
Appeal Decisions

Site visit made on 11 November 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2016

Appeal A: APP/K5600/C/3146840

Barkers Arcade, 63-97 Kensington High Street, London W8 5SE

- 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 GPS(Great Britain) Ltd against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The Council's reference is E/16/00023.
 - The notice was issued on 9 February 2016.
 - The breach of planning control as alleged in the notice is the installation of roof plant comprising five condensing units in total within acoustic enclosures on the roof of the annexe to the rear of Barkers Arcade, as shown on Drawing 1374-OS Map-Plant_D of refused planning and listed building applications under references PP/15/07484 & LB/15/07485.
 - The requirements of the notice are to permanently remove from the land the roof plant comprising five condensing units in total within acoustic enclosures on the roof of the annexe to the rear of Barkers Arcade, as shown on Drawing 1374-OS Map-Plant_D of refused planning and listed building applications under references PP/15/07484 & LB/15/07485 and make good any damage to the building and remove any resultant debris from the land.
 - The period for compliance with the requirements is 3 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.
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Appeal B: APP/K5600/F/3146841

Barkers Arcade, 63-97 Kensington High Street, London W8 5SE

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by GPS(Great Britain) Ltd against a listed building enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
- The Council's reference is E/16/00023.
- The notice was issued on 9 February 2016.
- The contravention of listed building control alleged in the notice is the installation of roof plant comprising five condensing units in total within acoustic enclosures on the roof of the annexe to the rear of Barkers Arcade, as shown on Drawing 1374-OS Map-Plant_D of refused planning and listed building applications under references PP/15/07484 & LB/15/07485.
- The requirements of the notice are to permanently remove from the land the roof plant comprising five condensing units in total within acoustic enclosures on the roof of the annexe to the rear of Barkers Arcade, as shown on Drawing 1374-OS Map-Plant_D of refused planning and listed building applications under references PP/15/07484 & LB/15/07485 and make good any damage to the building and remove any resultant debris from the land.

- The period for compliance with the requirements is 3 calendar months.
 - The appeal is made on the grounds set out in section 39(1)(e) & (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decisions

Appeal A

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal B

2. The appeal is allowed insofar as it relates to units SU3 GAP (Units as installed without acoustic enclosure) and listed building consent is granted for the retention of units SU3 GAP (Units as installed without acoustic enclosure) at Barkers Arcade, 63-97 Kensington High Street, London W8 5SE.
3. The listed building enforcement notice is varied by deleting from the requirements reference to 3 of the condensing units (SU3 GAP Units as installed without acoustic enclosure).
4. The listed building enforcement notice is upheld insofar as it relates to 2 of the condensing units (SU2 Banana Republic with acoustic enclosures).
5. The appeal is also allowed on ground (h) and the listed building enforcement notice is to be varied by the deletion of 3 months and the substitution of 6 months as the period for compliance.
6. Subject to these variations the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Reasons

Appeal A, ground (a) & Appeal B ground (e)

7. The development plan includes the Royal Borough of Kensington and Chelsea Consolidated Local Plan [LP]. LP Policy CL3 relates to conservation areas and requires development to preserve or enhance the character or appearance of the conservation area and to protect the special architectural and historic interest of the area and its setting. LP Policy CL4 refers, amongst other things, to listed buildings and requires all development and works for alterations or extensions to preserve the heritage significance of the building and setting or any other features of special architectural and historic interest. LP Policy CL6 relates to small scale alterations and notes these would be resisted if they harm the character or appearance of the existing building, its setting or townscape or results in cumulative effects that would be detrimental to the character and appearance of the area or are not of a high quality form or discreetly located. LP Policy CL11 requires development to protect and enhance views, vistas, gaps and to contribute to the character and quality of the skyline.

