
Appeal Decisions

Site visit made on 28 February 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 14 March 2017

Appeals A-H: APP/V2004/C/16/3154118, 3154120, 3154121, 3154122, 3154123, 3154124, 3154125 & 3154126
550 Holderness Road, Hull HU9 3ES

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr D Richardson, Mr J Segal, Mr J M Wood, Mr M Downs, Ms K Coleman, Mr S Pollard, SKP Restaurants and Mr J Wood against an enforcement notice (Notice 1) issued by the Kingston upon Hull City Council.
- The enforcement notice, LPA Ref: 16/01271/ENFAA/13/00376/BREACH, was issued on 3 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of a new shop front.
- The requirements of the notice are to:
 - (i) Remove the shop front; and,
 - (ii) Install a replacement shop front which matches the design and proportions of the previous shop front as shown on Photograph 1 attached to the notice.
- The period for compliance with the requirements is two months.
- Appeal A is proceeding on the grounds set out in Section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered. Appeals B-H are proceeding solely on ground (f) as the prescribed fees have not been paid within the specified period, thus the applications for planning permission deemed to have been made under Section 177(5) of the Act as amended do not fall to be considered in respect of those appeals.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal I: APP/V2004/C/16/3154132
550 Holderness Road, City of Kingston upon Hull HU9 3ES

- 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 D Richardson against an enforcement notice (Notice 2) issued by Kingston upon Hull City Council.
- The enforcement notice, LPA Ref: 16/01271/ENFAPP/13/00376/BREACH, was issued on 3 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of railings around the forecourt over 1 metre in height.
- The requirements of the notice are to reduce the height of the railings to no more than 1 metre in height from ground level.
- The period for compliance with the requirements is two 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.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Matters Concerning the Notices

1. Both notices contain an incorrect citation in respect of the allegation that there has been a breach of planning control. They refer to paragraph (a) of Section 171(A)(1) of the Town and Country Planning Act 1990 (The Act) whereas the correct citation should be under Section 171A(1)(a). I do not consider that this has caused any prejudice or injustice to either party, thus I shall use the powers available to me under Section 176(1) of The Act to correct the notices accordingly.
2. In addition, Notice 2 is wrongly formatted, and starts at Section, or paragraph, 5, with two sections numbered 8. Again no prejudice or injustice would be caused by appropriate correction using the powers available to me.

The Appeal Site and Background

3. The appeal site comprises a mid-terrace two-storey property, and its forecourt, in a row of ten located on the south-eastern side of Holderness Road between Faraday Street and Telford Street. Three of these properties (Nos 542-546 even) are in sole residential use, with small front gardens, but the remainder have ground-floor commercial or retail uses and first-floor flats. The appeal property, No 550, is in use as a hot food takeaway (Pollard's Plaice Fish Restaurant) with a residential flat above. No 552, to the north-east is in similar use, whilst the adjoining property to the south-west is a hairdressing salon. The three residential properties have distinctive two-storey bays to the front, with pentagonal hipped roofs. The appeal property and its neighbour at No 548 have similar first-floor projections over the ground-floor shop units, as do Nos 536-540 (even).
4. The appeals concern the installation of a new shop front and the erection of railings around the forecourt area of the property. The shop front is formed of a series of uPVC windows above a low wooden plinth, with two large windows on the front and smaller windows on angled side sections. The doorway has been repositioned to the left-hand side, when viewed from the front. The railings are set on low timber structures of varying height to ensure a level top around the slightly sloping forecourt.
5. The appeal site lies within the Holderness Road East Conservation Area, which was designated in 2004.

APPEALS A and I ON GROUND (a)

Main Issues

6. The main issue in these appeals is the effect of the development on the character and appearance of the host property, the surrounding area and the street scene, having regard to the site's location in the Holderness Road East Conservation Area.

Reasoning

7. The character of the area surrounding the appeal site is mixed, with residential and commercial uses bordering a busy dual carriageway road that forms one of the main routes into the city centre from the east, and a large public park opposite. Built development is mostly two-storey in scale with terraces

