



Appeal Decision

Site visit made on 23 March 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/L5240/C/20/3263136

**Land situated and buildings known as 578-582 Wickham Road, Croydon
CR0 8DN**

- 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 Serdal Ermis against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 14 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a large additional single storey front extension across the frontage of Nos 578-582 Wickham Road which exceeds the authorised single storey, front extension to the front of Nos 580-582 Wickham Road, already permitted under the planning permission granted by the Planning Inspectorate on 14 December 2011.
 - The requirements of the notice are:
 - i) Remove the large additional ground floor front extension across the front of Nos 578-582 Wickham Road which is in addition to the front extension of Nos 580-582 Wickham Road, already permitted under the planning permission granted by the Planning Inspectorate on 14 December 2011.
 - ii) Remove all the associated debris from the premises as a result of compliance with requirement 1 above and return the frontage of all three premises back to how they were prior to the unauthorised front extension being built.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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 words 'the Planning Inspectorate on 14 December 2011' and substituting with 'Appeal Ref APP/L5240/A/11/2160160'
- Adding 'or' to the end of requirement i) and adding a new requirement 'ii) Make the large additional ground floor extension which is in addition to the extension permitted under reference Ref 11/01703/P comply with the terms (including conditions and limitations) of planning permissions Ref 20/00876/FUL.'
- Renumber original requirement ii) as iii), delete the words 'requirement 1' and substitute with the words 'requirements 1 or 2' and delete the words 'and return the frontage of all three premises back to how they were prior to the unauthorised front extension being built'.

- Delete 'three' and replace with 'six' in the period for compliance with the requirements.
2. Subject to the variations, 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.

Preliminary matters

3. The appeal concerns the area to the front of three commercial units which form part of a terrace of similar properties. In 2011 planning permission¹ was refused and subsequently allowed on appeal² for a single storey extension to the front of Nos 580-582, at a time when No 578 was in separate use. This covered part of the private forecourt of the site, leaving an open area of forecourt between the extension and the public footway. The parties agree that this extension was built.
4. A larger extension to the front of Nos 580-582 was subsequently built and led to a planning application³ seeking permission to retain it, which was refused, and the resulting appeal was dismissed in 2018⁴. A further application for planning permission⁵ was also refused for a single storey front extension to the front of Nos 580-582 along with an outdoor seating area with a retractable canopy in 2019.
5. The Council's evidence states that the development that was subject to the 2018 dismissed appeal was demolished early in 2020. The appellant argues that the enforcement notice is concerned with the smaller unlawful extension that existed prior to his purchase of No 578. However, the Council's evidence is clear that the works that led to the serving of the enforcement notice followed complaints of major building works in May 2020 across the frontage of all three units.
6. Since then, permission⁶ has been granted for a smaller single storey extension to the front of No 578 in November 2020, with a similar forward projection to the 2011 permission for Nos 580-582. The enforcement notice is concerned with the extension as a whole, which extends up to the edge of the public footway, with the exception of the element that was permitted in 2011.
7. The London Plan 2021 has been adopted after the enforcement notice was served and now forms part of the development plan for the area. The London Plan 2016 policies that have been referred to in the reasons for issuing the notice have been superseded. The parties have been invited to provide copies of the relevant policies and comment on their implications for the appeal, but no responses have been received. I have therefore determined the ground (a) appeal on the basis of the Croydon Local Plan (2018) (CLP) policies and the Supplementary Planning Guidance No 1 Shopfronts and Signs (SPG) cited in the reasons for issuing the notice.

¹ Ref 11/01703/P

² Ref APP/L5240/A/11/2160160

³ Ref 18/02020/FUL

⁴ Ref APP/L5240/W/18/3216758

⁵ Ref 19/02319/FUL

⁶ Ref 20/00876/FUL

Matters Concerning the Notice

8. The Council has pointed out that it has given the wrong date of the appeal decision in the alleged breach of planning control. It would however be more concise to refer to the appeal reference, and there is no need to refer to a date. I can correct the notice without causing injustice to the parties.

