

Appeal Decision

Site visit made on 2 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/X5210/C/16/3149036

Land at 14 Heath Street, London NW3 6TE

- 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 Ian Trehearne (for Village Newsagents) against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 15 March 2016 under ref. EN15/0454.
 - The breach of planning control as alleged in the notice is "The unauthorised installation of an external roller shutter and associated fixtures to the shopfront."
 - The requirements of the notice are set out as follows:
 - "1. Completely remove the external roller shutters (sic) and associated fixtures from the shop frontage.
 - 2. Make good any damage to the building as a result of the works."
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by altering the word "shutters" to the word "shutter" in requirement 1 of paragraph 5. Subject to that correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Matters of clarification

2. There is only one external roller shutter at the front of the ground floor shop at 14 Heath Street. It is clear that the inclusion of the word "shutters" in the first requirement of the enforcement notice is incorrect. I shall correct the notice accordingly and I am satisfied that such a course of action would not cause any injustice to the parties.
 3. On the appeal form, Mr Ian Trehearne is recorded as the appellant and the agent. It was clarified at the site visit that he is acting for Village Newsagents. The ground floor shop at 14 Heath Street is a small shop selling newspapers, magazines and confectionery.
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4. The third party (David Milne on behalf of a neighbourhood forum) is also concerned about new signage and a canopy at the appeal property. However, those matters are not the subject of the enforcement notice or this appeal against that notice.

The appeal on ground (c)

5. This ground of appeal is that there has not been a breach of planning control. This might be because no development was involved or because planning permission has already been granted on application to the Council or because it is permitted by a development order. The gist of the appellant's case is that no development was involved in the installation of the external roller shutter and associated fixtures. No argument is put that express planning permission is in place or that the development is permitted by a development order.
6. Section 57 of the 1990 Act as amended indicates that planning permission is required for any development of land. Section 55(1) of the 1990 Act as amended defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
7. Building operations are widely defined at section 55(1A) of the 1990 Act as amended so as to include: (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. The same Act goes on to exclude a number of operations and uses from the definition of development. One of these in section 55(2) (a) (ii) refers to the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.
8. The Council's position is that the external roller shutter system is considered to be operational development requiring planning permission. The Council says that it routinely processes planning applications for roller shutters. I subscribe to the Council's stance.
9. The fixing of the external shutter and its associated housing amounted to an addition to the building and in my experience this is an operation normally undertaken by a person carrying on business as a builder, albeit one that might specialize in building jobs involving commercial and security projects.
10. The physical alteration to the land that has taken place clearly has a high degree of permanence. The roller shutter might only be deployed between the hours of 1730 to 0700 the following day (or as elsewhere stated 1900 to 0530 the following day) but the roller shutter and its box housing are never actually removed from the premises. In that sense the structures are permanently in place and the interpretation of operational development found in *Parkes v Secretary of State for the Environment* (1978) is respected.
11. The external roller shutter and its housing are visible from the street. They obscure virtually all of the external surface of the ground floor shop windows and entrance door when the shutter is lowered to its closing position. When the shutter is raised, the box housing is visible under the canopy from the vantage point of the footway on this side of the street outside the shop. I am in no doubt that the works undertaken to install the external shutter and its

housing to the building have materially affected the external appearance of the ground floor shop and the building as a whole. This is also evident in the before and after photographs supplied by the third party. The relevant exclusion in section 55(2) (a) (ii) of the 1990 Act as amended is of no assistance to the appellant.

12. I find on the balance of probability that the development alleged in the notice constitutes a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

13. The ground floor shop is situated within a three-storey brick terrace on the section of Heath Street that runs between Fitzjohn's Avenue and Hampstead High Street. It is located within the Hampstead Conservation Area.
14. Having regard to the reasons given in the enforcement notice for its issue and to the statutory duty set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the main issue in deciding if planning permission ought to be granted is the effect of the unauthorised development upon the character and appearance of the building and the Hampstead Conservation Area.
15. Heath Street and Hampstead High Street form the central spine of Hampstead. The character of Heath Street is derived from its function as a busy yet traditional shopping street within Hampstead town centre. The shops are key elements of this part of the conservation area, which has a village feel and a high quality environment. The Hampstead Conservation Area Statement (HCAS) identifies 14 Heath Street as one of a number of unlisted buildings which make a positive contribution to the special character and appearance of the area. From my observations of the site and the surrounding area, and my reading of the HCAS, I consider that the subject conservation area is a designated heritage asset of some significance and that the appeal property is a significant component of its character and appearance.
16. The black-coloured metal external roller shutter, half solid and half with a brick bond grille, when lowered, extends from the shutter box to ground level and across virtually the full width of the shopfront. I accept that in this case the shutter housing does not appear unduly obtrusive as the external canopy hides the shutter box in most views from Heath Street. However, when down, the shutter only allows for limited visibility into the property and this gives a rather bleak, lifeless form to the shopfront. The external roller shutter, by reason of its prominent location, design, material and colouring, is an incongruous addition which harms the character and appearance of the building.
17. Whatever shutters may have been used at night in Hampstead in the past, there are now remarkably few external roller shutters in place along this part of Heath Street. Indeed, the Council says that there are no records of planning permission being granted for external solid roller shutters on any property in Heath Street. Along this section of Heath Street, I could only identify one other property with an external roller shutter covering the shopfront. This is at no. 19 (not no. 17), a jeweller's shop known as Facets Diamonds. Judging from the condition of the shutter there it appears to have been in place for a considerable period of time. The shops at no. 8 (Linea) and no. 10 (Del

Maestro by Camilla) have external shutters but only over their entrance doors. Internal shutters secure the shopfront windows at those two properties.

