
Appeal Decision

Site visit made on 26 September 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 30 September 2016

Appeal Ref: APP/Q3060/C/16/3146769

44 Carrington Street, Nottingham NG1 7FG

- 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 Morteza Norozee against an enforcement notice issued by Nottingham City Council.
 - The enforcement notice was issued on 9 February 2016.
 - The breach of planning control as alleged in the notice is the replacement of the traditional timber shop front with an aluminium framed shop front and the installation of externally mounted roller shutters comprising box, curtain and guides.
 - The requirements of the notice are:
 - (1) Remove the aluminium framed shop front, including the door and the section within the doorway.
 - (2) Remove the externally mounted roller shutters comprising box, curtain and guides.
 - (3) Reinstall with a timber shop front in a similar style to that which was in place prior to the unauthorised works being carried out, (as illustrated in the attached image). The awning and security grilles shown on that image do not form part of this requirement and need not be reinstated.
 - The period for compliance with the requirements is 6 Calendar months.
 - The appeal is proceeding on grounds (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied (see formal decision below).

Background information and matters of clarification

2. The site is located on the west side of Carrington Street and lies within the Canal Conservation Area (CCA) and the Southside Regeneration Zone (SRZ). Nos 42 to 44 form part of 'City Buildings'. Although this part of Nottingham is located in the City Centre it is not designated as a Primary Shopping Frontage. At the time the notice was issued the adjacent property at No 42 was in A1 Retail use selling e-cigarettes. No 44 (the appeal property) was granted retrospective permission (15/02470/PFUL3) for a change of use (sui generis) to a tattoo parlour in 2015 in January 2016.

3. The original timber shopfronts to both properties had been removed in 2013. At No 42 the original timber shop front had been replaced without planning permission. An application (12/02671/PFUL3) for a new shopfront at No 44 was not validated. A condition attached to the change of use permission (15/02470/PFUL3) stated that

'Within three months of the date of this permission details of a replacement shopfront shall be submitted to and approved in writing by the Local Planning Authority. Subsequently, within 6 months of the date of approval of the details of the replacement shopfront, it shall be installed in accordance with the details'. At the time the notice was issued the condition had not been discharged and there is no evidence before me to indicate that it has been discharged since that date.

4. The approval was dated 6 January 2016 and the condition attached to the permission gave a period of 3 months for compliance with the above condition. That gave until 6 April 2016 for the submission of a shopfront scheme. The notice was issued 2 months before the lapse of time for the discharging of the condition. I deal with this below in the ground (g) appeal.

5. Because the relevant fees were not paid, the appeal on ground (a) does not fall to be considered and the deemed application lapsed. I am not empowered, therefore, to deal with the merits of the case. I am only empowered to deal with the appeal on grounds (f) and (g).

6. The Council has referred to relevant policies within the Aligned Core Strategy (ACS); the Nottingham Local Plan (NLP) and the National Planning Policy Framework (NPPF). However, I am not dealing with whether or not planning permission ought to be granted for the unauthorised works as carried out. I am dealing only with whether or not the requirements of the notice are excessive and whether or not more time ought to be granted for compliance with the steps required to be taken.

The appeal on ground (f)

7. On behalf of the appellant it is contended that the requirements of the notice are excessive and that lesser steps would overcome the objections. It is argued that there are other aluminium shopfronts close to No 44 and that the shopfront is part of a larger building where there is a mix of timber and aluminium shopfronts. It is further contended that to remove the roller shutter and guides because, again, there are other such installations in the location of those at No 44 within the same larger building. It is stressed that the image attached to the notice is of unknown date and to recreate the shopfront in timber as required would be costly and excessive.

8. The Council refers to *'City Buildings'* as: *'considered to be a designated heritage asset'*. Whilst accepting that the buildings are not listed, I agree that they contribute most positively to the character and appearance of the CCA. I also agree that the remaining original traditional detailing such as pilasters, consoles and stallrisers are all features which, where possible, should be retained. The Council refers to the 2016 Heritage Lottery funding for a *'Townscape Heritage Initiative for Carrington Street'* which is intended to improve the amenity of the CCA, including the appeal site.

9. There is a clear breach of planning control. Having seen the shopfront as installed I agree with the Council that this breach has resulted in harm to the character and appearance of the host building and thus harm to the CCA. The Council makes it clear that planning permission would not be granted for such a scheme. It stresses that the notice is directed at remedying the breach of planning control because it is contrary to development plan policies as well as being injurious to the character and appearance of the Canal Conservation Area (CCA).

10. In my view, the steps as set out in the notice, as a matter of fact, require no more than is necessary to overcome the harm caused by the breach. The fact that there are other aluminium shopfronts (including boxings, roller shutters and guides) in this location is not, in my view, justification for others to be installed. I fully agree with the Council's stance that it is necessary to carry out the requirements as set out

in the notice and that there are no lesser steps which would overcome the objections to the unauthorised works.

11. In any case there are no '*lesser steps*' put forward on behalf of the appellant. With regard to the timber shopfront reinstatement being expensive and excessive, the appellant was given an opportunity to submit a scheme to the LPA in conjunction with the change of use permission referred to above. This would still be possible and if a suitable scheme is submitted and approved it would override the need to comply with the notice.

12. In conclusion I do not consider that the steps required to be taken exceed what is necessary and nor do I consider that it has been shown that lesser steps would overcome the Council's objections. The appeal, therefore, fails on ground (f).

The appeal on ground (g)

13. It is claimed that the period of six months given to comply with the notice is too short and at odds with the planning approval for the change of use. The Council considers that a 6 month period to reinstate the original shopfront *is akin to the 6 month period as required by condition 1*. The condition gave a period of '*three months*' for submission of a scheme and then gave 6 months for it to be implemented.

14. Since the appeal was made the appellant did not need to take any other action pending the outcome of the appeal. I have found against the appellant on ground (f) and the notice will be upheld. However, in the overall circumstances of this case I consider that a 9 month period is reasonable. The appeal succeeds, therefore to this limited degree and I shall vary the notice accordingly.

Other Matters

15. In reaching my conclusions on the grounds of appeal I have taken into account all other matters raised by the Council and by and on behalf of the appellant. However none of these carries sufficient weight to alter my conclusions and nor is any other factor of such significance so as to change my decision that the notice should be upheld as varied.

Formal Decision

16. The appeal succeeds to a limited degree on ground (g) only. I direct that the enforcement notice be varied by deleting the word '*Six*' in part 6 (TIME FOR COMPLIANCE) and by substituting therefor the word '*Nine*'

17. Otherwise the appeal is dismissed and the notice is upheld as varied.

Anthony J Wharton

Inspector