



Appeal Decision

Site visit made on 6 June 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 19 June 2017

Appeal Ref: APP/V5570/C/16/3159901

Ground floor of 38-40 Exmouth Market, London, EC1R 4QE

- 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 1990 Act").
- The appeal is made by Roberto Costa (Exmouth) Limited ("the Appellants") against an Enforcement Notice issued by the Council of the London Borough of Islington ("the Council").
- The Enforcement Notice, numbered E/2015/0392, was issued on 23 August 2016.
- The breach of planning control as alleged in the Enforcement Notice is without the necessary planning permission the material alterations to the shopfronts at No. 38 and 40 Exmouth Market, London EC1R 4QE.
- The requirements of the Enforcement Notice are: 1. Remove all black tiles from the shop windows and associated fittings and restore the land to its former condition by reinstating the previous timber shopfronts existing immediately prior to the breach of planning control taking place, as shown on the attached drawing (Ref.: 00.03) headed Appendix A and photograph headed Appendix B, and forming part of the Enforcement Notice; 2. Remove the fascia sign at No. 40 Exmouth Market and reinstate an etched glass fascia sign to incorporate lettering in gold colour and black background and reads "40 MEDCALF 40" as shown on the attached drawing (Ref.: 00.03) headed Appendix A and photograph headed Appendix B and forming part of the Enforcement Notice; and 3. Repair any damage to the buildings caused as a result of undertaking steps 1 & 2 of the Enforcement Notice.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (c) & (f) of the 1990 Act.

Summary of Decision: The appeal is dismissed (in part); the Enforcement Notice is upheld with corrections and variations as set out in the Formal Decision below.

Procedural Matters

1. In my Appeal Decision I will refer to:
 - a) The premises identified in the Enforcement Notice as "the Appeal Site".
 - b) The individual premises as "No. 38" or "No. 40" as appropriate.
2. The Appeal Site is used for the sale of food and drink and as a restaurant. The Appellants trade under the name of "Macellaio".
3. The Appeal Site is within the Rosebery Avenue Conservation Area ("the Conservation Area"). There is a statutory duty when dealing with planning appeals in Conservation Areas that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the area ("the Conservation Area Test"). This is the approach I have adopted in dealing with this appeal.

4. The shopfront at No. 40 is a locally listed building. Part of the description for this locally listed building refers to its "etched glass fascia". I will refer to this fascia as "the Original Fascia". I saw the Original Fascia which is on display within the Appeal Site. There is **no** etched glass within the Original Fascia.

What are the material alterations to the shopfronts at the Appeal Site?

5. The material alterations that had been carried out as at the date the Enforcement Notice was issued were:
 - a) The glazed windows within the shopfronts at the Appeal Site had been removed and replaced by black shiny tiles affixed to hardboard with a non-glazed window-type opening within the tiled area.
 - b) The removal of the Original Fascia and its replacement with a new fascia which has the name "Macellaio" on it ("the Replacement Fascia").
6. As at the date of the site visit the tiling which replaced the window at No. 38 has been removed and glazing had been reinstated. The Appellants do not seek planning permission for the reintroduction of the tiling at No. 38 through the Ground (a) appeal.

The Wording of the Requirements of the Enforcement Notice

7. The first requirement of the Enforcement Notice refers to, "restore the land to its former condition by reinstating the previous timber shopfronts". However, it was clear from the site visit and photographs submitted that the "previous timber shopfronts" had not been removed – as explained above it is the glazing within those timber shopfronts which has been altered. I consider that this matter can be corrected without injustice to either party.

Reasons

Ground (c) that there has not been a breach of planning control

8. The Appellants' argument is that the replacement of the Original Fascia with the Replacement Fascia is not a breach of planning control.
9. The Appellants have set out why they consider the Replacement Fascia has deemed advertisement consent pursuant to Class 5 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("the 2007 Regulations"). The Council have not disputed this. I agree with the Appellants assessment regarding the deemed advertisement consent.
10. The 2007 Regulations were made pursuant to, amongst other powers, Section 220 of the 1990 Act. Section 222 of the 1990 Act explains that where the display of advertisements in accordance with the 2007 Regulations involves development of land then:
 - a) Planning permission for that development shall be deemed to be granted by virtue of Section 222 of the 1990 Act, and
 - b) No application shall be necessary for that development under Part III of the 1990 Act.
11. I therefore conclude that there has not been a breach of planning control in respect of the Replacement Fascia. Accordingly, the appeal on Ground (c) in respect of this matter is successful.

12. Having reached that conclusion I consider the matter can be addressed by:

- a) Deleting Requirement 2 of the Enforcement Notice, and
- b) Carrying out the consequential amendments to Requirement 3 which would be renumbered as Requirement 2.

Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.

13. The outstanding issue relates to the replacement of the glazing by the tiling referred to above at No. 40 (“the Replacement Tiling”).

Main Issue

14. I consider the main issue is whether the Replacement Tiling complies with the Conservation Area Test explained above.

Policy

15. The Development Plan for the area includes:

- a) Policies CS9 & CS10 of the Islington Core Strategy (2011) (“the Core Strategy”).
- b) Policies DM2.1, DM2.3, DM2.6, DM4.6, DM4.8 and DM4.9 of the Islington’s Local Plan: Development Management Policies (2013) (“the Local Plan”).

16. I have also been referred to various parts of:

- a) Islington’s “Shopfront Design Guide”¹.
- b) Rosebery Avenue (CA34) Conservation Area Design Guidelines (2003)².

17. I have also been referred in general terms to:

- a) The Supplementary Planning Document entitled “Islington Urban Design Guide”.
- b) Islington’s Conservation Area Design Guidelines.

18. The relevant parts of the Development Plan in relation to the matters that are before me explain that:

- a) The Borough’s unique character will be protected by preserving its historic urban fabric.
- b) The historic significance of Islington’s unique heritage assets³ and historic environment will be conserved and enhanced.
- c) The Council will require that alterations to existing buildings in Conservation Areas conserve or enhance their significance.
- d) Proposals that unjustifiably harm the significance of locally listed buildings will generally not be permitted.

¹ Pages 16, 21 & 25

² Paragraphs 34.27 & 34.29

³ This includes Conservation Areas

- e) The Council will resist the removal of shopfronts of architectural or historic interest particularly shopfronts listed on the Register of Locally Listed Buildings.
- f) The Council will expect proposals for alterations to existing shopfronts to demonstrate a high quality of design which complements the original design, materials and detailing of the shopfront, the surrounding street-scene and the building of which it forms a part.

Reasoning

- 19. Exmouth Market has a variety of retail outlets and some of the properties have dwellings above. I understand that there is a street market in part of Exmouth Market although at the time of my site visit there was only one market stalls trading.
- 20. Some of the shops have either lost their original shopfronts or never possessed shopfronts of any particular merit. There are currently a variety of shopfront designs within Exmouth Market, some of which do not contribute to the historic character or appearance of the Conservation Area. I am aware that there is a variety of sizes and shapes of windows within the shops along Exmouth Market but there is no evidence before me that any of the glazing in the windows of these shops or in the shops in other parts of the Conservation Area have been removed and replaced by tiling.
- 21. I am aware that some of the buildings in Exmouth Market have tiling on the structure that surrounds the windows. In particular the colourful tiling on Panzo, the Coin Laundry, Book Ends, and the Exmouth Arms in particular all add visual interest and quality to the character and appearance of this part of the Conservation Area.
- 22. I consider that the loss of the traditional glazing within the ground floor window at No. 40 has been significantly harmful to both the character and appearance of the Conservation Area. The Replacement Tiling:
 - a) Looks out of place in the context of the Appeal Site and the surrounding development.
 - b) Does not protect Islington's built heritage.
 - c) Does not conserve the historic environment within which the Appeal Site is situated.
 - d) Does not respect the historic context of the Appeal Site or its surroundings.
 - e) Does not complement the shopfronts at the Appeal Site or the surrounding street-scene.
 - f) Does not add any visual interest to the street-scene in Exmouth Market.
- 23. I therefore conclude, for the reasons explained above, that the Replacement Tiling fails to comply with the Conservation Area Test explained above. Accordingly, permission for the Replacement Tiling at No. 40 would be contrary to the relevant parts of the Core Strategy and the Local Plan.

Ground (f) that the steps required to comply with the requirements of the

Enforcement Notice are excessive and lesser steps would overcome the objections

24. I have addressed the Appellants Ground (f) arguments in dealing with the Grounds (c) & (a).

Overall Conclusions

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with the corrections and variations explained above and refuse to grant planning permission on the deemed application.

Formal Decision

26. It is directed that the Enforcement Notice be corrected and varied by:

- a) The deletion of Step 1 in Schedule 4 and its replacement with:
"1 - Remove the black tiles and any associated fittings and restore the shopfronts at No. 38 and No. 40 Exmouth Market to their former condition by reinstating the glazing within the timber shopfronts as existing immediately prior to the breach of planning control taking place;"
- b) The deletion of Step 2 in Schedule 4.
- c) The deletion of Step 3 in Schedule 4 and its replacement with:
"2 - Repair any damage to the buildings caused as a result of undertaking step 1 of the Enforcement Notice."

Subject to these corrections and variations the appeal is dismissed and the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Tim Belcher

Inspector