18. The local context I describe in the paragraph above means that the subject roller shutter is particularly conspicuous in this street scene and this part of the conservation area. The harm caused to the character and appearance of the host building detracts from the positive contribution that this building makes to the character and appearance of the conservation area. Furthermore, the shutter presents a rather hostile and unsafe appearance, reduces visual interest for pedestrians and spoils the attractiveness of the shopping street which forms an important component of the character and appearance of this part of the conservation area.
19. I note that the shutter is retracted and not visible between the early morning and when the shop closes in the evening. However, the opening hours of the unit cannot be ensured. If closed during daylight hours, for instance during the morning, the shutter would be even more of a harmful, harsh feature within the street scene, contrasting markedly with the open frontages in the locality. In any event, I would expect there to be a notable degree of activity along Heath Street (for example people visiting restaurants or making their way to and from the nearby tube station) well after the existing shop at 14 Heath Street closes in the early evening.
20. I find on the main issue that the unauthorised development harms the character and appearance of the building and fails to preserve or enhance the character or appearance of the conservation area. The significance of the designated heritage asset – the conservation area – has been diluted. I attach considerable importance and weight to this matter given my statutory duty set out in paragraph 14 above. The development conflicts with Policies CS5, CS7, CS14 and CS17 of the Camden Core Strategy and Policies DP24, DP25 and DP30 of the Camden Development Policies which, when read together, are aimed at securing a high standard of design and protecting and enhancing Camden's centres, heritage and safety.
21. In terms of the National Planning Policy Framework (the Framework), the magnitude of the harm to the significance of the designated heritage asset may properly be considered to be less than substantial. That being the case, paragraph 134 of the Framework advises that the harm should be weighed against the public benefits of the development, including securing optimum viable use. In this respect, the appellant has not really articulated any points in this appeal that could be included as a public benefit. There are no public benefits identified that can be considered to outweigh the harm I have found. The balance of judgment therefore remains firmly in favour of the preservation of the conservation area. Paragraph 132 of the Framework indicates that great weight should be given to a designated heritage asset's conservation when considering the impact of development upon its significance.
22. That security for the shop is an important material consideration is in little doubt. A number of break-ins have evidently occurred both during the time of the current owner and his predecessor. The installation of the roller shutter allowed the insurance company (Regis Mutual Management) to cover for theft and attempted theft outside of business hours. Even so, I am not sure if other insurance companies were approached or if alternative means of achieving

- security were discussed with Regis Mutual Management or other insurance companies. I am not in receipt of any submission from the local constabulary about the break-ins or general security considerations relating to this shop.
23. The advice on shopfront security in the HCAS is clear at paragraphs H40 and H41. The Council prefers the use of security measures that do not require external shutters or grilles such as: the strengthening of shopfronts; the use of toughened or laminated glass; internal grilles or collapsible gates; and improved lighting. Applicants would have to demonstrate that these measures are not feasible before external shutters can be considered.
24. I could see that the shopfront has been in position for many years. The appellant says it is of very light construction and has no structural strength. This added to the severe constraints on internal display space and the position of the electricity cabling, meter and fuse box does appear to make the provision of an internal roller shutter a difficult proposition. However, there is no clear evidence to suggest that the shopfront could not be strengthened and fitted with toughened or laminated glass with improved lighting. The appellant expects to receive a new lease on the premises and this may provide the impetus for some investment in the property's frontage.
25. I am not therefore persuaded that the installation of an external security shutter was the only way forward for the appellant. All the shops and commercial outlets on this section of Heath Street (apart from no. 19) trade without external shutters across their whole shopfronts. The need to provide security, although important, does not outweigh the visually harmful effects of the development. Moreover, providing security measures of this type can undermine community safety over the longer term because of the intimidating and hostile atmosphere they create, the potential to attract graffiti and the restriction on natural surveillance.
26. Painting the shutter white (mentioned under ground (g)) would not successfully mitigate the harmful visual impact of the development. No conditions would overcome the objections to the development.
27. My conclusion is that the development is unacceptably harmful to the character and appearance of the building and the conservation area. There is conflict with the development plan and I find no other material considerations of sufficient weight to justify a grant of planning permission. The appeal on ground (a) fails and I refuse to grant planning permission on the deemed application.

The appeal on ground (g)

28. This ground of appeal allows it to be argued that the time given to comply with the notice falls short of what should reasonably be allowed. A period of three months is stipulated in the notice. The appellant requests a period of six months instead.
29. The appellant argues that replacement measures will have to be agreed with the Council and that this process is likely to take more time than three months. Security will have to be maintained during this period. It is also pointed out that the absence of a lease is a serious impediment to the sort of investment which would be needed to achieve a suitable level of internal security. The

additional time requested would allow for the grant of the new lease from the Council of the London Borough of Camden as landlord.

30. However, the Council has not suggested that there is a need to agree a new design or alternative scheme; the notice simply seeks the removal of the unauthorised development. The works listed in the requirements are not extensive. Should the Council decide that further discussions about security measures at the shop or the prospect of a new lease would be desirable, it would be open to the Council to extend the period for compliance with the notice, at its own discretion, under the provisions of section 173A (1) (b) of the 1990 Act as amended.
31. It is important that the breach of planning control is addressed without unnecessary delay and I consider that a period of three months is not unreasonable, taking into account all the evidence put before me. The appeal on ground (g) fails.

Andrew Dale

INSPECTOR