
Appeal Decision

Site visit made on 13 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 22 December 2016

Appeal Ref: APP/P1133/C/16/3151709

12 Fore Street, Chudleigh TQ13 0HX

- 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 M Warren against an enforcement notice issued by Teignbridge District Council (the LPA).
 - The enforcement notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is: the installation of a new coated aluminium shop front and door.
 - The requirements of the notice are as follows:
 - (a) Remove the unauthorised coated aluminium shop front and door.
 - (b) Install a new timber shop front and door in accordance with the details shown on drawing number TDC 1.
 - The period for compliance with the requirements is Six months.
 - The appeal is proceeding on grounds (a), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree of ground (f). Otherwise the appeal is dismissed. See formal decision below.

Background information

2. The appeal building is a retail/commercial property at 12 Fore Street. It lies within the Chudleigh Conservation Area (CCA), on the south east side of the main shopping street of this historic wool town. It adjoins No 14 Fore Street, within a modest 2 storey block and both properties have shop frontages at ground level. To the north east they are connected to, but stand forward of, the Grade II listed Alpha House. To the south west a passageway separates Nos 12 and 14 from No 16 Fore Street. Fore Street is characterised by a variety of premises of varying styles, designs and ages. Overall it is perceived as an attractive market town with most of the buildings contributing positively to its character and appearance.

3. The appeal property had been in use as a charity shop and is now in office use. Its frontage comprised an aluminium-framed shop window and door. On 15 April 2015 a vehicle crashed into the shop front causing severe damage. In addition to severe structural damage, the shopfront was damaged beyond repair.

4. Following this accident the appellant consulted with planning and conservation officers of Teignbridge District Council (the LPA) and was given advice on the planning implications for the repair and replacement of the damaged shopfront. The first LPA suggestion was for a replacement of the shopfront with a timber framed installation which, in their view, would have been more appropriate for the CCA. The second was for a like-for-like replacement in aluminium which replicated what had been there before the shopfront was accidentally damaged.

5. At that time the LPA indicated that the first option would require a planning application. However, it was also confirmed by the LPA that, given the special circumstance whereby the damage had been caused through no fault of the appellant, the suggested like-for-like replacement in aluminium would not require planning permission.

6. The appellant chose the latter, more expedient option. But, in October 2015, the LPA Council received a complaint about the new shop front that had been installed at 12 Fore Street. Investigations showed this to be of white powder coated aluminium framing and it was not considered to be a like-for-like replacement. It was also noted by the LPA that, whilst repeating the overall general composition, some sections used for the new glazing system varied from those used in the original and, in particular top-opening lights had been added.

7. Because of the differences, between what had been in place prior to the accidental damage and the installation that the appellant had carried out, the LPA considered that the works could not be described as being 'like-for-like'. The LPA refers to the advice given by their officer to the appellant as being incorrect. This is stated to be because, under Schedule 2, Part 7, Class A of the Town and Country Planning (General Permitted Development) Order (GPDO), although provision is given to extend a shop, the works are not permitted if they involve the creation of a new shop front. In this case a completely new shop front was fitted.

8. These works were not related to the extension of the shop. They related to the installation of a shop front to replace the one which had been damaged. Unfortunately the works carried out did not exactly replicate what had been there before and so the question now is whether what has been carried out is so materially different to the accidentally destroyed shopfront. I deal with these matters under the grounds of appeal below.

The appeal on ground (c)

9. To be successful on this ground it must be shown that there has not been a breach of planning control and that either planning permission is not required for the works; that a planning permission is in place or that the works constitute permitted development. I have referred above to Schedule 2, Part 7, Class A of the Town and Country Planning (General Permitted Development) Order (GPDO), where provision is given to extend a shop. However, works are not permitted by the GPDO if they involve the creation of a new shop front. Thus, the works carried out do not constitute permitted development under the GPDO.

10. If the works had replicated the previous shopfront with a 'like-for-like' replacement, then planning permission would not have been required. However, from the submitted evidence and particularly the photograph which showed the previous framing to the shop windows, the new installation is far from being 'like-for-like'. The original frames were quite slender and, although there were still three top lights over the main frontage panes, these sections of framing were also much more slender than those now fitted. The door frames were also of much more slender sections.

11. Having seen the new shopfront I consider that as a matter of fact and degree it has materially changed the external appearance and character of the building. I therefore disagree with the contention that the operations, as carried out, do not amount to development under section 55 of the Act. In my view planning permission is required for the works carried out. There is no permission in place, the works are not 'permitted development and the appeal must fail, therefore on ground (c).

The appeal on ground (a)

12. The main issue is the effect that the newly installed shopfront has had on the character and appearance of this part of the Chudleigh Conservation Area (CCA).

