
Appeal Decisions

Site visit made on 3 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 12 October 2016

Appeal A: Notice A - Ref: APP/X5990/C/16/3145780 Bertie, 45 South Molton Street, London W1K 5RU

- 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 ISOD Ltd against an enforcement notice (Notice A) issued by the City of Westminster Council.
 - The enforcement notice (Enforcement Notice A) was issued on 4 February 2016.
 - The breach of planning control alleged in the notice is the installation of two external heaters (as shown in attached Photograph A, marked 'A1' and 'A2').
 - The requirements of the notice are:
 - a. Remove the two external heaters (as shown in attached Photograph A, marked 'A1' and 'A2') and all associated wiring, fixtures and fittings; and
 - b. Make good any damage caused by the installation/removal of the two external heaters, ensuring all remedial works are carried out in materials and detailing to match the existing fabric of the building.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal B: Notice B - Ref: APP/X5990/C/16/3145782 Bertie, 45 South Molton Street, London W1K 5RU

- 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 ISOD Ltd against an enforcement notice (Notice B) issued by the City of Westminster Council.
 - The enforcement notice (Enforcement Notice B) was issued on 4 February 2016.
 - The breach of planning control as alleged in the notice is the removal of the shopfront shown in Photograph C and its replacement with the unauthorised shopfront shown in Photograph B.
 - The requirements of the notice are:
 - a. Remove the unauthorised shopfront as shown in attached Photograph B); and
 - b. Reinstall a timber framed shopfront to match in facsimile the detailed design and materials of the shopfront which previously existed (as shown in attached Photograph C).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Both appeals, A and B, are dismissed. See formal decision below.

Background information

2. The appeal premises, formerly trading as 'Berties' (now named 'Orogold') lies on the north eastern side of South Molton Street and within the Mayfair Conservation
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Area (MCA). The host building is similar in scale and form to others in this part of the street design and is in Class A1 (retail) use. The previous traditional wooden shopfront appears to have been coloured dark blue/grey. The new one is predominantly white.

3. Planning permission (15/03836/FULL) was refused on 13 July 2015 for the '*Installation of a new shopfront*'. The Council's reasons for refusal indicated that the scheme was contrary to various policies including S25 (Heritage) and S28 (Design) of the Westminster Plan (WCP) and DES1 (Principles of Urban Design and Conservation); DES5 (Alterations and Extensions) and DES9 (Conservation Areas) of the Unitary Development Plan (UDP). There was no appeal against this decision. Other relevant development plan policies include policies 7.4 (Local Character) and 7.8 (Heritage assets and archaeology) of the London Plan (LP).

4. On 7 September 2015, following a complaint about various works being carried out to the frontage; a site inspection indicated that '*a new shopfront not dissimilar to the shopfront which was refused planning permission on 13 July 2015*' had been installed. Various other works were carried out including the installation of a new canopy/awning and barriers within the public highway. The latter have since been removed and the Council concluded that the awning benefitted from deemed consent pursuant to Class 5, Part 1, Schedule 3 of the Town and Country Planning (Control of Advertisements)(England) Regulations 2007.

5. I am only empowered to deal with the unauthorised works carried out and as alleged in the two notices, A and B. In reaching my conclusions on the grounds of appeal relating to each notice, I have had regard to all of the above policies and to the National Planning Policy Framework (NPPF) and Planning Practice Guidance PPG which are major material considerations. In particular I have had regard to sections 7 (Requiring Good Design) and 12 (Conserving and enhancing the historic environment) of the NPPF and to the relevant conservation area guidance in the PPG. Because the building lies within the MCA I have paid special attention to the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

Appeal A (Notice A) and Appeal B (Notice B) on ground (a).

Main issues

6. The main issue in both cases is the effect of the works on the character and appearance of this part of the MCA.

The two external heaters and associated wiring, fixtures and fittings

7. Having seen the two heaters and their positioning at the top of the windows and to the underside of the awning, I share the Council's concerns about their impact on the character and appearance of this part of the MCA. The utilitarian fittings are seen as obtrusive and alien elements within the street scene. These crude fixtures detract from the remaining timber pilaster detailing of the frontage and are clumsily and inappropriately fixed.

