

Appeal Decisions

Site visit made on 27 February 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 24 March 2017

Appeal A and B Refs: APP/W4705/C/16/3153925 and 3153926 Land at 912-914 Leeds Road, Bradford BD3 8EZ

- 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 Act'].
 - The appeals are made by Mrs Sonia Kanda (Appeal A) and Mr Naresh Kanda (Appeal B) against an enforcement notice issued by Bradford Metropolitan Borough Council.
 - The enforcement notice was issued on 26 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of four externally mounted roller shutters with shutter boxes and associated guide rails on the front and side elevations of the building.
 - The requirements of the notice are to:
 - (1) Remove the externally mounted roller shutter, shutter boxes and associated guide rails.
 - (2) Remove all resulting materials, and
 - (3) Make good and damage caused to the building.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in Appeal B.
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Decisions

1. Appeal A: 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.
2. Appeal B: The appeal is dismissed and the enforcement notice is upheld.

Ground (c) - Appeals A and B

3. In appealing on this ground, the onus is firmly on the appellants to show, on the balance of probabilities, that the alleged matters do not constitute a breach of planning controls. The definition of '*development*' includes carrying out building operations on land. Section 55(1A) states that for the purposes of the Act '*building operations*' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. Section 57 (1) of the Act states that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land. Section 171A (1) subsection (a) and (b) state that the carrying out of development without the required planning permission or failure to comply with any condition subject to which planning permission has been granted constitutes a breach of planning control.
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4. The notice targets operational development (s 171A(1)(a)). There is broad agreement between the appeal parties that the installation of four roller shutters together with associated equipment on the front and side elevations of the appeal building had occurred by the time the notice was issued. Given the nature and scale of the building work, I consider that the installation of the roller shutters amounts to a single building operation firmly falling within the meaning of s 55(1) and 55(1A) of the Act.
5. There is no dispute that the roller shutters and boxes significantly alter the external appearance of the building given their design and layout. The projection and protrusion caused by the shutter housing and guide rails are noticeable from various vantage points. Clearly, the four externally mounted roller shutters together with associated apparatus materially alter the external appearance of the whole building. The exception in s 55(2)(a)(ii) does not apply. Consequently, planning permission is required for the alleged matters unless, of course, the appellants show otherwise.
6. The appellants' submission is that planning permission already exists for the roller shutters and associated equipment. The permission relied upon was granted on 6 December 2011 for the construction of retail and residential development incorporating three A1 retail units and three apartments, subject to 10 conditions¹ ['the 2011 permission']. Condition 2) specifies the approved plans including drawing no. 11019 02 rev B. The purpose of the condition is to set out the terms upon which planning permission is granted. The latter specifies that the external roller shutters will fitted behind the sign. Condition 4) states the following: *Prior to the commencement of the development hereby permitted full details of all security shutters shall be submitted to and approved in writing by the Local Planning Authority. The details should clarify the design, method of fixing and finish of the proposed shutters. The development shall then be complete [sic] in accordance with the approved details.* The reason is to ensure shutters of an acceptable design are used in order to avoid causing harm to visual amenity and to comply with policies UR3 and D1 of the Replacement Unitary Development Plan and the adopted supplementary planning document Shopfront Design Guide.
7. The wording of condition 4) is clear on its face and there is no conflict with condition 2), because its purpose is to control the nature, type and design of the proposed roller shutters. In practice, it requires roller shutter details to be submitted prior to commencement. The Council must formally approve the details and, clearly, this condition could only be formally satisfied once all roller shutter details were deemed sufficient in terms of design and visual amenity. The development must be carried out in accordance with the approved details. These being the basic criteria for compliance with the terms of the condition. It is perfectly reasonable to perceive that details of all roller shutters are required in order for the development to be acceptable in planning terms. It is quite reasonable and proper for a condition to be discharged by a succession of submissions for approval and, in my view, detail of four externally mounted roller shutters with shutter boxes and associated guide rails on the front and side elevations of the building falls within the scope of condition 4).
8. Now, the Council assert that roller shutter details have not been formally submitted and approved in accordance with procedures². The appellants do not produce any documentary evidence to show an application had been made to the planning

¹ Council ref: 11/04572/FUL.

² The Department's published Planning Practice Guidance indicates that requests for approval of further details required by conditions must be made to the local planning authority in writing, enclosing any relevant details (paragraph 032 reference ID: 21a-032-20140306).

authority. They claim details were verbally agreed with the building control inspector³ but provide no corroboratory evidence to support this claim. In any event, even if that is correct, condition 4) remains effective because the Council has not formally approved any security shutter details.

