
Appeal Decisions

Site visit made on 14 March 2017

by D H Brier BA MA MRTPI

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

Decision date: 17 March 2017

Flames Pizzeria, 10 Main Road, Windermere, Cumbria LA23 1DY

- 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 Flames Pizzeria against 2 enforcement notices issued by the Lake District National Park Authority on 18 July 2016.
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Appeal A Ref: APP/Q9495/C/16/3155614

- The breach of planning control as alleged in the notice is the material change of use to a hot food takeaway.
- The requirement of the notice is permanently cease the use of the property as a hot food takeaway.
- The period for compliance with the requirement is 3 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 dismissed.

Appeal B Ref: APP/Q9495/C/16/3155615

- The breach of planning control as alleged in the notice is the application of cladding to the front (roadside) elevation of the building.
- The requirement of the notice is permanently remove the cladding below the ground floor display window and surrounding the entrance door on the roadside elevation of the building.
- The period for compliance with the requirement is 3 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 dismissed.

Background and Main Issues

The Appeals Site

1. Both appeals concern the same property which lies in the Windermere Conservation Area.

Appeal A – Use of the Appeal Premises

2. According to the appellant, the premises have been used as a restaurant and takeaway for over 20 years and, as such, the use is a mixed A3 and A5 use. However, no appeal has been made on grounds (c) or (d). Furthermore, apart
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from a reference to the previous use of the premises having been a Thai restaurant and takeaway, the points raised have not been elaborated upon, nor has any evidence which could have helped to shed more light on these matters been put forward. In these circumstances, mindful that the onus on proving points of this nature lies with the appellant, I am not inclined to attach great weight to this part of the appellant's case.

3. I saw that the premises contain tables and chairs as well as a serving counter and the fascia sign is annotated "take out eat in". Moreover, at the time I carried out my site inspection people were seated at one of the tables and appeared to be consuming food. But, while provision is clearly made for some customers to eat within the premises, no indication of the extent of this has been given, and the area occupied by the tables seemed to be relatively modest.
4. In the absence of any information regarding either the proportion of customers who choose to eat in, or how much of the business's turnover this accounts for, it is difficult for me to take a view as to whether the A3 element amounts to a main use in its own right, as opposed to being ancillary to the A5 use. I am not satisfied therefore that the allegation that forms the subject of Appeal A is incorrect or that the notice is defective in this respect.

Main Issues

5. There are 2 main issues. Firstly, whether the living conditions of the occupiers of the nearby residential properties would be adversely affected. (Appeal A). And, secondly, whether the character and appearance of the host property and the conservation area would be adversely affected. In so saying, I am mindful that section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

Planning Policies

6. As noted in the reasons for issuing the notice that is the subject of Appeal A, one of the core planning principles identified in paragraph 17 of the National Planning Policy Framework (The Framework), is securing a good standard of amenity for all existing and future occupants of buildings. The Authority's policies are contained in their Core Strategy (CS) and those 'saved' in their Local Plan (LP). CS Policy CS10 supports design that reinforces the importance of local character. Likewise, Policy CS11 states that the design of development should avoid adverse effects on the special qualities of the National Park. The statutory requirement referred to in the preceding paragraph is reiterated in LP Policy BE11 and CS Policy CS27.

Appeal A

7. The appeal property is in Windermere's town centre. Although this part of Main Road is flanked by commercial uses at ground floor level, there is living accommodation above some of them, including No.12 next door. In addition, the neighbouring properties at the rear in College Road, some of which are relatively close to the appeals property and border on to a yard area immediately to the north of it, are in residential use.
8. Despite the amount of residential property in the vicinity of the appeal premises, my impression was that the locality is very different from a quiet

residential suburb. For instance, Main Road is one of the main routes in the town centre's traffic circulation system and across the way, fronting onto Crescent Road is a public house. Because of this, there is likely to be a greater degree of activity than would normally be experienced in a wholly residential area.

9. That said, in my experience, takeaways such as the one in question can cause problems for nearby residents especially if they operate relatively late at night as appears to be so in this instance. The comings and goings of customers, general conversation and associated activity can all be sources of disturbance, especially if this coincides with the times when residents ought reasonably to be able to enjoy a period of relative peace and quiet. Judging from the comments made by the objectors, this would seem to be the case here. I therefore regard the concerns raised as weighty considerations.
10. Good neighbourliness is one of the yardsticks for assessing development, a tenet that underpins the guidance in paragraph 17 of The Framework. My conclusion is that the circumstances involved in this particular instance are such that the living conditions of nearby residents would be adversely affected. As such, the development in question would be contrary to the relevant provisions of The Framework.
11. I am mindful that the appellant has indicated a willingness to accept conditions appertaining to the extractor system, as well as one limiting the opening hours of the premises so that food would not be served after midnight. However, neither these, nor any other conditions, would be sufficient to overcome my concern.

Appeal B

12. The cladding in question comprises light coloured tiling that has been applied to the front part of the premises below the shop front and alongside its entrance, including some on top of the quoins on the corner of the building. This treatment, and in particular the light colour of the tiles, is in sharp contrast to the darker hue of the traditional stone that is a characteristic feature of the conservation area that contributes to its visual distinctiveness and special quality, and which is in evidence on the main body of No.10.
13. I accept that lighter colours are evident in the local streetscape as the appellant's photographs indicate. Be that as it may, the cladding appears as a visually discordant element feature wholly unsympathetic to the appearance of the host building which, I have read, is identified as a building of special character in the Conservation Area Appraisal and Management Plan.
14. The appeal premises occupy a prominent position alongside one of the main thoroughfares in the conservation area so that the presence of the cladding is readily apparent to passers-by. I regard it as a strident and visually discordant feature that fails to respect the local character. Rather than preserving or enhancing the character or appearance of the conservation area, the works have adversely affected the special quality of the area and have also detracted from the appearance of the host building. As such, I find the disputed development contrary to the relevant provisions of the CS and the LP. As was the case with Appeal A, I do not consider my concern could be overcome by conditions.

15. Paragraph 132 of The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset such as a conservation area, great weight should be given to the asset's conservation. As the scale of the development in question is in itself relatively modest, it has resulted in less than substantial harm to the significance of the conservation area as a whole. In such circumstances paragraph 134 advises that this harm should be weighed against the public benefits of the proposal. In this case, the benefits that have accrued from the disputed development appear to me to be primarily private ones. As a result, they do not outweigh the harm to the acknowledged significance of No.10, or that of the conservation area.

Overall

16. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed applications.
17. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations which have led me to my conclusions.

Formal Decisions

Appeal A Ref: APP/Q9495/C/16/3155614

18. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/Q9495/C/16/3155615

19. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector