
Appeal Decisions

Site visit made on 23 June 2015

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 July 2015

Appeal A - Ref: APP/X5210/C/14/2227018 Lebanese Garden, 243 Kentish Town Road, London NW5 2JT

- 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 Ali Mustafa against an enforcement notice issued by the London Borough of Camden.
 - The Council's reference is EN13/1207.
 - The notice was issued on 29 August 2014.
 - The breach of planning control as alleged in the notice is the erection of an unauthorised timber structure covering the rear garden of the ground floor café.
 - The requirement of the notice is to remove the timber structure entirely from the rear garden.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on grounds (a) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/X5210/A/14/2224679 Lebanese Garden, 243 Kentish Town Road, London NW5 2JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ali Mustafa against the decision of the London Borough of Camden.
 - The application Ref 2013/8269/P dated 19 December 2013 was refused by notice dated 3 July 2014.
 - The development proposed is for a Smoking Shelter at rear garden.
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Decisions

1. Both Appeals A and B are dismissed (see Formal Decisions below).

Background information and relevant policy

2. The appeal structure is located at the rear of this four storey property which fronts Kentish Town Road. The ground floor of the premises is in use as a café/restaurant and forms part of the core shop frontages in the Kentish Town Town Centre. The building is not listed and does not lie within a conservation area. The rear of the property backs on to a small housing estate, car park and small landscaped area immediately behind the business uses in this part of Kentish Town Road. The appeal structure (used for amongst other things) a smoking shelter has been erected to cover what was already an external part of the café. The shelter has been in use for at least the last 12 months.

3. The relevant development plan policies comprise Core Strategy (CS) Policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high

quality places and conserving our heritage); Development (DP) Policies DP24 (Securing high quality design), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (noise and vibration). These policies are up-to-date with the policies set out in the National Planning Policy Framework (NPPF) and in particular with those set out in section 7 (Requiring good design). Camden Planning Guidance 2013 is also material including Chapter 1 (Extensions, alterations and conservatories) within CPG1 (Design) and CPG6 (Amenities). I have also had regard to appropriate guidance set out in Planning Practice Guidance (PPG).

Appeal A on ground (a) and Appeal B

4. The main issues in both appeals are: firstly, the effect that the timber structure has had on the character and appearance of this part of Kentish Town and, secondly, the effect of its use on the living conditions of nearby residents.

Reasons

Character and appearance

5. Having inspected the structure from within the rear area and having viewed it from the adjacent car park and the flats opposite, I share the Council's concerns about its effect on the character and appearance of this part of Kentish Town. The shelter is supported on basic timber sections and has a flat, felted roof. At around 4m in height it protrudes well above the rear brick boundary wall of the premises and is perceived as an obtrusive, clumsy and temporary structure. I do not agree with the appellant's case that the shelter is subordinate to the main building and, even when seen against the rear boundary wall, it is still a most prominent and out of scale addition to the property.

6. In my view, when seen from the adjacent flats, it is perceived as an incongruous, badly designed and out of scale structure in this rear area. I acknowledge that there are other rear extensions nearby and these were pointed out to me during my site visit. However, the appeal structure looks like an out-of-place utilitarian shed, rather than a well-designed rear extension. It is of poor quality overall and the detailing is crude and obtrusive. For these reasons I consider that it is contrary to CS policies CS5 and CS14; to policy DP24 and to the design policies in the NPPF.

7. At paragraph 64 of the NPPF it is stated that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This particular structure is very poorly designed and, as a result, I find it significantly harmful to the character and appearance of this rear area in Kentish Town. Both appeals fail, therefore on this first issue.

Effect on living conditions

8. The rear area is much quieter than the front of the café (for obvious reasons) and that there are residential premises which are close to and overlook the unauthorised structure. The Council accepts that some restaurants and cafes can accommodate outdoor seating areas and I agree. But the Council is concerned that if this particular shelter is allowed to remain, there will be an intensification of use in a location where residents should be able to expect a quieter and more peaceful aural environment.

9. Having noted the proximity of the shelter to Crown Place; Alpha Court Block 1 and the flat to the rear of No 245, I share the Council's and residents' concerns

about any intensified use of this rear part of the café. The smoking shelter is close to openable habitable room windows and has been described by residents as a 'Shisha Garden'. Irrespective of whether or not it is a place for 'shisha' smoking the structure is open sided and there are no apparent noise mitigation measures in place. In my view, the continued use of the structure, whether for 'shisha' smoking or not, would result in undue noise and disturbance for nearby residents. This does not, however, affect the appellant's rights to continue the use of the authorised café in this external area.

10. However, the continuation of the use of the area in conjunction with the 'shisha' shelter use would, in my view, be would be contrary to policy DP28 in that it would be harmful to the aural environment for existing residents. I acknowledge that there have been no complaints directly to the Council's Environmental Health Department but, at the time of the retrospective application, nearby residents have convincingly set out their case and their objections to such a use.

11. I also consider that the design of the structure and its continued use would also be contrary to one of the core principles of the NPPF which seeks to find ways to enhance and improve the areas where people live and the quality in which people live their lives. This particular structure would have the opposite effect and would neither enhance nor improve the quality of peoples' lives in this particular part of Kentish Town. It is contrary to the design policies of the NPPFI and I consider, therefore, that the appeals must both fail on this issue.

Appeal A on ground (g)

12. It is stated that the appellant considers that a period of 6 months is a more reasonable period of time in which to remove the canopy but no reason is given to support this ground. Having seen the structure in-situ I can see no reason why it could not be removed within a two month period. It simply comprises timber posts and a flat, felted roof. In my view it could be dismantled and removed entirely from the rear garden within a couple of days rather than 2 months. Thus the appeal also fails on this ground of appeal.

Other Matters

13. In reaching my conclusions in both appeals I have taken into account all of the other matters raised in support of the appellant's case. These include all of the references and comments on the relevant local plan policies; references to the NPPF; the detailed grounds of appeal set out in the initial statement; the photographic evidence; the economic considerations; the NPPF presumption in favour of sustainable development and the final comments dated January 2015.

14. However, none of these carries sufficient weight to change my conclusions on the main points at issue and nor is any other factor of such significance so as to alter my decision that both appeals should fail and that planning permission for the retention of the timber structure should not be granted.

Formal Decisions

15. Appeal A 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.

16. Appeal B is dismissed.

Anthony J Wharton

Inspector