9. The appellants complain that the Council did not take enforcement action even though it had been aware of building operations on site. They continued with the installation of roller shutters in the expectation that these were acceptable. I do not believe any argument of legitimate expectation could be supported on the facts of this case, because there is nothing before me to indicate that roller shutter details pursuant to condition 4) had actually been submitted to the local planning authority for its written approval. Not to take initial action is not sufficient to fetter the proper exercise of the Council's statutory duties under the planning regime.
10. Drawing all of the points in the preceding paragraphs together, in all probability the subject roller shutter and associated plant and machinery do not benefit from planning permission. The building operations are unlawful because express planning permission has not been obtained. Therefore the alleged matters constitute a breach of planning control. I conclude ground (c) must fail.

Appeal A - ground (a) and the deemed application

11. The **main issue** is the effect of the development upon character and appearance of the host building and that of the street scene.
12. Policy D1 of the City of Bradford Replacement Unitary Development Plan ['the UDP'] 2005 sets out general design considerations. Policy D11 relates to gateways, policy UDP3 to quality built environment and policy UR3 relates to local impact of development. These local plan policies, saved by Direction of the Secretary of State, are broadly consistent with national policy found in section 7 of the National Planning Policy Framework ['the NPPF'].
13. Of relevance is Supplementary Planning Document ['SPD']: *A shopkeeper's guide to securing their premises*, adopted by the Council December 2012. This replaces section 6 of the Shop Front Design Guide SPD (2007). Although applications for planning permission need to be determined in accordance with planning policy in force at the time of the decision, the appellants argue that, assessed against the former SPD, the roller shutters comply with design guide for shop fronts. Section 6.2 of that guidance suggests that the Council will oppose the use of solid external shutters, and those of the perforated type will be treated as solid shutters due to their visual effect when in a closed position. The 2012 version of the SPD follows similar path and states, at section 2 Design Principle 2, there will be a strong presumption against the provision of solid external roller shutters and boxes to the principal elevation.
14. No. 912 - 914 is a modern addition to a commercial street. It comprises three retail units at ground floor and it has accommodation above. Although the surrounding area includes residential properties, the immediate vicinity is commercial in character.
15. In this location, the appeal site is prominently positioned. In combination with the colour and texture of the roller shutters, associated metal box and guiderails, the shutters and apparatus appear as prominent features readily apparent to passers-by when lowered. Although the shutter contains small perforations, the shop display is

³ Mr John Norfolk.

hardly visible when the shutters are lowered because of their design. Despite high specification of the shutters, the impression given is similar to a blank facade. The roller shutters are visually intrusive and the design and layout of the alterations harm the external appearance of the host building.

16. The appellant argues that the roller shutters allow natural light to penetrate and submit supporting photographic evidence. Nevertheless, the shutters make the front of the shops appear harsh and sterile and remove much of the active and visual interest that the shop windows create and contribute to the vitality and attraction of this gateway location. I find that the development has a visually harmful effect upon the quality of the street scene.
17. It may be the case that some kind of security measure is necessary to protect the units from crime and disorder. I am also cognisant of representations made by the occupier of no. 914 who says the unit has suffered from criminal damage. It is said that the frontage had to be replaced in February 2016. The Council recognises the importance of securing shop fronts and so its SPD aims to facilitate that objective by developing high quality shop fronts, especially in Gateway Road locations such as this. In contrast, the appellant does not demonstrate, to my satisfaction, that they have considered alternative designs. For example, laminated security glass and necessary frame strengthening, anti-shatter film or internal lattice and Brink Bind grilles as explained in the SPD at section 2.
18. The existence of similar roller shutters in the locality does not justify the development. The examples identified by the appellants either do not benefit from permission and are unauthorised, or were granted planning permission prior to the adoption of the revised SPD. In any event, each application should be considered individually. The presence of these other examples points to a need for such development to be controlled in the interests of safeguarding the appearance and visual interest of a designated Gateway Road. I am not persuaded that the Council is inconsistent in applying its own policies.
19. The need to meet property insurance requirements is a concern and the appellant was under the impression that the installed shutters were approved; there does not appear to be evidence of deliberate breach of planning controls. She is disappointed with the Council's handling of matters such as the retrospective planning application and subsequent enforcement action.
20. However, on balance, in my planning judgement the other considerations advanced whether taken individually or collectively do not outweigh my findings above. I conclude that the development has a materially harmful visual effect upon the character and appearance of the host building and that of the street scene. Accordingly, the scheme conflicts with UDP policies D1, D11, UDP3 and UR3, as well as national policy found in paragraphs 56, 64 and 69 to the NPPF.

Conclusions

21. Having regard to all other matters, I conclude that Appeal A and B on ground (c) should not succeed. I further conclude that Appeal A fails on ground (a). I have therefore upheld the enforcement notice and refused to grant planning permission on the deemed application as set out in my Decision above.

A U Ghafoor

Inspector