



Appeal Decision

Site visit made on 6 June 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/K5600/C/17/3162859

4 Victoria Grove, London W8 5RW

- 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 Dr S Radmand against an enforcement notice issued by the London Borough of Kensington and Chelsea.
 - The enforcement notice was issued on 5 October 2016.
 - The breach of planning control as alleged in the notice is: the installation of a shopfront not in accordance with planning permission.
 - The requirements of the notice are as follows: Replace the current shop front either:
 - i. in accordance with existing drawings of planning permission dated 22/01/16 under reference PP/15/02712, or,
 - ii. in accordance with approved drawings of planning permission dated 22/01/16 under reference PP/15/02712
 - The period for compliance with the requirements is Four (4) calendar months.
 - The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the notice is upheld as varied. See formal decision below.

Background information

2. The two storey (plus basement and loft space) appeal property is located on the south west side of Victoria Grove, close to the junction with Gloucester Road. It is currently in use (Use Class D1) as a dentist's surgery at ground and basement levels with residential accommodation above. The residential units are accessed via a door to the north west of the rest of the frontage. This part of the Borough lies within the De Vere Conservation Area (DVCA) and the Gloucester Road (North) Neighbourhood Shopping Centre (NSC).

3. The dental surgery and residential uses were granted planning permission under application reference PP/12/02643 on 26 November 2012. On 8 June 2015 consent was refused under reference CA/15/01982 for an internally illuminated fascia sign and tooth symbol to the frontage. The planning permission referred to in the notice (PP/15/02712) was granted on 22 January 2016. This included alterations to the shop frontage, as well as the variation of a condition to the earlier permission and internal alterations/arrangements to the residential accommodation and the surgery.

4. The works to the frontage were not carried out in accordance with the 2016 permission. In September 2016, a part retrospective application (PP/16/03861/Q13) for the alterations as carried out to the shop front and to reduce the illumination intensity of the signage, was refused.

5. The reason given was that the design and materials of the shopfront failed to preserve or enhance the character or appearance of the DVCA and were contrary to

development plan policies. The Council's delegated report refers to the illuminated signage not having advertisement consent and, in any case, not being appropriate or likely to be granted consent in this particular location. The Council then considered it expedient to issue the enforcement notice, the subject of this appeal.

6. I am only empowered to deal with the enforcement notice as issued. This relates to the shopfront only and not to the signage. I have noted that in the appellant's written representations (paragraph 3.8) there is a request to include the shopfront advertisement as part of this appeal. However, this aspect of the unauthorised works is not before me and any change in lighting, from LED lamps to downlighters would have to be a matter for a future application to the Council.

The appeal on ground (a)

7. The main issue is the effect of the shopfront, as installed, on the character and appearance of the DVCA. Before considering the proposed modifications (see ground (f) below), I must consider whether or not the shopfront works (excluding the lighting and signage) as carried out, should be granted planning permission since this forms the appeal on ground (a) and deemed application.

8. The most relevant development plan policies are CL1 (Context and Character); CL2 (Design Quality); CL3 (Heritage Assets) and CL10) Shopfronts of the Consolidated Local Plan (CLP). The National Planning Policy Framework (NPPF) is a major material consideration and sets out a presumption in favour of sustainable development. Amongst other things, I have had regard to NPPF sections 1 (Building a strong and competitive economy); 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment).

9. The Council's 'De Vere Conservation Area Appraisal' (DVCAA) and its supplementary design guide on Shopfront Design are also material considerations. Because the appeal property lies within the DVCA and close to some listed buildings, I have paid special attention to the requirements of sections 72 and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). I have also had regard to relevant sections of Planning Practice Guidance (PPG) relating to the protection of heritage assets.

10. Having seen the works as carried out, I share the Council's and others' concerns about the effect of the works on the DVCA. The commercial properties along this section of Victoria Grove are all of a traditional design and there are listed buildings close by on both sides of the road: Nos 6 to 13 on south side and Nos 19 to 29 on the north side. Some of these buildings date back to around 1840 and Albert Mews, with its attractive listed archway, dates back to 1865. The materials, finishes and overall designs of the historic and traditionally detailed buildings in this part of Victoria Grove contribute most positively to the area. They form a cohesive architectural and historic grouping in this part of the DVCA.

