

Appeal Decision

Site visit made on 7 June 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 19 June 2017

Appeal Ref: APP/H5390/C/16/3159709
87 Hammersmith Grove, London W6 0NQ

- 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 Diego Humberto Alfonso Celis against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 6 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a replacement metal shop front with bi-folding doors.
 - The requirements of the notice are:
 - a. Remove from the land the replacement shop front from the ground floor of the premises;
 - AND
 - b. Reinstall the timber shopfront to match that which was in place prior to the breach of planning control (as shown in the attached photograph).
 - The period for compliance with the requirements is within four (4) months of the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Preliminary matters

2. An appeal on ground (d) was made but subsequently withdrawn.
3. The appellant says he was misled as to the need for planning permission by other persons who installed the shopfront. On the information available I have no reason to disbelieve him. For the avoidance of doubt no question arises in this appeal of the development being intentionally undertaken as unauthorised.

Ground (a) and the deemed application for planning permission

Main Issue and Reasons

4. The main issue on this ground is the effect of the development on the character and appearance of the host property and surrounding area.
 5. The premises the subject of the notice are a ground floor commercial unit occupied as a café, in a three-storey mid-terraced building in a well-proportioned, tree lined, mainly residential road. No 87 and surrounding properties are in the Hammersmith Grove Conservation Area (CA). Nos 83 to
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- 115 (odd) form a Victorian terrace whose buildings have on the whole preserved the architectural details and materials used during their construction.
6. All properties in the terrace are locally listed and as such are non-designated heritage assets as defined in the National Planning Policy Framework (Framework). The effect of development on their significance should therefore be taken into account in determining applications for permission.¹
 7. Furthermore a duty exists, in considering the grant of planning permission with respect to buildings in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
 8. From the information supplied the pre-existing shopfront had a substantial wooden stall riser and three tall windows extending to fascia level. These features are repeated in the two units either side of No 87 as well as at Nos 95 and 107. These and the unit at 109 are examples of historical shopfronts that have been retained or at least altered using traditional or matching designs and materials.
 9. The frontage of the wine bar at No 111-113 has been modernised but retains the pattern of fenestration and the stall risers. The restaurants at No 103 and No 115 have no significant stall riser and have introduced full length double opening windows which are an incongruous feature. Both units have retained the use of wood which gives the frontages a texture and appearance more in keeping with the historic character of the terrace. Nos 91, 93, 97, 99, 101 and 105 have undergone alterations to the shopfronts. To a greater or lesser degree these have neither kept their original design or features, nor been replaced with replicas.
 10. There is some variation in appearance of the shopfronts and in my view several commercial units have struggled to maintain the rhythm and proportions inherent in the historic character of the parade. Apart from the instant case, I have been given no information as the planning status of any of the units or what, if any enforcement action has been contemplated. Nonetheless from what I saw, the traditionally designed timber shopfronts, although numerically deficient, form a strong, coherent and attractive feature within the terrace, and are an integral part of the historic and architectural interest of the CA.
 11. The new shopfront has metal framed bi-folding doors divided into four panels extending to ground floor level, and above the doors are two further glass panels. Removal of the stall riser and the insertion of the glass panels and surrounds have failed to respect the proportions of, and the materials used in, the pre-existing shopfront. The effect is out of keeping with the host building and the overall uniformity of shopfronts in the parade, and has caused significant harm to the qualities of this part of the CA. It is essential in my view that its character is not undermined by further development that is unsympathetic to it.
 12. The appellant points to damage to the pre-existing windows in the shopfront that in his view rendered the premises unsafe. He also refers to personal financial hardship that would prevent him from complying with the requirements of the notice. I sympathise with the financial difficulties that the appellant finds himself in, but neither this nor any of the other matters he

¹ See Paragraph 135 and Annex 2: Glossary. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).

raises, affects my assessment of the degree of harm due to the development, nor does it outweigh such harm.

Conclusion on ground (a)

13. The shopfront by reason of its design including its proportions and materials used, has substantially undermined the architectural and historic character of the host property, the character and appearance of the surrounding shopfronts and the wider street scene. It thus fails to preserve or enhance the character and appearance of the CA. The Framework gives considerable importance and weight to the desirability of preserving the CA, a designated heritage asset.
14. I therefore conclude that the development is contrary to Policy BE1 of the Council's Core Strategy: *Local Development Framework* 2011 in failing to create a high quality urban environment that respects and enhances its townscape context and heritage assets. It would also conflict with the Development Management Local Plan 2013, Policies DM G4 and DM G7, because it neither achieves a high quality shopfront that is in sympathy with the age and architectural style of its host building, nor preserves the character or appearance of the CA.
15. It also conflicts with the Planning Guidance: *Supplementary Planning Document* 2013, Policies 21, 22 and 24 in that the design and architectural detail of the alteration is unsympathetic to the age and style of the host building.
16. The appeal on ground (a) therefore fails.

Compliance period

17. There was no appeal on ground (g) but the appellant vividly draws attention the financial difficulties involved in changing the shopfront back to its original condition. I have no reason to disbelieve, nor does the Council dispute, his account of the initial outlay required to get the business afloat in difficult economic times with a family to support. It would be counterproductive to seek to require the remedial works to be carried out within an unrealistic period. That would risk them not being carried out at all, quite apart from the fact that, as the appellant fears this would put in jeopardy the future viability of the business.
18. However such considerations have to be balanced against the continuing harm resulting from the development. In the circumstances it seems to me that increasing the period for compliance from four to six months would provide a more realistic timescale within which the requirements could be achieved without stalling or aborting their progress due to financial pressures.
19. I have not requested the Council to comment specifically on this matter but it seems to me, in the particular circumstances of the case that a modest extension is more likely to achieve a satisfactory outcome and as such would not cause injustice to the Council's interests. I will make the necessary variation using powers available in s176(b) of the 1990 Act.

Overall Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the period for compliance in the notice is varied by the deletion of "four (4) months" and the substitution of "six (6) months".
22. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR