
Appeal Decision

Site visit made on 7 June 2017

by Simon N Hand MA

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

Decision date: 20 June 2017

Appeal Ref: APP/X5990/C/17/3171677

93 New Bond Street, London, W1S 1DA

- 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 Soap & Co (UK) Limited against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered TOA/30099170, was issued on 9 February 2017.
 - The breach of planning control as alleged in the notice is within the last 4 years and without planning permission, the unauthorised alteration of the shopfront of the property, consisting of the installation of a heating column, associated fixings, fittings and any cabling or pipework as shown edged in red in the attached photograph 'A'.
 - The requirements of the notice are (1) remove the unauthorised alteration made to the shopfront of the property, consisting of the installation of a heating column, associated fixings, fittings and any cabling or pipework as shown edged in red in the attached photograph 'A'; and (2) repair and make good any damage caused to the shop front of the property through the installation or removal of the unauthorised heating column associated fixings, fittings and any cabling or pipework referred to in Requirement (1) of this notice.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/X5990/C/17/3171674

67 South Molton Street, London, W1K 5SY

- 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 Soap & Co (UK) Limited against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered TOA/30100932, was issued on 9 February 2017.
 - The breach of planning control as alleged in the notice is within the last 4 years and without planning permission, the unauthorised installation of an external heating column to the shopfront of the property, as shown edged in red in the attached photograph 'A'.
 - The requirements of the notice are (1) remove the unauthorised alterations made to the shopfront of the property, consisting of the installation of an external heating column, as shown edged in red in the attached photograph 'A'; and (2) repair and make good any damage caused to the shop front of the property through the installation or removal of the unauthorised external heating column referred to in Requirement (1) of this notice.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal Ref: APP/X5990/C/17/3171677

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the alteration of the shopfront of the property, consisting of the installation of a heating column, associated fixings, fittings and any cabling or pipework on land at 93 New Bond Street, London, W1S 1DA referred to in the notice.

Appeal Ref: APP/X5990/C/17/3171674

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the unauthorised installation of an external heating column to the shopfront of the property on land at 67 South Molton Street, London, W1K 5SY referred to in the notice.

Background to the Appeals

3. No 93 is a shop in New Bond Street, which sells beauty products. It is not listed but is in the Mayfair conservation area. It has an awning over the pavement and under the awning are located several heaters that direct heat down onto those standing under the awning. They are attached to the underside of a metal part of the awning and form the "heating column" referred to in the notice, although they are horizontal rather than vertical. 67 South Molton Street is virtually identical.
4. In July 2014 appeals were dismissed for a different configuration of heaters at both sites because they were "highly conspicuous and distinctly modern features". They also were "hanging down over an otherwise clear window frontage". Although partly screened by the awning they "would remain abruptly apparent in closer proximity, particularly on approach from the sides of the awning". When the awnings were closed the heaters would still be apparent.
5. I was able to walk around much of the conservation area and see the various other heaters referred to by the appellant. My views on these and on the conservation area in general are pertinent to both appeals.

The Appeals on Ground (c)

6. This ground is that there has not been a breach of planning control. The appellant argues that the heaters are not development and so do not need planning permission, or if they are they are excluded by s55(2)(a).
7. For the purposes of this appeal s55 defines development as "the carrying out of building, engineering, mining or other operations". In my view the installation of heaters is either engineering, as in electrical engineering, or an "other operation". They are akin to the installation of external lighting units or similar features on a building and there is no dispute that those are development.

8. Section 55(2)(a)(ii) states that works for the alteration of a building that “do not materially affect the external appearance of the building” do not involve development. The heaters can clearly be seen from certain angles and when turned on, as I was able to see at the New Bond Street location, are readily visible and quite clearly materially affect the external appearance of the building. The appeals on ground (c) fail.

The Appeal on Ground (a)

9. The Council refer to a number of policies of which S25 and S28 of the Westminster City Plan (2013) are over-arching policies that deal primarily with redevelopment of listed buildings and are not really relevant to small scale design issues such as these appeals. DES1 of the UDP (2007) sets out the principles of good quality design, DES5 deals with alterations and extensions and DES9 is the most directly relevant as it deals with development in conservation areas and does allow in appropriate situations modern or atypical materials or detailing. The Council also has an SPG on “Shopfronts, Blinds and Signs, a Guide to their Design”, although this does not mention heaters or lighting (except for floodlighting, which is a different matter). It is perhaps not surprising there are no directly relevant policies as external heaters would seem to be a relatively new phenomenon. Nevertheless it is clear the Council’s policies encourage good quality development and sensitive design, appropriate to its location within the many historic environments of the City. I am also obliged to have special regard to the desirability of preserving or enhancing the character and appearance of the conservation area.
10. Mayfair is a large conservation area containing a wide variety of architectural styles, but the two sites are located in predominantly shopping streets, which specialise in, as the appellant refers to it, “high end” shopping. These are both in high quality parts of the conservation area, with a scattering of listed buildings where modern and intrusive design, even of small elements such as heaters, could be seriously harmful.
11. I was able to see that there were a large number of establishments with outdoor heating scattered around the conservation area. In particular in Mount Street, the Shepherd Market area, Lansdowne Row and Albermarle Street. I also looked at Barrett Street and St James Street in the neighbouring Stratford Place conservation area. Two of the sites in Barrett Street and one in Albermarle Street had been allowed by the Council. I assume the vast majority of others are potentially unlawful. Nearly all are associated with restaurants, cafes and pubs with outdoor seating, and the purpose of the heaters is to encourage patrons to use those areas even when the weather is inclement.
12. The heaters range from large free-standing units, through unsightly out of scale equipment, hanging randomly in front of the restaurant windows to neat and tidy units, tucked away largely out of site, which was the case in the three allowed by the Council. In some cases the heaters were well designed and sensitively located in other less so, but it seems clear they are not necessarily the alien intrusions the Council suggest, but are becoming a typical part of the shopping and eating experience.
13. In South Molton Street in particular I was able to see two shops where the Council had required heaters to be removed from under the awnings. At No 37 an application to replace ugly hanging down heaters with bar heaters (the applicant’s description) was refused. At No 45 the case went to appeal and the

Inspector found they were ugly and crude and were “clumsily and inappropriately fixed”. It seems from the above that the use of outdoor heaters is proliferating in the conservation area, and the Council have been prepared to allow some but refuse others. At appeal Inspectors have only considered the larger and more intrusive versions that hang down and always found them to be harmful.

14. At both the appeal sites the intrusive heaters that were refused on appeal have been replaced by a different style, which I saw in other parts of the conservation area, but which were by no means the norm. These are much smaller and neatly contained on a metal bar that appears to be part of the awning mechanism. When the awnings are retracted the heaters are invisible. When the awnings are in use the heaters can only be seen from the side, as noted by the previous Inspector. However, because they are smaller and more sensitively located they do not stand out. Indeed, when they are not turned on, they are really not noticeable at all. They do not obscure any features of the shop front and do not hang down intrusively in front of the shop window. When in use they glow red and so are more noticeable. This draws attention to them but I cannot see how this can be considered to be alien or disruptive as the Council say. Both are in busy shopping streets and outdoor heating is not a surprise in such an area.
15. A third party has complained the heaters are designed to provide warmth for staff members who stand outside to hand out free samples and encourage passers-by to come into the shop. This indeed seemed to be the case at both shops when I visited and while it is mildly annoying it does not seem to me to be a planning issue.
16. In my view the heaters are small and sited in such a way that they are hardly visible to the public. Consequently, they do not cause any harm, they are in accord with the general thrust of the Council’s policies and the character and appearance of the conservation area is preserved. I shall allow the appeals on ground (a). The appeals on grounds (f) and (g) do not need to be considered.

Simon Hand

Inspector