8. The Council would not have granted planning permission for such fittings in the first instance and I can see no justification for allowing permission at the appeal stage. I find that the fittings are contrary to policies S25 and S28 of the WCP in that they are visually harmful to the MCA and poorly designed. For the same reasons I also find them contrary to policies DES1, DES5 and DES9 of the UDP; to policies 7.4 and 7.8 of the LP and to policies set out in sections 7 and 12 of the NPPF and conservation area guidance in the PPG.

9. At paragraph 64 the NPPF indicates that permission should be refused for development of poor design that fails to take the opportunities available to for improving the character and quality of an area and the way it functions. Furthermore one of the core planning principles of the NPPF is to conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations.

10. Inappropriate and visually harmful fixtures and fittings might well be relatively small but in this case their visual impact is significant and noticeably detrimental to the appearance of the building and the MCA.

The replacement shopfront

11. Again I share the Council's concerns about the impact of this stark and poorly-designed addition to the streetscene. I consider that the modern metal framed elements of the installation jar markedly with the remaining timber sections and detailing. So too does the shiny fascia insert with its gold lettering. The result is that the shop front is neither modern nor traditional in its appearance. Instead it is an awkward, inappropriately designed and detailed hybrid of a scheme which bears no resemblance to the former traditional timber shopfront or the neighbouring shopfronts in this part of South Molton Street.

12. I accept that well-designed contemporary shopfronts can have a place in this part of the MCA and I noted some during my site visit. However, in my view this particular installation is harmful to the host building and neither preserves nor enhances the character or appearance of the MCA. Again, therefore, I do not consider that planning permission ought to be granted for its retention. Like the heaters I find the shopfront to be contrary to the above mentioned policies as well as to the NPPF and guidance within the PPG. I acknowledge that the harm might be defined as '*less than substantial*' (see paragraph 134 of the NPPF) but there are no public benefits which outweigh the harm which I have identified.

13. Both appeals A and B, therefore, fail on ground (a) and planning permission is not granted for either the heaters or the new shopfront.

Appeal A (Notice A) on ground (f) and Appeal B on ground (f)

14. An appeal on ground (f) must be made on the basis that the steps required to comply with the notice are excessive and that lesser steps would overcome the objections. In the appellant's appeal statement it is requested that '*the notice be varied*' and it is suggested that it be amended to confirm the retention of the canopy and that the '*necessary steps be limited to the replacement of the glazing and stall risers to replicate the previous shopfront as per Photograph C of Enforcement Notice B*'.

15. On the first point relating to the canopy, this does not form part of the notice and thus there can be no '*lesser steps*' to consider and no need to vary the notice. On the second point I have found above that it is the hybrid nature of the new shopfront that results in the harm caused to the character and appearance of the MCA. In my view, to only replace the glazing and stall riser in accordance with what was there before will still result in an inappropriate and harmful hybrid scheme. This would not, in my view, overcome the objections. I consider that the steps set out in both notices are necessary in order to remedy the breaches of planning control. Both appeals, therefore, fail on ground (f).

Other Matters

16. I have noted all of the other references to shopfront installations in South Molton Street (including Nos 3, 12, 35, 47-48, 55 and 56) and indeed saw them and others during my visit. However, as indicated by the Council, some of these are the subject of other enforcement notices and some were granted permission because the Council was of the view that they were acceptable and not contrary to any policies or guidance. I do not have the full details for any of these premises but in any case every application needs to be considered on its merits. This is how I have dealt with these appeals.

17. In reaching my conclusions I have taken into account all of the other matters raised in support of the retention of the heaters and the new shopfront. These include the planning history; the contents of the appellant's statement (introduction, description of proposals, the notice, references to policies and guidance grounds of appeal and conclusions); the appendices; the photographic submissions (including other examples of shopfronts) and the submitted drawings.

18. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal relating to both appeals/notices. Nor is any other factor of such significance so as to change my decisions that both appeals should fail and that both enforcement notices should be upheld.

Formal Decisions

Appeal A (Notice A)

19. 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 Town and Country Planning Act 1990 as amended.

Appeal B (Notice B)

20. 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 Town and Country Planning Act 1990 as amended.

Anthony J Wharton

Inspector