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## Appeal Decision

Site visit made on 9 January 2019

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 January 2019**

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**Appeal Ref: APP/B5480/C/18/3209305**

**The land at 9 Billet Lane, Hornchurch RM11 1TS**

- 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 Oktay Senturk against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 11 July 2018.
  - The breach of planning control as alleged in the notice is without planning permission the installation of a wooden enclosure to the front elevation facing the highway of Billet Lane.
  - The requirements of the notice are:-
    - i. Remove the unauthorised wooden enclosure and archway in its entirety from the front boundary of the premises; or
    - ii. Reduce the enclosure to be in line with what has been approved under planning permission P1028.13; and
    - iii. Remove all materials and debris resulting from step (i or ii) from the site.
  - The period for compliance with the requirements is 2 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.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Preliminary Matters

2. The appellant has requested that I consider reducing the requirements of the notice. That request requires an appeal under ground (f) which has not been pleaded on the appeal form. It is nevertheless possible to consider this additional ground and I will do so.

### Ground (a) appeal and the Deemed Planning Application

#### *Ground (a) Main Issue*

3. The main issue is the effect of the development on the character and appearance of the property and street-scene.

#### *Reasons*

4. The appeal site is a mid-terrace café in a prominent high street location close to a range of other commercial premises. The development encloses a decked

- area at the front of the café with a balustrade and also a higher frame around the sides with a prominent arch above the entrance. The structure has no roof, with a previously installed retractable canopy providing some cover.
5. Shop-fronts elsewhere along this terrace are largely glazed with direct access onto the paved area in a traditional manner, at the back of a wide paved footpath. The public space in front of the terrace generally provides a pleasant openness to the street-scene, contributing positively to the character and appearance of the area. The development has encroached into the footpath along the front of the terrace and the height and solidity of the structure has significantly reduced the openness of the area.
  6. The adjoining property at Nos 3 to 7 has a large extension along its frontage. I am told that the structure at that property is not authorised and 2 appeals have recently been dismissed which sought its retention and alteration (APP/B5480/W/16/3151369 and APP/B5480/W/18/3200938). The presence of that building does not assist the appellant's case. No 23 Billet Lane further to the north of the site also has a front extension but that is an individual property, not part of this terrace and the extension has a very different design from that at the appeal site. That development and other different forms of shop frontages further away in High Street, do not provide overriding characteristics within the area and do not undermine the positive qualities of this part of Billet Lane.
  7. The appellant has suggested that I should consider the merits of the alternative scheme that was refused planning permission by the Council (P1041.18) on 28 August 2018. That scheme proposed the retention of the timber decking with a lower timber balustrade around its perimeter. The balustrade proposed would be similar to what exists at the moment and at the height of the lower part of the current structure. Everything above the handrail would be removed. Such a solution would reduce the current impact to a degree but the solidity of the retained balustrade would still bring about a reduction in openness along the frontage of the terrace. The alternative design which is allowed for within the existing requirement ii) of the notice would result in the enclosure of the same area but with a far less robust structure that would therefore result in less visual enclosure of the street.
  8. In relation to the main issue, the development has a harmful effect on the character and appearance of the property as well as the street-scene, not maintaining visual continuity along the terrace. The development therefore fails to comply with Policies DC16 and DC61 of the Havering Core Strategy<sup>1</sup>. The National Planning Policy Framework (the Framework) requires high quality buildings and places which is not achieved. The Council's 2013 Shopfront Design SPD<sup>2</sup> acknowledges that strong independent character can have a positive impact on commercial appeal. However the SPD also promotes well designed and well maintained shopfronts. It refers to them as being integral to create a positive, attractive and vibrant image for town centres. These aims are not achieved by the current development.

#### Other Matters

9. The notice does not affect the decking beneath the enclosure and it will still be

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<sup>1</sup> Havering Core Strategy and Development Control Policies Development Plan Document

<sup>2</sup> Shopfront Design, Supplementary Planning Document, June 2013

possible for customers to sit outside of the café. I have no evidence that this will significantly affect the viability of the business or go against the aims of the Framework to help build a strong, competitive economy.

*Conclusion on ground (a)*

10. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail.

**The Appeal on ground (f)**

11. The appeal on this ground is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary. The notice has alternative requirements. The first would remedy the breach of planning control by complete removal of the enclosure and the archway. The second would not go as far, allowing the reinstatement of the development that had been previously installed and approved retrospectively. The alternative purpose is therefore to remedy the injury to amenity caused by the breach.
12. I have been asked to consider a further alternative of allowing the lower part of the balustrade to remain around the deck. I have also considered that possibility above under the appeal on ground (a). That would be more harmful, in relation to the character and appearance of the property as well as the street-scene, than a reversion back to the previously approved development. The suggested alternative is therefore unacceptable on its merits and is not an obvious alternative that would overcome the planning difficulties in this case. Neither of the purposes of the notice would be achieved by this suggested alternative requirement.
13. The appeal on ground (f) does not succeed.

**The Appeal on ground (g)**

14. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant is requesting 6 months instead of the existing 2 months.
15. I am not made aware of any particular practical problems with removing the existing structure or the reinstatement of the alternative enclosure. It is not clear either why complying with the notice would be difficult for the appellant to afford, for customers to be informed or what difference it would make to the revenue of the business.
16. Given the lack of evidence on these matters, 2 months would in my view strike a reasonable balance between overcoming the harm that the development causes but allowing sufficient time to comply. Consequently the appeal on ground (g) fails.

**Conclusion**

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

*A Harwood*  
INSPECTOR