



Appeal Decision

Site visit made on 3 May 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/B5480/C/22/3298716

Land at 160-162 Balgores Lane (Kervan Kitchen), Romford RM2 6BS

- 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 Savas Firat against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 11 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development in the form of the installation of a decking area to create a sitting area to the front of the restaurant facing the highway of Balgores Lane.
 - The requirements of the notice are:
 - i. Remove the unauthorised decking to the front facing Balgores Lane and remove all tables and chairs on the forecourt of the property; and
 - ii. Remove all debris, rubbish or other materials accumulated as a result of taking step (i) above.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of a decking area to create a sitting area on land at 160-162 Balgores Lane (Kervan Kitchen), Romford RM2 6BS referred to in the notice.

Appeal on ground (d)

2. In relation to a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed (171B (1)).
3. The main issue is therefore whether the building operations undertaken in the construction of the decking were substantially completed before 11 April 2018. The onus of proof is on the appellant and the test is the balance of probability.

4. The appellant maintains in his signed Witness Statement that he has continued to use the privately owned land and land outside the restaurant for tables and chairs since 6 April 2018. However, he does not say when the decking was constructed and has provided no further evidence to support his claim.
5. On the other hand, the Council has provided a set of photographs of the Land, taken during site visits on 14 May 2018 and the 10 August 2018 which show the front of the appeal premises. There is no evidence of the decking having been constructed on the Land on either of those dates. Those photographs cast doubt on the accuracy of the appellant's version of events.
6. For the reasons given above, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the decking is immune from enforcement action. The appeal on ground (d) fails.

Appeal on ground (a), deemed planning application

Main Issues

7. The main issues in this case are the effect of the development on the character of the area, and on the living conditions of adjacent occupiers.

Reasons

Character/Living conditions

8. Kervan Kitchen is a licenced restaurant and take away situated in a parade of shops at the heart of a small local centre close to Gidea Park Station. There are residential flats above the restaurant and above the adjoining commercial premises.
9. The decking takes the form of a series of timber boards which have been laid directly onto the paving slabs beneath the restaurant's front canopy and painted dark grey to match the shop's frontage. At the time of my visit there were three picnic benches, also painted dark grey, on this decked area.
10. The Council are concerned that the decking constructed has created an external seating area which has brought about significant levels of activity from inside to outside of the premises. It has encouraged people to congregate outside which has exacerbated the existing impacts of the premises in terms of noise, disturbance and anti-social behaviour which is materially harmful to adjacent occupiers. Furthermore, the Council states that planning permission has already been refused for the development and dismissed on appeal in July 2019¹.
11. The terms of the deemed planning application are derived from the alleged breach of planning control. In this case the notice alleges without planning permission operational development in the form of the installation of a decking area. The notice does not allege a material change of use in the Land, albeit the Council's primary concern is not the design and appearance of the decking but its use as an external seating area. I note that the previous Inspector's Decision in May 2019 was in relation to an application for planning permission to utilise the privately owned forecourt outside of restaurant premises for tables and chairs. Thus, it was an application for the use of the Land rather

¹ APP/B5480/W/19/3222253

than operational development in the form of decking, which is the subject of this appeal.

12. The Council do not raise any concerns about the external appearance of the decking. The timber boards are limited in depth and do not therefore protrude much above pavement level. Furthermore, the decking is contained beneath the restaurant's front canopy, and it has been painted a dark grey to match the shop front. Consequently, it is not visually conspicuous and does not have a harmful effect on the appearance of either the host property or surrounding area.
13. Kervan Kitchen is a restaurant and take-away which has a licence to supply alcohol to patrons only where it is consumed with table meals and served by waiting staff. The area where the decking has been constructed and the picnic tables placed, is covered by the licence.
14. I understand that the decking has now been in place for approximately three years. Whilst the Council has expressed concerns about its use, which they allege has a harmful effect on the living conditions of neighbouring occupiers, in terms of noise and disturbance, I have not been provided with any substantive evidence which would support those concerns. It is also relevant that the Inspector's decision in July 2019 also noted that he had not been provided with any information that would demonstrate ongoing issues with anti-social behaviour at the premises.
15. Moreover, a freedom of information request on behalf of the appellant only revealed three complaints since November 2018 which related to noise at the premises, and no evidence has been provided to demonstrate that those complaints related to the use of the decked area. Furthermore, the appellant's appeal is supported by correspondence from the occupiers of adjacent properties, all of whom advise that the decked area with seats has not resulted in any noise/disturbance to them since it was installed. There is support from those neighbours for the retention of the decking.
16. Policy 14 of the London Borough of Havering Local Plan, 2016 – 2031 (HLP) recognises the importance of eating and drinking establishments in creating attractive places where people enjoy spending their leisure time. It advises that consideration needs to be given to the impact on amenity of adjoining or adjacent residential accommodation, arising from cooking smells, noise disturbance and anti-social behaviour. Furthermore, the impact of any exterior dining space should also be considered. In this case the premises has consent for a restaurant use and has operated in this location for a number of years. From the evidence before me, the business is a welcome addition to this small local centre and adds to the vibrancy of the area.
17. Although the decking defines the extent of the external eating area, it does not necessarily facilitate it, with the paving area beneath the decking also being capable of accommodating tables. Nevertheless, considering the extant restaurant use, the limited number of tables that can be accommodated on the decked area, and the absence of any substantive evidence that would indicate otherwise, I conclude that the decking does not have a harmful effect on the character of the area nor on the living conditions of adjacent occupiers. I find no conflict with the development plan, including Policy 14 of HLP as set out above. I also find no conflict with paragraph 130 of the National Planning

Policy Framework, which aims to ensure a high standard of amenity for existing and future users. The appeal on ground (a) therefore succeeds.

Conclusion

18. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) succeeds.

Overall Conclusion

19. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the installation of the decking as described in the notice. The appeal on ground (g) does not therefore fall to be considered.

Elizabeth Pleasant

INSPECTOR