

Appeal Decision

Site visit made on 2 May 2017

by **C L Humphrey BA (Hons) DipTP MRTPI**

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

Decision date: 19th May 2017

Appeal Ref: **APP/X5210/W/17/3168796** **46 Birchington Road, London NW6 4LJ**

- 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 Neritan Cela against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/5627/P, dated 3 September 2016, was refused by notice dated 13 January 2017.
 - The development is described as 'retrospective erection of timber enclosure and decking to forecourt to restaurant'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the time of my site visit, I noted that the development had been completed. I shall consider the appeal accordingly.

Main Issues

3. The main issues are the effect of the development upon the character and appearance of the appeal property and the surrounding area, and upon the living conditions of the occupants of neighbouring residential properties with particular regard to noise nuisance and light pollution.

Reasons

Character and appearance

4. The development which is the subject of this appeal is a timber enclosure and decking on the forecourt of 46 Birchington Road, a 2 storey building which is occupied by a restaurant at ground floor and basement level and by 2 flats at first floor level. The appeal property is located to the rear of a block of commercial properties lining the busy Kilburn High Road and fronts onto Birchington Road, a predominantly residential street which is characterised by traditional terraced properties with stepped access to the upper ground floors and small open gardens to the front of the lower ground floors bounded by low walls and taller pillars of brick or painted render. To the west of the appeal site, the forecourt of Lloyds Bank on the corner of Kilburn High Road and Birchington Road is very slightly elevated above pavement level and bounded by lightweight metal railings, which gives it an open appearance. The forecourt of the shop adjacent to the appeal site is open.
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5. The timber enclosure extends along much of the appeal site's front boundary and along the eastern boundary adjacent to the forecourt of the neighbouring shop. The majority of the enclosure is solid timber to a height of around 1.4m, with timber posts and metal railings along the top section to an overall height of approximately 2m. Decking set behind the timber enclosure forms an outdoor seating area associated with the restaurant. The use of timber materials, substantial height and predominantly solid form of the development along the majority of the site boundary results in an incongruous, bulky, enclosing and oppressive feature which detracts from the simple form of the appeal property and fails to reflect the traditional materials and generally low, open form characteristic of existing boundary treatment within the street.
6. Photographs in Appendix 1 of the appellant's Statement of Case show the appeal property prior to the erection of the timber enclosure and decking. In these photographs, the straightforward form of the appeal property appears subordinate to the more imposing neighbouring development and the flush building line and open forecourt provides continuity with the adjacent building and forecourt on the corner. Although the former ramp, steps, railings and bollards may have been constructed from poor quality materials this does not justify the harm caused by the appeal scheme, particularly as there is no reason to believe that these matters could not have been resolved more sympathetically. I therefore afford this matter little weight.
7. For the reasons set out above I conclude that the development has a harmful effect upon the character and appearance of the appeal property and the surrounding area. As such, the development fails to accord with the design aims of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy (the Core Strategy), Policy DP24 of the London Borough of Camden Local Development Framework Development Policies (the LDFDP) and paragraph 9 and Section 7 of the National Planning Policy Framework (the Framework).
8. The Council's first reason for refusal makes reference to LDFDP Policy DP26 which relates to managing the impact of development on occupiers and neighbours. However, this policy does not appear to be directly relevant to the assessment of the effect of the appeal scheme upon character and appearance and therefore I have not had regard to it in respect of the first main issue.

Living conditions

9. At the time of my site visit, which took place around the middle of the day on a weekday, the decking was in use as an outdoor seating area. Although in close proximity to the bustling Kilburn High Road, the appeal premises are situated in a primarily residential street with flats above and residential properties lining both sides of the street to the east. The nearby shops and bank appear to be predominantly daytime uses and are therefore unlikely to generate significant activity in the evening.
10. I note that the submitted assessment of noise impact assesses the potential noise impact of customers accessing and leaving the premises during the late evening, rather than noise arising from the use of the decking for outdoor seating associated with the restaurant. Furthermore, in considering a previous appeal (APP/X5210/A/13/2204843) relating to the proposed change of use of the appeal property from a shop to a restaurant, the Inspector's assessment of potential noise disturbance arising from the use related to the comings and

goings of customers and noted that 'The details do not demonstrate an intention to use the outdoor area for customers. Such a use could result in disturbance to the residents of flat 46A in particular.'

11. I would expect activity within the street to be fairly limited during evening and night time hours, and noise generated by customers using the decking during the evening would therefore be likely to give rise to noise nuisance to neighbouring residents. However, the evening and night time use of the decking and the playing of live or amplified music could be controlled by conditions.
12. The Council and residents have also raised concerns regarding light pollution from the lights which have been installed on the development. The implementation of an appropriate external lighting scheme and restrictions on the hours of illumination of any lights could be secured by conditions.
13. I note the appellant's acceptance of conditions in respect of these matters, and have no evidence to suggest that such conditions could not be appropriately drafted so as to meet the 6 tests set out in paragraph 206 of the Framework.
14. For the reasons set out above, I conclude that the imposition of conditions relating to hours of use, music and external lighting would ensure that the development would not have a harmful effect upon the living conditions of the occupants of neighbouring residential properties, with particular regard to noise nuisance and light pollution, and so would accord with the amenity protection aims of Core Strategy Policy CS5, LDFDP Policy DP26 and paragraphs 17, 123 and 125 of the Framework.

Conclusion

15. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

CL Humphrey

INSPECTOR