11. The overall design of the appeal shop frontage, on the other hand, appears as an obtrusive and very poorly designed addition to this historic streetscape. In my view, the design makes no attempt whatsoever to respect the character and appearance of this part of the DVCA. The fascia is out of proportion with those adjacent and opposite; the marble finish looks completely alien and the signage is garish and crude. I consider that the description (by an interested person) that it '*stands out like a sore thumb*' to be most apposite. I completely disagree with the contention put forward on behalf of the appellant that, '*save for the marble effect tiles, the shop front has a neutral effect*'. Even without the marble finish, I find the detailing of the shopfront, the scale and proportion of the glazed sections; the depth of the fascia and the entrance door to the accommodation to be most unacceptable on design grounds.

12. The shopfront cannot possibly be said to relate well to the rest of the building above; to those on either side or to those opposite. The marble finished column, adjacent to No 2, is particularly obtrusive in protruding clumsily forward of the rest of the façade. This wholly inappropriate composition of windows, doors, fascia and signage detracts markedly from the attractive visual qualities of this part of the DVCA. The overall design does not respect the architectural and historic qualities of the host building; it has a most harmful visual impact in the streetscene and fails miserably to provide an overall attractive setting to the frontage of the property. I agree with the Council and others that it is contrary to policy CL10 of CLP. It is also contrary to the NPPF which, at paragraph 64, makes quite clear that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

13. I conclude, therefore, that the works as carried out have neither preserved nor enhanced the character or the appearance of the DVCA. I also find that the works carried out are harmful to the settings of the listed buildings along this attractive section of Victoria Grove. The works are contrary to policies CL1, CL2, CL3 and CL10 of the CLP, as well as to policies in section 12 of the NPPF. With regard to paragraph 134 of the NPPF, even if the harm to the significance of the DVCA was considered to be '*less than substantial*', there are no public benefits of the scheme which would outweigh the harm caused. I do not consider, therefore, that planning permission should be granted for the works as carried out and the appeal fails on ground (a).

The appeal on ground (f)

14. In the appellant's submissions it is contended that the alternative solution of painting the marble tiles would be an acceptable and suitable alternative. I have noted that a contractor has confirmed that it would be feasible to remove the polished surface and to apply paint to the specification set out. It is stated that this would result in a black matt finish similar to other nearby shopfront finishes. This is considered by the appellant to be an acceptable alternative to completely removing the shopfront and that it would result in a works which would preserve the character of the DVCA.

15. However, I completely disagree. The solution might well remove the inappropriate shine or sheen of the marble finish but the inappropriate scale, detail and inappropriate proportions of the different elements of the shopfront would remain. This suggested lesser step, in my view, would not outweigh the harm that has been caused by the breach of planning control. Irrespective of whether or not these works were carried out, I do not consider that the harm caused to the character and appearance of the DVCA could be acceptably overcome other than compliance with the enforcement notice. The appeal also fails, therefore on ground (f).

The appeal on ground (g)

16. The compliance period of 4 months is considered to be inadequate. It is argued that this is not sufficient a period of time to arrange for a contractor to provide a new shop frontage. In addition it is stressed that the use of the premises as a dental surgery could not continue whilst works to install the frontage were taking place. It is requested, therefore, that a period of 6 months (an extra 2 months) be allowed.

17. Having considered the planning history of the site and in the overall circumstances of this case, I consider that it is reasonable and appropriate to allow a 6 month compliance period. This will give adequate time for the appellant to liaise closely with the Council in order to comply with the previous planning permission and the requirements of the notice. It would also allow time for an appropriate advertisement consent application (including any lighting) to be submitted. The

appeal succeeds therefore to this limited degree on ground (g) and I will vary the notice accordingly. I am satisfied that this course of action will not prejudice the Council or any other person/party.

Other matters

18. In reaching my conclusions I have taken into account all of the submissions made on behalf of the appellant, by the Council and by interested persons. These include the planning history of the site; the appellant's references (including drawings and photographs) to the previous shop front; the references to the gas meter locations and the need for fire-proof materials; the related surveyor's report; the full specification for the proposed treatment of the marble tiles; the fact that there are other matt black shop front finishes in the vicinity; the suggested conditions and all other matters in support of the appellant's position.

19. However, none of these carries sufficient weight to alter my conclusions on the three grounds of appeal and nor is any other matter of such significance so as to change my decision that the appeal should fail.

Formal Decision

20. I direct that the notice be varied by deleting the word and figure '*Four (4)*', in section 5 of the notice (WHAT YOU ARE REQUIRED TO DO – Time for compliance:) and by substituting therefor, the word and figure '*Six (6)*'.

21. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector