
Appeal Decisions

Site visit made on 13 September 2016

by Martin Joyce DipTP MRTPI

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

Decision date: 23 September 2016

Appeal A: APP/A5840/C/16/3144480

120-122 Bermondsey Street, London SE1 3TX

- 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 Renaissance Works Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, LPA Ref: 15/EN/0285, was issued on 20 January 2016.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 and 3 of a planning permission Ref: 12/AP/3921 granted on 17 April 2013.
- The development to which the permission relates is the erection of a 4-storey building to infill terrace comprising entrance at ground floor level and two self-contained flats above with terraces to front and rear. The conditions in question are Nos 2 and 3 which state that:

"2. The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans:

120BS_PL_02, 03A, 04A, 05A, 07A, 08, 09A, 2 (1:100), 12 (1:50)

3. Sample panels of all external facing materials including the facing brickwork and its bond, the window frames and roof materials to be used in the carrying out of this permission shall be presented on site and approved in writing by the Local Planning Authority before any work in connection with this permission is commenced; the development shall not be carried out otherwise than in accordance with any such approval given."

The notice alleges that the conditions have not been complied with in that, in respect of Condition No 2, approved plans 120BS_PL_07A and 09A annotate new timber windows and show the fenestration of the French doors behind the balcony as having minimal framing, the doors/windows being virtually entirely glazed save for a slim frame. The as built fenestration has a powder coated metal frame on the exterior and in this respect is not timber. Further the frames of the French doors/windows are significantly thicker than those shown on the approved plans. Additionally, Condition No 3 has not been discharged. Two applications seeking retrospective discharge of the condition have been refused approval of details: application reference 15/AP/1643 refused on 19 June 2015 and reference 15/AP/4311 refused on 18 December 2015.

- The requirements of the notice are to remove all fenestration from the front elevation of the building, together with any debris arising from their removal. The fenestration in question is shown in the two photographs attached to the notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/A5840/W/15/3140944
120-122 Bermondsey Street, London SE1 3TX

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Renaissance Works Ltd against the decision of the Council of the London Borough of Southwark.
- The application, Ref: 15/AP/1643, dated 20 April 2015, sought approval of details pursuant to condition No 3 of a planning permission Ref: 12/AP/3921, granted on 17 April 2013.
- The application was refused, in part, by notice dated 19 June 2015.
- The development proposed is the erection of a 4-storey building to infill terrace comprising entrance at ground floor level and two self-contained flats above with terraces to front and rear.
- The details for which approval is sought are details of external facing materials, including fenestration materials.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. Both appeals concern the same aspect of the development that has taken place at the appeal premises, which is a four-storey infill building on the south-western side of Bermondsey Street. Whilst Appeal A, against an enforcement notice, concerns an alleged breach of two conditions of the original planning permission for this development, Appeal B follows partial refusal of an application that relates only to Condition No 3 of that permission. It seeks to substitute revised plans for those approved at the date of the original planning permission, thus the alleged non-compliance with Condition No 2 of that permission would be rectified if those plans were to be approved, pursuant to this appeal.
2. The Council's decision in respect of the submission of details (Appeal B) was only a partial refusal, as all other details submitted, including the facing bricks, roofing and the zinc cladding for the third floor accommodation, were found to be acceptable. However, the Council did not accept the revised materials used for the fenestration of the appeal property. Subsequently, the Council has confirmed, within their representations on these appeals, that they do not object to the materials used on doors and windows on the rear elevations of the appeal property, notwithstanding that they do not comply with the details shown on the originally approved application plans. Furthermore, the appeal relates only to the windows above ground floor level, which have been installed using a mix of aluminium and timber, with the external faces being of powder-coated aluminium.

APPEAL A ON GROUND (a) AND APPEAL B

Main Issues

3. The main issues in these appeals are:
 - a. The effect of the development on the character and appearance of the appeal and neighbouring property; and,
 - b. The effect of the development on the setting of the adjoining Grade II Listed Building and this part of the Bermondsey Street Conservation Area.

