therefore a historical and possibly social connection, along with the visual connection given the close physical relationship. However, the setting itself seems confined to the immediate grounds including the pedestrian entrance from Rosslyn Hill.
22. The pre-existing roof was of no particular architectural merit. Although the framing of the replacement is chunkier and the glazing pattern different, when compared to that pre-existing, which could be reinstated, it has a neutral effect on the character and appearance of the HCA. Moreover, it does not visually compete nor detract from views of the Chapel behind, which still stands dominantly towering above the roof, therefore the setting is preserved. There is therefore no conflict with the design and heritage protection aims of policies D1, D2 and D3 of the Local Plan and policies DH1 and DH2 of the Hampstead Neighbourhood Plan or the Framework.

Living conditions

23. The pre-existing roof was openable, but I have no details which show to what extent. There are residential uses at upper floor levels in proximity to the premises and whilst the roof is only likely to be open in the warmer months, residents are also likely to have windows open during these times. In the absence of evidence about the operation of the business, there is an unacceptable risk that the living conditions of nearby residential occupiers would be harmed because of noise generated.
24. There is no evidence of complaints regarding noise nuisance. However, were permission to be granted, this would run with the land and there is no guarantee that a future occupier would operate in a considerate manner. It is possible that the opening/closing of the roof windows could be controlled by conditions however, none have been suggested and in the absence of details regarding the operation of the business, I could not construct conditions that are both reasonable and enforceable.
25. The glazed roof is therefore contrary to Policy A1 of the Local Plan which seeks to protect the amenity of neighbours.

¹ Hampstead Neighbourhood Forum Hampstead Neighbourhood Plan 2018 - 2033

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections 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