



Appeal Decision

Site visit made on 18 July 2023

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal Ref: **APP/B5480/C/22/3303920**

48-50 Station Lane, Hornchurch RM12 6NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by White Rose Restaurant Limited against an enforcement notice issued by London Borough of Havering.
 - The notice, numbered ENF/130/21, was issued on 24 June 2022.
 - The breach of planning control as alleged in the notice is
 - i) Without planning permission, the alteration and construction of a first floor rear extension.
 - ii) Without planning permission, the construction of an extension over the front forecourt.
 - The requirements of the notice are:
 1. Remove all the unauthorised extensions to the rear first floor flat roof (hatched on the attached location plan); or
 2. Remove all the unauthorised extensions to the rear first floor flat roof (hatched on the attached location plan) so that what remains on site accords fully with the existing plans submitted with application P1000.21 attached as LBH1. Any building works undertaken to comply with this step shall be carried out in materials to match in colour and texture the host building; and
 3. Remove all materials and debris from the land as a result of undertaking steps 1 and 2 above; and
 4. Remove the unauthorised extension over the front forecourt (marked as solid black on the attached location plan); and
 5. Remove all materials and debris from the land as a result of undertaking step 4 above.
 - The periods for compliance with the requirements are:
 - Steps 1 to 3 inclusive three months;
 - Steps 4 and 5 one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by deleting the following:

The periods for compliance with the requirements are: Steps 1 to 3 inclusive three months; steps 4 and 5 one month.

And replacing it with:

The period for compliance with the requirements is 4 months.

2. Subject to the variation, 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.

Matters concerning the notice

3. At the site visit there was some uncertainty as to the extent of the alleged breach of planning control referred to in part i) of the allegation. I saw that the main part of the rear extension consists of a large, enclosed seating area with a retractable roof, that extends to the rear of the site. Connecting this to the host building, a small first floor rearward projection has been altered and extended to fill the width of the plot.
4. The hatched area on the plan accompanying the enforcement notice includes the altered and extended rear projection. Requirement 2 of the notice requires that the first floor rear extension is removed so that what remains on site accords fully with the plan attached as LBH1. This plan indicates the pre-existing first floor rear element. The notice therefore tells the recipient of the notice fairly what they have done wrong and what they must do to remedy it.

The appeal on ground (a) and the deemed planning application

5. Having regard to the reasons for issuing the notice, the main issues are:
 - The effect of the extensions on the living conditions of neighbouring occupiers with regard to noise and disturbance.
 - The effect of the rear extension on the living conditions of neighbouring occupiers with regard to privacy, outlook and natural light.
 - The effect of the extensions on the character and appearance of the site and surrounding area.

Noise and disturbance

Rear extension

6. The appeal site is part of a terrace of properties whose ground floor units are generally in commercial use, with some residential uses, particularly at first floor level. It is close to the town centre of Hornchurch. Station Lane is a minor road with relatively low levels of traffic at the time of my visit.
7. The rear extension has been mostly built on top of an area of flat roof. It has a retractable roof with opening windows adjacent to the neighbouring first floor property at No 46 and on its rear elevation. The first floor and loft of No 46 are understood to be in use as a flat, following planning permission being granted¹. On the other side of the extension is No 52, which I understand to be in use as flats, following the grant of prior approval² for five flats on the ground, first and attic floors.
8. The neighbouring flats on both sides are in very close proximity to the rear extension, which is built virtually up to the boundary with them. Due to the very close proximity and the apparently lightweight form of construction, with extensive areas of openable windows and a retractable roof, it appears to me

¹ Application no. P1393.17

² Application no. J0003.16

- to be inevitable that the use of the first floor seating area as a restaurant, with the use of amplified music, is likely to result in noise and disturbance to the neighbouring occupiers to the extent that is harmful to their living conditions.
9. This conclusion is confirmed by Noise Impact Assessment (NIA) provided with the appeal, which found that the projected noise level inside the room of the nearest noise sensitive window was only reasonable when the side windows and roof were both shut. However, the NIA identified the nearest noise sensitive windows as being bedroom windows on the rear elevation of the main building at No 46, and at the rear of a rear extension to No 46. According to the approved drawings, the nearest windows are located in the lightwell, which is closer to the appeal site and is identified as serving the kitchen and main living area of the flat. Furthermore, the windows serving flats at No 52 were not assessed in the NIA, although these also appear to be adjacent to the extension³. It is not therefore clear whether the findings of the NIA are reliable, and whether the projected noise levels would be reasonable, even with the side windows and roof shut.
 10. Moreover, it is not feasible in warm weather to use the first floor restaurant area without the windows or roof open, as ventilation would be needed. The NIA suggests that noise mitigation measures would be required to ensure that noise levels are acceptable, including a noise management plan, an air conditioning system and medium pile carpet within the space. The appellant says that these could be secured through a condition. However, air conditioning may raise other planning issues in terms of the siting and appearance of the air conditioning units and ducting, as well as noise and vibration. Moreover, it has not been shown that the mitigation measures and the noise management plan would be effective at reducing noise to a reasonable level. Although the hours of operation and use of amplified music could be controlled through a condition, I am not satisfied that even a 10pm closing time would ensure acceptable living conditions for neighbouring occupiers.
 11. The appellant argues that the flat roof area that previously existed could have been used for outdoor seating without a material change of use taking place. While this may be the case, it is unlikely that this could have taken place without operational development, for example to facilitate access and ensure the safety through railings etc. In any event, its use would have been weather dependent and therefore less frequent and of shorter duration than is the case with the appeal development.
 12. I accept that the site is located within a secondary shopping frontage in a town centre location, where it could reasonably be expected that there could be a greater level of noisy activity in the evenings than in a less urban location. Nonetheless, the development affects the rear windows of flats in a position that appears to be relatively sheltered from activities on the shopping frontage along Station Lane, and the level of noise and disturbance generated by the use of the rear extension is harmful to the living conditions of neighbouring occupiers.