8. The list description identifies the building as being a grade II listed store from about 1937-1938 by Bernard George. It is constructed of Portland Stone, glass and gilded metal and has a symmetrical convex façade and there are vertical stone pillars between the first and fourth floors. There are two stone stair towers with glass lanterns and relief sculpture to the towers and stone piers by the entrance. There is also a cantilevered canopy at ground floor level and bronze mullions to the ground floor windows. The description does not identify any specific features at the rear and it is clear that the main architectural features are on the front and side of the main building. However, the rear elevation has still been very attractively designed with mainly brick façade with stone features, elegant windows and decorative metalwork. To my mind the change in design reflects very well the change from the commercial frontage to the houses behind.
9. The building is in the Kensington Square Conservation Area which was designated in 1993. The significance and special architectural and historic interest of the area relates to its history which can be traced back to the medieval period. The Square was the first to be built out of town and is the sixth oldest in the capital. It is characterised by a mix of residential and commercial properties and Heythrop College was in one corner. The buildings, including the listed buildings, make a major contribution to its significance together with their layout and relationship with the various streets.
10. The property at the rear faces towards flats, a significant number of which have views towards the appeal site and proposed units. The roof top is also visible from parts of the end of Derry Street.
11. In the past the service equipment was housed in a plant room with a louver upstand enclosure projecting above the flat roof and is a very discreet housing for services. Obviously things have moved on and more equipment is necessary to provide appropriate conditions within the shop units. There are some separate air conditioning units already outside of these purpose made enclosure. However, it seems to me that their arrangement has been considered reasonably carefully. Their grouping between the upstand louver enclosure and rear elevation is sensible to limit the spread of equipment and careful design means that one of the larger units has been positioned relatively close to the back of the existing enclosure with its height at about that of the enclosure and it is generally reasonably screened from view. It seems to me what is required is either good screening such as the purpose built louver enclosure/plant room or limiting visibility through control of size.
12. There are also a number of significantly smaller units added above roof level, but generally these are currently reasonably screened by the existing enclosures or other larger air conditioning units. The SU2 units are raised a considerable height above the roof surface and have an acoustic enclosure, which also has much space between it and the tops of the air conditioning units; consequently these are much higher than the louver enclosure and significantly higher than the lower window cills on the main rear elevation.
13. These SU2 units are a dominant feature in the rear area, and accepting that many of the photographs supplied are from the roof area, the units are still prominent from ground level in Derry Street and are also clearly visible from the flats to the rear. I accept that there might be more screening from the tree in summer, but this would not adequately screen the units. The units are

utilitarian designs, even with the enclosures, and are alien and incongruous features in juxtaposition to the rear of the listed building. I consider that these cause harm to the significance of the listed building and some harm to the conservation area as a whole. In terms of the National Planning Policy Framework this would be classified as 'less than substantial' harm.

14. I note that the appellant identifies the acoustic enclosures are required to the SU3 units to ensure that the plant meets the required noise criteria and drawings are provided to show this. Currently the SU3 units do not have the acoustic cladding, so are lower overall and just below the lower window cill height. So while they are located fairly close to the rear of the building they are reasonably screened by the louver upstand and amongst other plant and do not cause significant visual interference to the rear elevation. However, clearly the addition of acoustic enclosures will increase their prominence and even with the removal of the 'big foot' system and some reduction in height these would be very prominent features and given the utilitarian appearance so close to the rear of the listed building would cause considerable harm to the listed building.
15. I conclude overall that the SU2 units because of their size and height with acoustic cladding (which the appellant notes is necessary) would cause significant harm in terms of the planning enforcement appeal and that harm should be considered against the benefits of the work. I consider that the SU3 units (currently without acoustic enclosure) are reasonably located in relation to the listed building and conservation area, so would not harm significance and special architectural and historic interest, I note in terms of the planning application that the appellant acknowledges the need for acoustic enclosure and in planning terms raising the height above the lower window cill level would be unacceptable.
16. I acknowledge that the shops provide an important social and economic function that needs to be accommodated. Air conditioning units have been accommodated in the past and I see no reason why with negotiation that a suitable arrangement cannot be achieved here. I appreciate that the appellant has undertaken extensive discussions with the council, looking at various proposals. However, even acknowledging the public benefits, I consider that they do not outweigh the harm and the schemes as built or with proposed amendments are unacceptable. In terms of the listed building I have found the SU3 units without acoustic enclosure to be acceptable and that the public benefits of the SU2 units do not outweigh the harm identified. The units would not accord with LP Policies CL3, CL4, CL6 and CL11.

Appeal A, ground (f)

17. I have taken into consideration the proposals, as the applications, including that changes would be made to reduce the heights of the units. However, I have found above that the applications as proposed would be unacceptable and while there is an indication the height of the units could be reduced, there is insufficient information to show they would be reduced enough to prevent the harm identified.
18. I appreciate that it is likely that a solution can be found, but if it is not then it is reasonable that the plant be removed. In order to allow time for a solution to be found, I have increased the time for compliance under grounds (g) and (h) as explained below. The appeal fails on ground (f).

Appeal A, ground (g) & Appeal B, ground (h)

19. The detailed evidence provided by the appellant on the extent of the negotiations that have already been undertaken leads me to the conclusion that more time than proposed will be necessary in order to find an appropriate solution for air conditioning for the shop units. I have found that the shops serve an important social and economic function and it is in the interest of all that appropriate time be provided for a suitable solution to be achieved. I shall increase the time for compliance with the notices to 6 months. The appeals succeed on grounds (g) and (h).

Graham Dudley

Inspector