- ribboning the road on its south-eastern side, and further streets of similar properties, in residential use, running away behind in a densely developed grid pattern. In terms of appearance, the terraces, and their architectural detailing and style, present a pleasing rhythm albeit that ground-floor shop fronts of a mix of styles and materials form a detracting visual feature. Mature deciduous trees in the park and alongside the road, including in the central reservation, add to the visual quality of this part of the Conservation Area.
8. The appeal property is part of a Victorian terrace that has considerable visual quality, with the two-storey front bays being of particular architectural merit, especially in the three houses that lie to the south-west. Fine detailing around their windows and doorways adds to their quality and style. Such detailing has, however, been lost in the other nearby properties where ground-floor shop or commercial units exist and there are no examples of traditional shop fronts, with stall risers and pilasters supporting a fascia, anywhere in either this terrace or that to the south-west, where further retail and commercial uses can be seen.
 9. Dealing firstly with Appeal A, the Council contend that the new shop front detracts from the character and appearance of the Conservation Area and also that of the host building. Whilst accepting that previous unsympathetic alterations have been carried out they contend that the present shop front is not an improvement and is of poor quality and design, bearing little resemblance to a traditional shop front, lacking pilasters and using inappropriate materials. It also relates poorly to the upper floor windows which provide a strong vertical emphasis to the front elevation, as the new windows, doorway and fascia are disproportionately sized and positioned. Therefore the development fails to accord with relevant policies in the Hull CityPlan (*sic*) (HCP).
 10. Pertinent policies in the HCP include Policy BE1, which seeks high standards of design for all development; Policy BE5, which deals with the principles of altering property; Policy BE11, which requires, amongst other things, shop front development to be of a good standard of design and materials and be well related to the building and its surroundings; and Policy BE18, which states that Council will have special regard to preserving or enhancing the character or appearance of designated Conservation Areas. The Council also refer to Policy S1, but this is a more general policy relating to the provision of shopping and related development and is not directly applicable to the development before me save that it also requires consideration of design. In addition, SPG Note 9 "Designing a shop front" (SPG 9), adopted in 2000, gives detailed design advice in the light of policies BE1 and BE11. The HCP was adopted in May 2000 and is therefore of some age. Nevertheless the general thrust of relevant policies is still applicable in the context of the policy contained in the National Planning Policy Framework (The Framework), thus they attract significant weight in the context of these appeals.
 11. The shop front that has been installed does not meet the design principles for a traditional shop front set out in SPG 9, as shown in Figure 9.2 of that document, although it does contain some elements, including a low stall riser, transoms and mullions on the windows, and a fascia, albeit that the use of uPVC materials for the fenestration, and the size of the front windows and the fascia are visually jarring to some extent. However, the development has to be

assessed in the context of both that which preceded it, as shown on the photograph attached to the enforcement notice, and also neighbouring shop fronts and others in the vicinity.

12. In this respect, the new shop front causes, in my view, minimal additional harm. The fascia is of a similar size to that which previously existed, and the windows are also of a comparable scale, albeit that they are taller as the previous shop front had a higher brick stall riser either side of the doorway. Materials have been altered, with the use of uPVC rather than wood, but this matches that used at No 548, and has a better appearance than the aluminium windows in No 552 on the other side. The vertical emphasis of the enlarged windows matches those in the flat above better than those previously installed.
13. The Council appear to be seeking the re-installation of a more traditional shop front, in line with their guidance document SPG 9, but the previous shop front displayed little if any resemblance to such a shop front, and reinstatement of a similar design would not overcome the harm suggested by the Council in relation to the present installation. I am also mindful of the fact that none of the other shop fronts in this, or the neighbouring terrace to the south-west, are of a traditional design, and many are significantly more incongruous in visual terms. Therefore I do not consider that the new shop front creates any additional material harm in terms of the character or appearance of the host property, the surrounding area or the street scene. It thereby at least preserves the character and appearance of this part of the Holderness Road East Conservation Area, and meets the relevant policy in The Framework.
14. Turning to Appeal I, the railings enclose the forecourt in front of the new shop front and, to some extent, divert attention away from the new installation through the screening of direct views. I noted that the railings are of about 1.27m in height, thus they are 0.27m higher than that normally permitted under the terms of Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO). However, they are of a similar height to the railings along the facing edge of No 546, and I saw that similar enclosures of forecourts at Nos 518, 520 and 522, including other hot food takeaways, are also slightly above the normally permitted height. That at No 534, a restaurant, complies with the provisions of the GPDO.
15. Railings are therefore an established feature of this section of Holderness Road, and whilst those at the appeal property are slightly higher than others in the vicinity, they match the height of the nearest comparable enclosure at No 546. A reduction in height, as required by Notice 2, would have no noticeable effect in the overall context of the area or in respect of the visual integrity of the appeal property.
16. My conclusion on these appeals is that neither development materially harms either the character or appearance of the host property, the surrounding area and the street scene. The character and appearance of the surrounding part of the Holderness Road East Conservation Area is thereby preserved. The developments accord with relevant policies in the HCP and do not materially conflict with those in The Framework. It follows that planning permission will be granted and that there is no need for me to consider the appeals against Notice 1 on ground (f).

Conditions

17. The Council have not suggested any conditions in the event of the appeals being allowed and planning permission being granted and I do not consider that any are necessary as the developments are largely complete. It may be that a finishing treatment for both the wooden plinth under the windows and the supporting base of the railings would be beneficial but I would expect the appellants, as owners, to provide this for maintenance reasons. In the absence of any specific request by the Council I see no reason for conditions to secure such treatment.

Conclusions

18. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, subject to the enforcement notices being corrected in the terms set out above. The appeals on ground (f), against Notice 1, do not, therefore, need to be considered.

FORMAL DECISIONS

Appeals A-H: APP/V2004/C/16/3154118, 3154120, 3154121, 3154122, 3154123, 3154124, 3154125, & 3154126

19. The enforcement notice is corrected by the deletion, in Section 1, of the words "of section 171(A) (1)" and the substitution therefor of the words "of Section 171A(1)".
20. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the installation of a new shop front on land at 550 Holderness Road, Hull HU9 3ES.

Appeal I: APP/V2004/C/16/3154132

21. The enforcement notice is corrected by:
- (a) the deletion of the Section numbers 5-10 and the substitution therefor of the numbers 1-7; and,
 - (b) the deletion, in Section 1, as re-numbered, of the words "of section 171(A) (1)" and the substitution therefor of the words "of Section 171A(1)".
22. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the installation of railings around the forecourt over 1 metre in height, on land at 550 Holderness Road, Hull HU9 3ES.

Martin Joyce

INSPECTOR