
Appeal Decision

Site visit made on 1 June 2015

by **JP Roberts** BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 21 August 2015

Appeal Ref: APP/X5210/C/14/2224084
328C Kilburn High Road, London NW6 2QN

- 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 Morteza Ghaffari-Tari against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN12/0587.
 - The notice was issued on 8 July 2014.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of a single storey ground floor rear extension to restaurant (Class A3).
 - The requirements of the notice are to:
Remove the unauthorised rear extension, make good any damage to the original building and remove all the associated debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application deemed to have been made under s177(5) of the Act as amended also falls to be determined.
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Decision

1. I direct that the enforcement notice be corrected as follows:
 - i) by the replacement of the plan attached to the notice with that attached to this decision.
 - ii) By the replacement in paragraph 2 of the words "outlined in black" with the words "outlined and hatched in black".
2. I further direct that the notice be varied by the replacement in paragraph 5 of the words "3 months" with the words "9 months".
3. I dismiss the appeal and uphold the enforcement notice subject to the above corrections and variation.

Preliminary matter

4. The notice identifies the appeal site with reference to a plan. However, the plan includes not only the appeal site, but also other adjoining properties. This is clearly incorrect, and I shall correct the notice by substituting the plan with a corrected one.
5. Although the appeal was not made on ground (d), it is clear from the appellants' statement that ground (d) is being relied on in respect of part of the

extension. Accordingly I have dealt with this as a formal ground of appeal, and have provided the Council with an opportunity to respond to it.

Appeal on ground (d)

6. The appellant argues that the first 6m of the extension was carried out in 2009, more than 4 years prior to the date of issue of the enforcement notice, and that this part of the extension is therefore immune from enforcement action. The onus of proof is firmly on the appellant to establish that on the balance of probabilities, that the development was substantially completed 4 years prior to the date of issue of the notice, ie. before 8 July 2010.
7. The appellant has submitted a statutory declaration from Mr Guy Ziser, an agent acting for the current landlord, to which I attach significant weight. He inspected the property prior to his client's acquisition of the property on 2 June 2011, at which time a 6m extension was present and in use. On a further visit in 2012, he noticed "a further extension by way of a 12m extension structure at the rear". Mr Ziser does not say when he made his first visit, but it is likely to have been shortly before the acquisition of the property took place in June 2011. However this is well after the beginning of the 4 year period of 8 July 2010, and there is no clear evidence to show that the extension was completed before that date.
8. The Council has submitted aerial photographs taken in 2007, 2010, 2012 and 2013. They are indistinct and I do not place great reliance on them. Whilst there appears to be something shown to the rear of the premises in the 2010 photograph which does not appear on the 2007 photograph, it is impossible to conclude that it is an extension, and it has a different appearance from that of the first 6m of the extension which appears in the 2013 photograph. However, the lack of clarity makes it impossible to draw clear conclusions on what they show. I conclude that it has not been shown, on the balance of probabilities, that the extension is immune from enforcement action. The appeal should not succeed on ground (d).

Appeal on ground (a) and the deemed planning application

Main Issues

9. The deemed planning application is for the extension as built and the main issues are:
 - i) the effect of the development on the character and appearance of the surrounding area, and
 - ii) the effect of the development on the living conditions of nearby residential occupiers.

Reasons

Character and appearance

10. The extension projects from the rear main wall of the property, alongside a three-storey extension immediately to the south, with a railway embankment to the north. An area of scrub woodland lies to the east. The extension is constructed of wood with a translucent roof comprised of panels of different coloured plastic or UPVC sheeting. The northern side elevation contains a number of UPVC windows. A covered but otherwise open storage area lies at

the end of the building, closest to the eastern boundary, housing a miscellany of building and other materials.

11. Passengers on the nearby train line would have a passing glimpse of the extension, but it would be fleeting, and when the trees on the embankment are in leaf, it would be largely screened. However, the extension is in full view of the occupiers of the flats above the site and those to the immediate north. From these viewpoints the expanse of roofing sheets, and the rubbish and leaves which has accumulated on it, give a very poor appearance. The open storage area is more exposed to views from the area of open space to the east. Whilst this does not appear to be a well-frequented area at present, the view of the extension from it is very poor, giving an appearance of dereliction.
12. The rear elevation of the flats in the building above the main part of the restaurant is finished in brick and render, and modern, metal framed windows and is of a good standard of design. The three-storey building which abuts the southern boundary of the site is less well-designed, and suffers from an application of graffiti, but it is of brick construction which respects the materials used in the host building. The scale, design and materials of the appeal building pay little regard to their surroundings. Overall, the extension is functional, little care has been given to its external appearance and it falls well short of the high standard of design that is sought in Camden Core Strategy (CCS) Policies CS5 and CS15, which respectively deal with managing the impact of growth and development and promoting high quality places and conserving the borough's heritage. It also conflicts with the aim of Policy DP24 of the adopted Camden Development Policies (CDP), which also aims to secure the highest standards of design.
13. The appeal site lies within an area designated in the Core Strategy as open space. The boundary of the area runs through the terrace of buildings fronting Kilburn High Road of which the appeal premises is part. This appears to have been a drafting error, as the buildings do not form open space. Even so, the aerial photographs provided by the Council indicate that there was some greenery on the site in 2010, but it is impossible to determine whether the site made a positive contribution to the open space. However, as I have indicated above, the appearance of the extension is poor when seen from the adjacent land, and thus the development neither protects nor improves the open space as sought by Policy CS15.
14. The appellant suggests that the development could be made acceptable by the requirement to clad it with alternative materials. No scheme has been provided, but in any event, I consider that the large expanse of flat roof, which results in an accumulation of leaves and litter, is both unsightly and of poor design. Recladding would not provide an acceptable answer to the harm that I have identified.
15. Accordingly, I conclude on this issue that the development results in significant harm to the character and appearance of the area, and conflicts with the policies referred to above.