Front forecourt extension

13. Properties on this part of Station Lane have front forecourts, most of which are used for parking. The forecourt at Nos 40-44 is nearby and is used for outdoor

³ Photographs provided by third party objector

restaurant seating, with large parasols providing shelter. The front extension on the appeal site has resulted in the forecourt being available for use all year round as it has a roof, walls and windows. It is of a lightweight construction and is in close proximity to nearby residential uses either side.

14. The NIA has not assessed the effect of noise from the front extension on the nearest noise sensitive windows, but it would be reasonable to assume that its use would result in noise levels from diners affecting neighbouring occupiers, to a degree that could be harmful to their living conditions. I acknowledge that background noise levels at the front of the property are likely to be higher than at the rear due to the presence of the road and other commercial uses and that the site is in a secondary shopping frontage. I also appreciate that the forecourt can be used for outdoor seating. However, the extension facilitates its use throughout the year and due to the lightweight nature of the structure, its effect on reducing noise transmission is likely to be limited. The nature of the noise from customers is likely to be more disturbing due to the proximity and character of the noise.
15. The appellant states that the front extension is a response to antisocial behaviour and thefts. It has not been demonstrated however that other means of preventing such occurrences have been investigated and ruled out. There are other forecourts in the area that are used for outdoor seating, but I did not see any in the immediate locality that are fully enclosed to allow use all year round.

Conclusions in relation to noise and disturbance

16. Although the Council has not provided evidence of complaints on noise and disturbance grounds, third party objections have been provided which indicate that the use is noisy, with or without the playing of music. It has not been shown that the suggested conditions restricting the hours of use and the playing of amplified music, noise management and mitigation, would be sufficient to ensure satisfactory noise levels for neighbouring occupiers.
17. For the reasons set out above, I conclude that the front and rear extensions are harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. The development is therefore in conflict with Policies D1 and D4 of the London Plan 2021 (LP) and Policies 14, 26 and 34 of the Having Local Plan 2021 (HLP), insofar as they seek to ensure high quality design that considers the effect of noise disturbance on adjacent uses. It is also in conflict with the National Planning Policy Framework (NPPF).
18. The appellant has provided details of appeal decisions relating to uses that give rise to noise. The case in Cricklewood Broadway⁴ was located in a commercial area on an arterial route into central London with associated traffic noise. None of the immediately neighbouring properties were in residential use and the property was sound proofed with self closing doors. The case is not comparable with the appeal site, where there are residential occupiers adjacent to the site, the extensions have not been sound proofed and the site is not located on a busy main road.
19. The site in Swansea was located in an area identified as the Wind Street leisure and entertainment district, where the key development principles were,

⁴ Appeal ref APP/N5090/A/13/2201162

amongst other matters, to reinforce the mixed-use, leisure emphasis. While there were adjacent flats, I understand from my colleague's decision⁵ that sound insulation would be provided. Furthermore, the decision sets out that there were existing bars, restaurants and night clubs on Wind Street, and therefore the appeal development would not be sufficient to cause significant harm to the living conditions of neighbouring flats. The circumstances therefore differ, and the decision does not therefore indicate that the appeal should be allowed.

Privacy, outlook and natural light

20. 46 Station Lane has a flat at first and second floors, which is indicated to have three bedrooms, according to the plans approved with P1393.17. According to the plans, the only source of natural light to the dining area, kitchen and stairs is via a lightwell, with three windows. Photographs have been provided by a third party in relation to No 52 which indicate a lightwell with windows, and a new flank wall, said to be part of the extension. As a result of the development, the lightwells are enclosed by the flank wall of the extension, so that the outlook from the windows served by the lightwells is very limited. The presence of the extension is likely to have reduced the penetration of natural light to the areas of the flats served by the lightwell windows, and it would be reasonable to conclude that as a result, the areas of the affected flats are gloomier than would previously have been the case. In the case of the first floor flat at No 46 at least, the floor plans indicate that the sole windows to the main living area have been affected.
21. The flats have been approved with this layout, which relies to an extent on the appeal site for outlook and natural light. The merits of the planning application and prior approval for the flats are not under consideration. The appellant argues that a moveable structure could be placed on the flat roof of the appeal site that could affect these windows. However, I have seen no evidence that this is more than a theoretical possibility, and in any event it is unlikely that it would be of such a scale as to be comparable with the appeal development.
22. A window on the rear elevation of the first floor of No 46 serves a bedroom and appears to be the only source of natural light. I agree that the effect of the appeal development is likely to be minimal on this window due to the overshadowing effect of trees on the rear boundary. However, the trees are unlikely to be the cause of overshadowing of the windows served by the lightwells to both Nos 46 and 52 due to the distances involved. The windows on the side elevation of the extension allow views towards the bedroom window on the rear of No 46, although it has been partially enclosed by a covered area. I note that a third party has stated that the extension has affected the privacy of a flat at No 52, but the nature of the harm was not clear from my site visit or the submitted evidence.
23. I therefore conclude that the development is harmful to the living conditions of neighbouring occupiers in terms of outlook and natural light. It is therefore in conflict with LP Policies D1 and D4, and HLP Policies 14, 26 and 34, which seek, amongst other things, to ensure that development creates successful places that respects the site and local area. It is also in conflict with the NPPF.

⁵ Appeal ref APP/B6855/A/10/2135314

Character and appearance

24. The terrace is set back behind forecourts, some of which are open and used for car parking. Although the individual properties in the terrace have been subject to various alterations, the consistent set back from the road gives them a degree of coherence. A neighbouring property at Sortie Grill and Restaurant has a wide forecourt that is used for outdoor seating with parasols and a low boundary enclosure. There are other commercial uses on the opposite side of the road, including Zizzi restaurant which has a canopy and outdoor seating area with a low timber enclosure on its frontage.
25. The front extension is highly visible in the street scene and has resulted in the entire forecourt being enclosed and covered with a permanent structure. This detracts from the characteristic openness and consistent set back from the road. The extension has a greater effect on the street scene than the parasols and canopies that are evident elsewhere in the street scene, as they do not cover the entire forecourt and have a more permeable appearance with open sides. While the colours of the materials are similar to the front elevation of the main building, and the planting softens its appearance, it is nonetheless a substantial and prominent addition that detracts from the open frontage of the rest of the terrace.
26. Although outdoor seating provides visual interest and natural surveillance, thereby improving safety on the adjacent highway, in this case, the seating is enclosed so that it is separated from the adjacent pavement. The appellant argues that the extension is preferable to using the forecourt for car parking. While parking can affect the openness, the extension has a greater visual impact than parked cars due to its height, permanency and solid appearance. I acknowledge that the extension allows easy access for those with reduced mobility, who may be hindered by uncontrolled parking on the forecourt, this does not override the harm that is caused to the character and appearance of the site. It would not be in the interests of the appellant to allow parking on the forecourt in such a way that hinders access to the premises and I have seen no evidence that this would occur if the appeal is dismissed.
27. In terms of the rear of the property, there is a variety of forms of development, including other two storey additions, that lack a strong degree of coherence in their form or materials, with the result that the rear of the terrace has a typical rear yard appearance. The area is open to public views from the large car park and is also visible from surrounding flats and houses, although the existing trees provide screening when in leaf. The development is a substantial two storey addition that fills the site. It has a lightweight appearance with materials and form that do not match the main building but is not out of character in view of the existing development in this backland location. I do not therefore find that the rear extension is harmful to the character and appearance of the site or surrounding area.
28. I therefore conclude that the front extension is harmful to the character and appearance of the site and surrounding area. It is thus in conflict with LP Policies D1 and D4, and HLP Policies 14, 26 and 34, insofar as they seek to promote high quality design that respects and complements the distinctive qualities of the site and local area. There is also conflict with the NPPF.

Other matters

29. The appellant argues that the increased restaurant floorspace has created jobs and enhanced a local facility, to the benefit of local residents and in support of the vitality and viability of the area and the evening economy. The reduced floor area would mean that some staff would lose their jobs. The NPPF is supportive of businesses and advises that planning should help create the conditions in which businesses can invest, expand and adapt (paragraph 81). However, one of the overarching objectives of achieving sustainable development is environmental, which includes protecting our built environment and minimising pollution. The objectives are interdependent and need to be pursued in mutually supportive ways (paragraph 8). It is not therefore the case that economic and social objectives should override environmental considerations. Paragraph 188 advises that planning decisions should focus on whether new development is an acceptable use of land. As set out above, I have found that in this case the development is harmful and is in conflict with the development plan and the NPPF.

Conclusion in relation to the appeal on ground (a)

30. For the reasons set out above, I conclude that the appeal on ground (a) should fail and the deemed application for planning permission should be refused.

Appeal on ground (g)

31. The ground of appeal is that the periods for compliance with the requirements of the notice are too short. The periods for compliance are 3 months for the rear extension and 1 month for the front extension. The appellant argues that 6 months for all the requirements would be reasonable, as sufficient time is needed to find and commission builders, carry out and check the work, as well as obtaining Building Regulations approval. I consider that a period of 4 months for all the requirements would strike a reasonable balance between the concerns of the appellant and the need to bring the breaches of planning control to a timely resolution. To this limited extent, the appeal on ground (g) succeeds and I will vary the notice accordingly.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

N Thomas

INSPECTOR