13. The relevant development plan policies are Policies S1 (Sustainable development Criteria); S2 (Quality Development) and EN5 (Heritage Assets) of the Teignbridge Local Plan 2013-2033 (TLP). The National Planning Policy Framework (NPPF) is a major material consideration and particularly sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment). The TLP policies are up-to-date with the NPPF. I have also had regard to national Planning Practice Guidance (PPG) in relation to historic assets and, because the site lies within the CCA, I have paid special attention to the requirements of section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

14. Having viewed the appeal building from both near and distant viewpoints and having considered it in the context of nearby buildings within the CCA, I share the LPA's concerns about the specific impact of the replacement shopfront.

15. I acknowledge the variety of the designs, ages and styles of the retail and commercial frontages on to Fore Street. Some of them detract markedly from the character and appearance of the street scene and it is clear that the previous shopfront had a negative impact within the CCA. The LPA has confirmed that the only reason a 'like-for-like' replacement would have been acceptable was because of the accidental damage to what had been in place.

16. However, as established above, the replacement is far from being similar in design, scale and proportions to the previous shopfront. Any new shopfront within Fore Street should, therefore comply with both national and local policy and guidance with regard to the conservation and preservation of the historic environment of the CCA.

17. Having seen the appeal shopfront I consider that it is perceived as a crude, poorly-designed frontage that detracts markedly from the character and appearance of this part of the town. The thick and out-of-proportion frame sections; the bulkily-framed opening top-lights and the main door frames all combine to form a clumsy and visually harmful addition to the street scene. I agree with the interested person who submitted an appeal comment that if this particular shopfront is allowed to remain in place, it would set an unfortunate precedent which could lead to a further erosion of the traditional 'old market town feel' of Chudleigh.

18. Taking into account the aims and objectives of the above local and national planning policies, it is clear to me that the LPA would not have granted permission for this particular shopfront. I agree with the LPA's reasoning and it follows, therefore, that there can be no justification in granting permission for a harmful development at this appeal stage. I find the installation to be contrary to Policies S1, S2 and EN5 of the TLP as well as being contrary to policies set out within sections 7 and 12 of the NPPF.

19. I acknowledge that the harm is less than substantial as set out (paragraph 134) in the NPPF, but there are no public benefits to outweigh the harm caused. In addition, the NPPF indicates (paragraph 64) that permission should be refused for development of poor design that fails to take opportunities for improving the character and quality of an area and the way it functions. In this case the character and quality of the CCA is noticeably harmed. The appeal also fails on ground (a).

The appeal on ground (f)

20. In considering the appellant's arguments under this ground, I consider that the breach of control is quite precise. A new shopfront has been installed without the required permission and the works are not 'permitted development'. It is clear to me that the recipient of the notice should know exactly what has been done wrong and what, in the LPA's view, is necessary to remedy the breach.

21. In my view, the question in this case is whether or not the requirements, as drafted, are reasonable and appropriate, having regard to all of the material considerations relating to this case. The facts are as follows: there was a shopfront in place which was lawful in planning terms; this was demolished through no fault of the appellant and the LPA advised, correctly, that if replaced by a timber shopfront, then planning permission would be required.

22. The LPA is now requiring that the newly installed shopfront be re-placed by a timber shopfront which, in effect is a requirement to improve upon what had previously been in place. Taking into account the cases of *'Miller –Mead v MHLG 1963* and *Bath City v SOS and Grosvenor Hotels*, I agree with the appellant's stance that requirement (b), as drafted is excessive.

23. I consider that in order to remedy the breach in a fair, reasonable and equitable manner the appellant should be given the option of replacing the unauthorised shopfront with a 'like-for-like' replacement like the one which was accidentally damaged. I shall, therefore, vary the notice accordingly and the appeal succeeds to this limited degree under ground (f).

Other Matters

24. In reaching my conclusions on the grounds of appeal I have taken into account all of the other matters raised by the Council, the appellant and an interested person. These include the unfortunate history of the frontage; the full facts and details in the appellant's initial grounds of appeal; the photographic evidence; the detailed arguments under each ground; references to the change of use to A2 office and the submitted case law references.

Formal decision

25. The appeal succeeds to a limited degree on ground (f) and I direct that the notice be varied by adding the following, after requirements (a) and (b) in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO):

'OR,

(c) replace the unauthorised shopfront with one which matches the design of the shopfront which was damaged. This should be a 'like-for-like' replacement in terms of aluminium frame sizes and sections, all of which should either be finished in white paint or a white powder-coated finish'.

26. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. Planning permission is refused for the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector