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# Appeal Decision

Site visit made on 30 May 2017

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 16 June 2017**

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**Appeal Refs: APP/X5990/C/16/3158936, 37, 38, 39 & 40**  
**Buildings and associated land, 8 Queensway, London W2 3RX**

- 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 appeals are made by Mr Bossel Achraf - Manorview Ltd (3158936), Mr Subramaniam Kamalamanathan (3158937), Ms/Mrs Angela Susan Davies (3158938), Mr Benjamin James Bourne (3158939), and Mr Leslie Robert Hardie (3158940) against an enforcement notice issued by City of Westminster Council.
  - The enforcement notice, ref.15/59011/0, was issued on 15 August 2016.
  - The breach alleged in the notice is without the requisite planning permission and within the last 4 years, the removal of the previous shopfront and its replacement with a fully openable folding shopfront as shown on the Photograph A attached to the notice.
  - The requirements of the notice are to:
    - (a) Remove the fully openable folding doors shown outlined by red lines on Plan A and Photograph A attached to the notice; and,
    - (b) Return the property to its previous condition by reinstating a shopfront with central double doors to match the design, materials, detailing and dimensions of the shopfront shown outlined by green lines on Photograph B attached to the notice.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the ground set out in section 174(2)(d) 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 the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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## Decision

1. The appeal is dismissed and the enforcement notice is upheld.

## Preliminary matters

2. I appreciate that appeals were originally made on ground (a) – that planning permission should be granted for the matters alleged in the enforcement notice. However, as noted in the heading above, the prescribed fee was not paid, and that ground of appeal, together with the deemed planning application have lapsed. As a result I am not able to consider the planning merits of the development.

## Background

3. The appeal property is a shop unit in a parade of similar units on the eastern side of Queensway, close to its junction with Bayswater Road. It is in lawful use as a café, for which planning permission was granted at appeal in November 2006.
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4. The shopfront subject of these appeals is aluminium framed, comprising 6 vertically proportioned panels with fanlights above. On the right-hand side<sup>1</sup> is a single door, which can be opened inwards independently, and is slightly wider than the other panels. The 5 panels to the left are in concertina form, and at the time of my visit were folded back against the structural reveal. About a metre behind this front there is an internal wall with decorative tiles in a middle-eastern style, with a wide central doorway. Thus, when the aluminium doors are folded back, a semi-external area is formed that is largely protected from the weather, where customers are able to sit, eat, drink, and smoke shisha.
5. In 2015 the Council refused a planning application for the retention of the shopfront and awning<sup>2</sup>. I note the application drawing<sup>3</sup> shows a different scheme from what now exists, in that there are 7 panels rather than 6.

#### **The appeals on ground (d)**

6. This ground is that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. In the case of the operational development alleged in this notice, in order to gain immunity from enforcement, the development must have been substantially complete at least 4 years before the issue date – that is, on or before 15 August 2012. In a ground (d) appeal – which is one of the ‘legal’ grounds – the burden of proof is on the appellants to show on the balance of probabilities that this is the case. This is on the basis that the appellant is in the best position to know what the development comprised and when it was carried out.
7. The appellants assert that the new shopfront was installed in 2012. However, they have provided no documentary or other evidence of this – for instance, in the form of instructions to the shopfront contractor, payments made, or contemporary dated photographs.
8. The Council have submitted photographs from April 2012 showing a different shop front to the premises, with central double doors. Again photographs from August 2014 show the same central double doors. The panels to either side of these doors do not appear to be hinged, or capable of folding back against the side walls.
9. Furthermore, the planning application form submitted in 2015 records that the installation works were started and completed in June 2013. This is inconsistent both with the appellants’ claim in their ground (d) submission, and the Council’s photographic evidence.
10. In appeals on legal grounds it is established law that if a Council have no evidence of their own, or from others, to contradict or make an appellant’s version of events less than probable there is no good reason to refuse (an appeal), provided the appellant’s evidence on its own is sufficiently precise and unambiguous to justify the case on the balance of probability.

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<sup>1</sup> Looking at the building from the street.

<sup>2</sup> Decision notice 15/06748/FULL, dated 14 September 2015.

<sup>3</sup> Drawing no. 10711/102 revision P1.

11. Given the lack of supporting material, and the considerable discrepancy between dates for carrying out the development provided by the appellants, I find their evidence both imprecise and ambiguous. On the other hand, the Council's evidence shows it to be likely that the new shopfront had not been installed by August 2014 – well within the 4-year 'window' before the enforcement notice was issued.
12. I therefore conclude that on the balance of probabilities the operational development enforced against was not substantially complete on or before 15 August 2012. The appeal on ground (d) therefore fails.

### **Conclusions**

13. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

*Stephen Brown*

INSPECTOR