Reasoning

4. On the first issue, the appeal property has been built as an infill in a long terrace of four-storey buildings on the western side of Bermondsey Street between Morocco Street, to the north, and Lamb Walk, to the south. It is viewed as an integral part of this row of about 14 properties, particularly as it is sited approximately midway at a point where the street is more open than elsewhere, being opposite an area of public open space. Significant care has been taken over the detailed design of the building to ensure that, whilst not a replica of those on either side, it nevertheless blends in with and complements them so that it does not appear to be at odds with a terrace that displays consistent uniformity of style, particularly in terms of fenestration. All first- and second-floor windows on the majority of the terrace, save for a modern building on the corner of Lamb Walk, have timber sash windows with small panes and integral glazing bars.
5. The approved plans for the front elevation of the new building did not include small panes or glazing bars, but they did show timber frames of narrow profile which, if installed as such, would have maintained the overall integrity and style of the terrace. Instead, the thicker frames, particularly on the pairs of French doors, and the use of powder-coated aluminium with a dark finish, creates a heavy appearance at odds with the lightness of fenestration on adjoining buildings, which is thereby unduly incongruous.
6. The appellants contend that the materials used in the doors and windows are required to ensure compliance with Level 4 of the Code for Sustainable Homes (CSH), as required by Condition No 12 of the original planning permission. They also suggest that the Council's objections could be overcome by painting the windows to match those on neighbouring buildings. However, I find that neither of these matters outweighs the visual harm that has been created to the character and appearance of the appeal property and its neighbours. Although the windows that have been installed may ensure appropriate energy efficiency, I have nothing before me to indicate that alternative solutions, which may have included the use of timber as the external, rather than internal, material, were considered. Additionally, the CSH scheme has now been withdrawn which reduces the weight that can be attached to this element of the overall scheme. As for painting the windows, this may provide a superficial match with neighbouring properties and their windows, but it would not affect the size of the frames installed, neither would it replicate the texture and visual warmth of timber doors and windows. My conclusion on the first issue is that the development that has taken place materially harms the character and appearance of the appeal and neighbouring properties.
7. On the second issue, the incongruity of the existing fenestration provides a visually jarring contrast with the windows on the neighbouring building to the north, Nos 124-130 (even) Bermondsey Street, which is a Listed Grade II Building. As such, therefore, the retention of the present fenestration would materially harm the setting of that Listed Building.
8. As for the effect on the wider Conservation Area, the impact I have already identified on the terrace as a whole would fail to either preserve or enhance the character or appearance of this important part of it if the existing windows were to be allowed to remain. However, the impact of the Conservation Area as a whole would be less, as there is a much greater variety of architectural

styles and building materials, including window design, apparent in the wider area. I conclude on the second issue that the development has materially harmed the setting of the adjoining Grade II Listed Building and the immediately surrounding part of the Bermondsey Street Conservation Area.

9. Various policies in the London Plan, including Policy 7.6, the Council's Core Strategy (Strategic Policy 12), and those saved from the Southwark Local Plan (Policies 3.16 and 3.18) seek, amongst other things, to ensure a high standard of design, including the use of details and materials that complement the local architectural character, prevent the use of details or features that are out of character with the area, such as the use of doors or windows made of aluminium, uPVC or other non-traditional materials, and to preserve or enhance the immediate or wider setting of a Listed Building. The development conflicts with these policies for the reasons set out above, and this is not outweighed by any compliance with other policies, including Saved Policy 3.4 and Strategic Policy 13, which aim at the maximisation of energy efficiency.
10. The appeals on ground (a) and against the Council's partial refusal of the approval of details pursuant to condition No 3 therefore fail.

APPEAL A ON GROUND (f)

11. The appeal on ground (f) is based upon a contention that the requirement to remove all fenestration from the front elevation of the appeal property is excessive and unreasonable as lesser steps would overcome the Council's objection. In this context they submit that alternative solutions including the addition of finishes to the window frames currently in situ could be explored further, and the appellants would be amenable to any alteration that may be suggested in this decision.
12. None of these matters can properly form the basis of an appeal on ground (f) as the only firm suggestion put forward by the appellants is for the painting of the current window frames, and this matter has been taken into account in my previous deliberations under ground (a). An enforcement notice requires precision and certainty in terms of its requirements, and cannot, for example, require a scheme to be submitted for the subsequent approval of the Council, as there could be no certainty that such a scheme would overcome the objections to the development or, indeed, would be feasible. A requirement to remove the offending fenestration is clear and precise and the appellants are free to discuss alternative solutions at any time with the Council to meet the requirements of the original planning permission. The appeal on ground (f) therefore fails.

Other Matters

13. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

Conclusions

14. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application in respect of Appeal A. I shall not approve the fenestration details submitted in respect of Appeal B.

FORMAL DECISIONS

Appeal A: APP/A5840/C/16/3144480

15. 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.

Appeal B: APP/A5840/W/15/3140944

16. The appeal is dismissed and approval of the fenestration details submitted in pursuance of condition No 3 attached to planning permission Ref: 12/AP/3921 dated 17 April 2013 is refused.

Martin Joyce

INSPECTOR