
Appeal Decision

Site visit made on 24 January 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 20 February 2017

Appeal Ref: APP/G5750/C/16/3161205

Land at 30-32 Woodgrange Road, Forest Gate, London E7 0QH

- 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 Mehboob Khaliq of MK Bros against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 23 September 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of two canopies.
 - The requirements of the notice are:
 1. Remove the canopies.
 2. Remove from the site all debris arising from compliance with the above step.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice upheld

Reasons

1. The ground of appeal is that planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, relating to the character of the streetscene, the impact on visual amenity and the outlook along a key linear gateway. However, the appeal site is within the Forest Gate Conservation Area. Although the substantive reason for issuing the enforcement notice makes no reference to this, I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area. I therefore consider that the main issue raised by this appeal is whether the two canopies preserve or enhance the character or appearance of the Forest Gate Conservation Area. I shall subsume the Council's reason for issuing the enforcement notice in my consideration of that main issue. Both the appellant and the Council make specific reference to the effect of the canopies on the character and appearance of the conservation area in their evidence, and I am therefore satisfied that no party would be prejudiced by this approach.
 2. The Forest Gate Conservation Area Appraisal and Management Plan (Conservation Area Appraisal) explains that the special architectural and historic interest of the conservation area derives from a number of factors, including the historic fabric, plot and grain as well as the clearly defined and enclosed linear layout. The overall character and appearance of the
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- conservation area is in part dictated by plot size, with the earliest plots being narrow but deep. This pattern was continued into latter development in the Victorian period such that much of the conservation area has a vertical emphasis to the built form, albeit this has been somewhat diluted by the introduction of post-war buildings with a predominantly horizontal emphasis.
3. The Conservation Area Appraisal divides the character and appearance of the Forest Gate Conservation Area into a number of distinct character areas. The appeal site falls within Area 16. This character area is effectively formed of two substantial buildings, one being in the Art Deco style and known as "Burton's building". The other, Nos. 28-38 Woodgrange Road, includes the appeal site. This four storey building is part of a post-war redevelopment and comprises a parade of shops at ground floor level with residential above. The Conservation Area Appraisal indicates that the building does not make a positive contribution to the character of the centre.
 4. As well as being within the Forest Gate Conservation Area, the appeal site falls within Forest Gate Town Centre. The Council explain that in 2008 a publicly funded regeneration project delivered enhancements to the appearance of Victorian buildings within Forest Gate Town Centre. More recently, the Council has undertaken a 'Linear Gateway project' that seeks improvements to the quality of Forest Gate Town Centre by tackling breaches of planning control, untidy frontages and unauthorised signage. The enforcement notice subject to this appeal was issued as part of that project.
 5. The appeal property comprises two former retail units now amalgamated into a single unit with a substantial frontage within the Primary Shopping Frontage of Forest Gate Town Centre. The two canopies broadly reflect the position of the previous two retail units and the clear division between the two canopies assists in retaining some semblance of the character of the conservation area in terms of the historic plot size. I am also mindful that the host property is a relatively modern four storey building with a strong horizontal emphasis. In that context, although not in keeping with the vertical emphasis demonstrated by older buildings in the conservation area, I am satisfied that the two canopies are not excessive in size and possess a physical and visual affinity with the host building.
 6. The two canopies, which were deployed at the time of my site visit, are constructed of a plastic-type material that is dark red in colour but with prominent structural components in a starkly contrasting silver colour. These are poor quality materials that detract from overall character and appearance of the Forest Gate Conservation Area. In this respect, even in the context of a relatively modern building that does not itself make a positive contribution to the character and appearance of the conservation area, the use of poor quality materials such as this is not consistent with the objectives behind the 'Linear Gateway project' in terms of seeking to improve the quality of Forest Gate Town Centre.
 7. I am mindful that canopies are a feature that is found on many shopfronts in Forest Gate Town Centre. As such, canopies form an established part of the character and appearance of the Forest Gate Conservation Area and I noted several examples during my site visit, both deployed and retracted. I also acknowledge that in some respects the canopies subject to this enforcement notice accord with the Council's Supplementary Planning Guidance Note:

Shopfront Design Guide (April 2002) which, in relation to 'Blinds and Canopies', indicates that the shape and size of the canopy should relate to the structural form of the shop unit and that the material used should be able to withstand weathering. Nevertheless, by reason of the poor quality materials used and irrespective of any ability to withstand weathering that they may possess, the two canopies subject to the enforcement notice have a negative effect on the character and appearance of this conservation area.

8. I conclude that the two canopies fail to preserve or enhance the character or appearance of the Forest Gate Conservation Area. I therefore conclude that the breach of planning control conflicts with Policies 7.1, 7.4, 7.6 and 7.8 of The London Plan; Policies S6, SP1, SP2, SP3, SP5 and SP7 of the London Borough of Newham Core Strategy, and the emerging Policy SP8 of the Pre-adoption Detailed Sites and Policies Development Plan Document. These policies indicate, amongst other things, that within linear gateways development will be supported where the principles of good urban design are expressed to positively contribute to the street scene, and require that development conserves and enhances designated heritage assets. The canopies also fail to accord with the importance attached to good design in the National Planning Policy Framework (Framework).
9. For the reasons given above, I consider that the canopies for which planning permission is sought fail to preserve or enhance the character or appearance of the Forest Gate Conservation Area. In terms of the Framework, the harm to the character and appearance of the conservation area as a whole can be described as "less than substantial" harm to the significance of the heritage asset. Nevertheless, given the statutory duty, that harm carries considerable importance and weight. No public benefits have been advanced to weigh against that harm. That harm is sufficient reason by itself to refuse planning permission on the deemed application.

Other Matters

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the two canopies subject to the enforcement notice do not accord with the development plan. I must therefore consider whether there are any matters of sufficient weight to indicate that determination should be otherwise than in accordance with the development plan.
11. The appellant indicates that the retail unit sells perishable goods, including fruit, vegetables and meat, and that the canopies help to protect those goods. At the time of my site visit, no goods were displayed for sale on the pavement directly beneath the canopies and I have been provided with no evidence that this is routinely the case. Furthermore, I have been provided with no evidence to demonstrate that the perishable goods displayed for sale within the premises cannot be protected by other non-mechanical means or that the employment of mechanical means to protect these goods would be economically unviable for the business. I accept that the canopies may represent a sustainability benefit in terms of reducing energy requirements but I have been provided with no information to quantify any benefit in that respect. I therefore attach only

limited weight to the sustainability and economic benefits that might be gained by the retention of the canopies.

12. I have been referred to a decision made by the Council to grant planning permission for the installation of a canopy with roller shutter at No 109 Woodgrange Road, which is also within the Forest Gate Conservation Area and Forest Gate Town Centre. The appellant contends that the Council has been inconsistent in its decision making by granting planning permission in that case but then issuing an enforcement notice in relation to the canopies at the appeal premises.
13. There is, however, a significant difference between these two developments. The canopy with roller shutter at No 109 Woodgrange Road is intended to be used for security purposes when the shop is closed, rather than being deployed to protect produce displayed for sale when the shop is open during normal shopping hours. The canopy proposed at No 109 Woodgrange Road is therefore intended to serve a different purpose to those at the appeal premises and consequently the impact upon the conservation area is also different. Consequently, on the information available to me, I am not persuaded that the decision made by the Council in respect of No 109 Woodgrange Road serves as a precedent that justifies planning permission being granted for the canopies at the appeal premises.

Conclusion on the ground (a) appeal

14. I find that the two canopies subject to the enforcement notice are contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.
15. Accordingly, the appeal on ground (a) fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

17. The appeal is dismissed and 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.

Paul Freer

INSPECTOR