

Appeal Decision

Site visit made on 29 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 18 January 2017

Appeal Ref: APP/Q5300/C/16/3149051

62 Aldermans Hill, Palmers Green, London N13 4PP

- 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 Andreas Panayiotou against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 24 March 2016 under ref. CON/6575.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the unauthorised installation of a solid external roller shutter and shop front (sic) (drawn in blue on the attached plan for identification purposes)."
 - The requirements of the notice are set out as follows:
 - "1. Remove the roller shutter
 - 2. Remove the shop front (sic)
 - 3. Remove all resulting materials from the Premises".
 - The period for compliance with the requirements is "Four (4) calendar months".
 - The appeal is proceeding on the ground set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the text "(drawn in blue on the attached plan for identification purposes)" from paragraph 3 relating to the breach of planning control alleged.
2. Subject to that correction, the appeal is allowed and the enforcement notice is quashed.

The enforcement notice

3. The Council was asked if there was a plan marked with a blue line attached to the enforcement notice. No response has been received. I see no necessity for a blue line to identify the position of the shopfront and solid external roller shutter as it is clear enough where they are. There is no possibility for any confusion. I shall delete the text in paragraph 3 of the notice that refers to such blue markings. This correction to the notice would not result in any injustice to the parties.

Background and matters of clarification

4. The appeal property is a Greek restaurant which is situated on the ground floor of a three-storey terraced building. The restaurant, known as Nissi, lies within
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Palmers Green town centre opposite Broomfield Park and within the Lakes Estate Conservation Area.

5. The third party – Friends of the Lakes Estate Conservation Area – raises concerns about the impact of the roller shutter and shopfront upon the character and appearance of the conservation area. However, no appeal has been brought on ground (a) that planning permission ought to be granted for the matters stated in the enforcement notice. The appellant is not therefore deemed to have made an application for planning permission in respect of those matters for the purposes of section 177(5) of the 1990 Act as amended. Thus, the planning merits of the roller shutter and shopfront are not relevant and are not issues for me to consider in this appeal case.

The appeal on ground (d)

6. An appeal on ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters alleged in the notice.
7. Section 171B (1) of the 1990 Act as amended states that where there has been a breach of planning control consisting in the carrying out without planning permission of, amongst other things, building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The burden of proof falls on the appellant to show that at the date when the enforcement notice was issued, no enforcement action could be taken in respect of the breaches of planning control as stated in the notice. The relevant date for this purpose is four years before the date of issue of the enforcement notice, that is 24 March 2012. The relevant test of the evidence is on the balance of probabilities.
8. The appellant explains how the restaurant was subject to an arson attack on 29 February 2012 which destroyed the interior. This is confirmed in a news report dated 1 March 2012 from the Enfield Independent which includes a photograph of a policeman standing outside the premises guarding the crime scene. The appellant says that the police and the fire service advised that the only effective way to protect the premises from further arson attacks was to secure the front with a robust shutter, which he immediately commissioned. The installation of the solid external roller shutter was completed on 10 March 2012. An invoice dated 10 March 2012 from Shutters and Doors Ltd is produced by the appellant. It is an invoice for work carried out at Nissi involving one roller shutter door 5.5 m wide by 3.5 m high.
9. The appellant is not represented and, perhaps understandably, has focussed on the traumatic events surrounding the arson attack and the subsequent installation of the security shutter. The enforcement notice also attacks the shopfront itself. However, I studied the existing shopfront very closely on my site visit, as the shutter was raised, and I cannot see how it is materially different to the shopfront depicted in the photograph in the Enfield Independent which must have been taken on 29 February 2012 or on 1 March 2012. The main entrance door, the fixed single light to the left displaying the opening hours and the menu and the range of folding, substantially glazed

doors to the right were in place at that time. The colour and detailing are the same, right the way down to the positions of the hinges in the folding doors.

10. In any event, it would have been somewhat unusual if the shopfront had been taken out and replaced after the security shutter, shutter box and guides had been installed on 10 March 2012. The photograph is sufficient evidence to confirm that this did not happen.
11. The Council has not refuted the appellant's version of events or produced any evidence (for example, dated photographic evidence) of its own to point to a different scenario for the shopfront or the shutter. The third party is aware of the arson attack on this restaurant and offers no contradictory evidence in respect of ground (d). There is no basis on which to question the validity of the appellant's case. It seems to me on the balance of probabilities that the solid external roller shutter was installed on 10 March 2012 and that the shopfront was installed at some point before 1 March 2012.
12. Enforcement action could have been taken at any time during the period of four years beginning on 10 March 2012 in the case of the solid external roller shutter and beginning on an unidentified date before 1 March 2012 in the case of the shopfront. However, enforcement action was not taken against either of those building operations until 24 March 2016, by which time it was too late to do so in respect of both of them. The appeal has therefore succeeded on ground (d). The corrected enforcement notice has been quashed.

Andrew Dale

INSPECTOR