The ground (a) appeal and the deemed planning application

9. Having regard to the reasons for issuing the notice, the main issue is the effect of the development on the character and appearance of the site and surrounding area.
10. The appeal property relates to a restaurant on the ground floor of three properties, which form part of a short terrace of three storey properties (top floor within roof space) with residential uses on the upper floors. The properties in the terrace have the same original design, and although they have been altered, they have a generally coherent appearance giving them a distinctive character. The site is on a wide and straight section of Wickham Road, so that it is visible in the surrounding area and prominent in public views of the site.
11. The front extensions approved under the 2011 and 2020 permissions for Nos 550-582 and No 578 respectively, are relatively modest additions to the front which allow a significant section of the forecourt adjacent to the public footway to remain largely open. In allowing the 2011 appeal the Inspector referred to the uncomplicated design of the extension, the extensive use of lightweight materials and glazing.
12. In contrast, the extension that has been built appears as a substantial addition, that dominates the entire front forecourt, extending the covered seating area up to the back edge of the footway. It has a bulky appearance that is out of scale with the host building and the rest of the terrace. There are no similar front extensions in the terrace, and due to its size, siting and design, it appears as a visually discordant and incongruous feature within the street scene which detracts from the character and appearance of the area.
13. I recognise that the National Planning Policy Framework 2019 (NPPF) advises that planning decisions should help create the conditions in which businesses can invest, expand and adapt, and encourage the efficient use of land. However, this is not a requirement that overrides other considerations.
14. The Government has given support to pubs, cafes and restaurants during the current pandemic, and has put in place a number of measures to help businesses thrive, in particular encouraging outdoor seating and street stalls to serve food and drink. This has included temporary changes to licensing laws. However, none of the measures indicate that permanent development should be allowed that is harmful to the character and appearance of the area.
15. The appellant argues that the development has been built to accord with Government guidelines for Covid-19 secure seating, but I have seen no evidence that this necessitates the scale of development that has been built. These considerations do not therefore outweigh the harm I have identified. The 2011 allowed appeal was for a smaller extension using different materials, and is not comparable with the appeal development. That the property is not listed or in a conservation area does not mean that policies which seek to protect the character and appearance of the area do not apply.

16. The appellant has provided examples of various extensions and additions to the front of restaurants, and states that they have not been harmful to the character of the respective areas. However, I note that the scale, design and appearance of those extensions are not comparable with the appeal development and I do not agree therefore that they indicate that the latter is not harmful. I recognise that the enclosure of the seating area could reduce noise and disturbance to neighbouring uses, but I have seen no evidence that this is an overriding concern that justifies the harm that has been caused.
17. For the reasons set out above, I conclude that the development is harmful to the character and appearance of the site and surrounding area. It is therefore in conflict with CLP Policies SP4 and DM10, insofar as they seek to ensure that development is of a high quality, which respects and enhances local character. It also conflicts with the SPG. Consequently, the appeal on ground (a) fails and the deemed application for planning permission should be refused.

The appeal on ground (f)

18. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The notice requires the demolition of the extension which is in addition to the extension permitted on appeal in 2011, and therefore seeks to remedy the breach of planning control. The notice cannot and does not seek the removal of the lawful extension allowed on appeal in 2011.
19. Since the notice was issued, permission has been granted for the smaller extension to the front of No 578. This represents an obvious alternative to the demolition of the unlawfully erected extension, at less cost and disruption to the appellant. I am satisfied that no injustice would be caused if I vary the notice so that the purpose of remedying the breach can be achieved by making the development comply with the terms (including conditions and limitations) of the planning permission for the extension to the front of No 578. It follows that the requirement to return the frontage of all three premises back to how they were prior to the breach is excessive as it would conflict with the 2020 permission. It would cause no injustice to delete this part of the requirement.
20. For the reasons given above, I conclude that there is an alternative to total demolition of the extension. To this limited extent, the appeal on ground (f) succeeds and I shall vary the notice accordingly.

The appeal on ground (g)

21. The ground of appeal is that the period for compliance with the requirements of the notice is too short. The period for compliance is three months and the appellant requests a longer period, until after the Covid-19 pandemic. This is because adequate time is required to source a builder, and to make alternative arrangements for other forms of development to meet the Government guidelines and requirements for social distancing due to Covid-19.
22. As a compliance period is required, I cannot vary the notice for an unspecified period until the Covid-19 pandemic is over. However, due to the disruption caused by the pandemic, it seems to me that a six month period for compliance would strike an appropriate balance between bringing to an end the breach and allowing a reasonable period to make arrangements in respect of the works and

to carry them out. To this extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

N Thomas

INSPECTOR