Living conditions

16. There are five storeys of residential accommodation above the appeal site, and the extension subject of the notice projects well beyond the face of these flats. The extension accommodates most of the customer seating for the restaurant,

comprising a number of seating compartments on raised, carpeted platforms, furnished with cushions. The area is a vibrant one; Kilburn High Road is, in the vicinity of the appeal site, a busy commercial area, with a number of restaurants, bars and shops. The road itself is heavily trafficked, and the site lies between two traffic lights, so that vehicles are continually stopping and starting off, adding to the general noise of the area. The Brondesbury train station is close to the site, and the railway line runs along an embankment adjacent to the site and the extension subject of the notice. Thus, the locality is a noisy one, although the rear is noticeably quieter than the front.

17. The internal walls of the extension are lined with carpet, which would muffle some noise. The translucent plastic sheeting used in the roof is likely to have limited noise attenuation properties. Even so, from what I saw there is nothing in the nature of the restaurant use that suggests that it is likely to generate significant noise or disturbance.
18. The appellant has provided me with a copy of the appeal decision which permits the erection of the flats on the upper storeys above and close to the appeal site. I note that it was a condition of the planning permission for the flats that noise mitigation measures should be provided to address noise from the adjacent railway line. I consider it likely that these measures would also provide protection against noise from the use of the extension.
19. The comings and goings of customers on Kilburn High Road would be readily assimilated within the hustle and bustle of the area. No evidence from the Council or from local residents has shown that there is a problem with noise from the premises, and on the information available to me, and from what I saw on my visit, I consider that there is unlikely to be any significant problem with noise and disturbance over and above that generated by the authorised restaurant use.
20. Had I found that the appearance of the extension was satisfactory, any residual noise could be dealt with by the imposition of a condition requiring the provision of noise attenuation measures.
21. I therefore find that the extension does not materially harm the living conditions of adjacent residential occupiers with particular regard to noise and disturbance. Nor is there any material conflict with CCS Policies CS5 and CS7, which respectively deal with managing the impact of growth and development and promoting the borough's centres and shops, both of which include the objective of protecting the amenity of residents. I find no material conflict with CDP Policies DP12 and DP26, which respectively deal with supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses and managing the impact of development on occupiers and neighbours.

Other matters

22. The appellant argues that the removal of the extension would have a harmful effect on his restaurant business. No financial evidence has been submitted to show that viability would be threatened, but I recognise that the removal of the extension would eliminate much of the seating for the restaurant and that this would be likely to have a serious impact on the business. Even so, the harm that I have identified is serious and whilst I attach some weight to the appellant's financial plight, it does not outweigh the harm that I have found.

23. My favourable conclusion on the effect on living conditions is outweighed by my conclusion on the effect on character and appearance. The appeal on ground (a) should fail and planning permission should not be granted.

Appeal on ground (g)

24. The appellant indicates that the period for compliance is too short and that a longer period should be provided to allow some compromise to be reached. No alternative period is suggested. The Council argues that there has already been adequate opportunity to resolve the matter before now, and that no further time should be allowed. However, an appellant is entitled to assume success on an enforcement appeal, and therefore I attach little weight to previous opportunities that there may have been to try to resolve the matter.

25. I do not rule out the possibility that some compromise might be reached, and a compliance period of 3 months would be insufficient to submit and determine a new planning application. I am mindful of the likely effect on the viability of the restaurant that compliance with the notice would bring, and I therefore consider that a compliance period of 9 months would strike the appropriate balance. Accordingly, to this limited extent the appeal on this ground succeeds.

Conclusion

26. For the reasons given above, I conclude that the enforcement notice should be corrected and varied as I have indicated above, and that subject to this, the appeal should be dismissed, planning permission should be refused and the enforcement notice should be upheld.

JP Roberts

INSPECTOR

Plan

This is the plan referred to in my decision dated:

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

Land at: 328C Kilburn High Road, London NW6 2QN

Reference: APP/ X5210/C/14/2224084

Not to Scale

