

## Appeal Decision

Site visit made on 21 February 2017

**by Chris Preston BA(Hons) BPI MRTPI**

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

**Decision date: 22 March 2017**

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**Appeal Ref: APP/U5360/C/16/3158421**  
**83-85 Broadway Market, London E8 4PH**

- 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 Mustafa Altun against an enforcement notice issued by the Council of the London Borough of Hackney.
  - The enforcement notice, numbered 2016/0109/ENF, was issued on 09 August 2016.
  - The breach of planning control as alleged in the notice is: Without planning permission the operational development comprising of the alterations to the shopfront involving the installation of a projecting boxed fascia and erection of fixed metal framed display shelves outside the shop at ground floor level.
  - The requirements of the notice are: (i) Remove the unauthorised projecting timber boxed fascia from the Property; (ii) Remove the external display shelves from the front of the unit at ground floor level of the Property; (iii) Make good any damage resulting from compliance with the requirements of the notice; and (iv) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
  - The period for compliance with the requirements is three months from the date the notice takes effect.
  - 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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### Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Procedural Matters

2. For clarity, the enforcement notice to which this appeal relates was served in relation to operational development, specifically the erection of a new timber fascia and shelving units that have been fixed to the shopfront. My decision relates to those matters only. Interested parties have referred to the fact that trading appears to be taking place from the pavement to the front of the shop and, at the time of my visit, a number of movable trolleys/ vegetable racks were located outside the shop.
  3. It is possible that trading from the pavement would amount to a material change of use of highway land to retail sales but the lawfulness, or otherwise, of trading from the pavement is not a matter for me to determine. Similarly, the display of advertisements is regulated by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Any comments related to advertisements fall outside the scope of my decision.
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### **The Appeal on Ground (a)**

4. The reasons for issuing the enforcement notice, as listed at section 4, refer to the effect of the development on the 'setting' of the Broadway Market Conservation Area. In my experience, use of the word 'setting' in relation to a heritage asset normally relates to development that sits outside the designated boundary but which may have an effect on how it is viewed or appreciated. However, in this case, the site is located within the boundary of the Conservation Area and I consider that the main issue is the effect of the development on the character and appearance of the property and the Broadway Market Conservation Area.
5. The appeal site is located at the end of a terrace of properties at Broadway Market, directly adjacent to the junction with Lansdowne Drive. The property is in a prominent position at the entrance to the local shopping parade, being visible as one approaches along Lansdowne Drive and from the footpaths which approach Broadway Market from the public park at London Fields.
6. The Conservation Area boundary is relatively tightly drawn and includes the commercial properties along Broadway Market and a number of primarily residential streets which branch off from it, including Dericote Street, Croston Street and Lansdowne Road. No Conservation Area Appraisal has been submitted but the streets within the designated boundary appear to date from the early to mid-nineteenth century, being an example of residential expansion alongside a principle, more commercially focussed thoroughfare. The terrace in question retains a pleasing Georgian symmetry at first floor level with two windows per unit and recessed rectangular brick detail within the parapet wall above each window. The use of timber sash windows and stock bricks adds to the character of the row. Consequently, the terrace conforms to the general pattern of development within the Conservation Area in terms of its age and the design at first floor level makes a positive contribution to the character of the area.
7. At ground floor level, the adjacent properties at Nos 75 to 81 have, by and large, retained shopfronts of traditional proportions and design, with window displays set to the side of entrance doors, modest fascias and low stall risers. In contrast, the alterations to the shop front at the appeal site pay no regard to the traditional form or proportions of the building. The timber fascia extends across Nos 83 and 85 and the large single span of the structure disregards the fact that the two properties would, at one time, have been separate buildings each with an individual shop front. Although not entirely clear it appears that remnants of the original shop front remain, hidden beneath the current fascia and frontage.
8. Moreover, the fascia projects from the front of the shop by a significant amount and that degree of projection is particularly noticeable due to the prominent location of the building on the corner of two streets. The timber boards that have been used appear to be of the kind normally manufactured for timber decking and the materials give a somewhat makeshift appearance that is at odds with the character of the building and the painted timber shopfronts that are evident on adjacent properties.
9. The fascia is open on its underside and it doubles as a 'hood' or cover for the fixed metal shelves that have been physically attached to the shopfront. The shelving extends across the majority of Nos 83 and 85, to the side of the

entrance door and none of the glazing associated with the original shop windows of either property remains visible. The loss of a traditional window display is harmful, of itself, and the shelving has further eroded the individual character of each property. Whilst the two properties are in single ownership it does not follow that the individual character of each building should be lost through any alterations. The symmetry of the row is an important part of its character and the wider character of the Conservation Area and the substantial fascia and shelving units have significantly eroded the symmetry and individual character of each unit.

10. Additional canopies have been attached to the extended fascia and the visual effect of the development as a whole is of a large, bulky, cluttered and unsympathetic alteration. The appellant maintains that the current alterations are an enhancement on the previous shopfronts. I have noted the photographs which depict the shop fronts from 2008 onwards. In 2008 Nos 83 and 85 appear to have been in separate ownership and an individual shop front was retained for each. Various fascia signs and projecting canopies appear to have been added between that time and the point at which the development before me was undertaken. It is not clear if advertisement consent and/or planning permission was required or obtained for any of those alterations.
11. Consequently, in the absence of any information to suggest that the previous alterations were lawful I am not satisfied that the comparison between the current shop front and the previous incarnation is necessarily appropriate. In any event, whilst some of the previous alterations appear to have been less than sympathetic, the photographs depict a degree of separation between the sign and canopy at No 83 and the shopfront at No 85, such that each property retained a degree of individual identity. In comparison, the current fascia and shelving extends across both shopfronts and the fascia is significantly more bulky and prominent in the street scene by virtue of its overall scale, the degree to which it projects from the shopfront and the use of incongruous materials. Accordingly, reference to the previous shop fronts does not alter my conclusions on the harm caused by the development before me.
12. For the reasons set out, the development has caused harm to the character and appearance of the property and the Conservation Area, contrary to the aims of policy DM28 of the Hackney Local Development Framework Development Management Local Plan (2013) (the DMLP) which states that development shall preserve or enhance the character and appearance of Conservation Areas and, amongst other things, that alterations and extensions should not upset the scale or proportions of buildings, should preserve characteristic features, and should not harm the architectural integrity of a building or the unity of a group of buildings or terrace.
13. For the same reasons, the development fails to conform to the aims of policy 25 of the Hackney Core Strategy (2010) (the CS) and the aims of section 12 of the National Planning Policy Framework (the Framework) with regard to the conservation of the historic environment. Where any harm to heritage assets would be less than substantial, paragraph 134 of the Framework requires that harm to be weighed against any public benefits of the proposal. Although the development has had significant and harmful impact in the immediate vicinity, the effect is localised and is less than substantial in terms of the Conservation Area viewed as a whole. However, no public benefits have been put forward.

14. In addition to the above, the development represents poor design which is contrary to the aims of policy 24 of the CS, policy DM1 of the DMLP, policies 7.4 and 7.6 of the London Plan (2015) and the aims of section 7 of the Framework. In particular paragraph 64 of the Framework notes that planning permission should be refused for poor design that fails to take the opportunities available for improving the character and quality of an area.

#### *Other Matters*

15. The appellant has put forward an alternative scheme in the event that I was to conclude that the development was unacceptable. The scope of an appeal on ground (a) is limited. In effect, planning permission is sought for the development as built. Under the terms of section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) I may grant planning permission for the whole or any part of the matters stated in the enforcement notice. It is not open to me to grant planning permission for a different scheme and any application for an alternative form of development would need to be submitted to the Local Planning Authority. On the details provided it seems to me that the suggested amendments would represent a different scheme as opposed to being part of the current development. In effect, the current fascia would need to be removed and a new fascia erected in its place. Consequently, I am not satisfied that it would be open to me to grant planning permission for the development having regard to the limit of my powers, outlined above.
16. Even if I were wrong on that point, the suggested alternative is not vastly different to the current development and would not overcome my concerns regarding the impact of the alterations on the individual character of the properties in question, the inappropriate use of materials and the bulky appearance of the projecting fascia, albeit in slightly reduced form.
17. As described in the procedural note above the question of whether trading from the pavement amounts to a material change of use for which planning permission is a matter that falls outside the scope of my decision. As such, the effect on pedestrian safety of the way in which the pavement, beyond the immediate confines of the shopfront, is used is not relevant in the determination of this appeal. The fixed metal shelves that are attached to the shopfront have little effect on the ability of pedestrians to move freely past the site and, having regard to the development for which planning permission is sought, I am satisfied that there has been no undue harm to pedestrian safety.

#### **Conclusion**

18. For the reasons given above, I conclude that planning permission should not be granted for the development due to the harm caused to the character and appearance of the property and the Conservation Area. Therefore, I shall dismiss the appeal and uphold the notice.

*Chris Preston*

INSPECTOR