
Appeal Decisions

Site visit made on 16 August 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 31 August 2017

Appeal A: Appeal Ref: APP/L5240/C/17/3168439 226 Portland Road, London, SE25 4SL

- 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 Amin against an enforcement notice issued by the Council of the London Borough of Croydon.
- The enforcement notice, numbered 14/0680/C, was issued on 17 January 2017.
- The breach of planning control as alleged in the notice is without planning permission the alterations to the shopfronts as identified in photograph 'A' attached to the notice.
- The requirements of the notice are:
 - A) Remove the white Upvc window to the ground floor elevation facing Portland Road, which is shown cross hatched on the photograph marked 'A'.
 - B) Reinstate the shopfronts to their former state as shown in photograph marked 'B' or
 - C) Fully implement planning permission under reference no 15/00474/P for the shopfront and timber fascia facing Portland Road and Cobden Road as shown in drawing number 07/14-P6 dated July 2014 attached to the notice.
 - D) Remove all associated debris from the site as a result of compliance with requirements A) and B) or C).
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal B: Appeal Ref: APP/L5240/W/17/3169165 226 Portland Road, London, SE25 4SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Amin against the decision of the Council of the London Borough of Croydon.
- The application Ref 16/05801/FUL, dated 10 November 2016, was refused by notice dated 11 January 2017.
- The development proposed is the retention of existing windows as built.

Summary of Decision: The appeal is dismissed.

Appeal C: Appeal Ref: APP/L5240/W/17/3169158 226 Portland Road, London, SE25 4SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
- The appeal is made by Mr Amin against the decision of the Council of the London Borough of Croydon.

- The application Ref 16/05749/DISC, dated 10 November 2016, sought approval of details pursuant to condition No 3 of a planning permission Ref 15/00474/P, granted on 2 April 2015.
- The application was refused by notice dated 4 January 2017.
- The development proposed is alterations to frontage; retention of conversion of the basement and ground floor to form a one bedroom flat; retention of front infill extension and external alterations at 226 Portland Road.
- The details for which approval is sought are: details of the window at ground floor level on the north-eastern elevation.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The three appeals are in respect of the same property. The development in each appeal is different but the appeals raise similar issues and are inextricably linked and I will determine them taking that into account.

The appeal property and planning history

2. The appeal property is located on a corner junction facing Woodside Avenue, Cobden Road and Portland Road. It was formerly a shop/offices on the ground floor but this together with the basement is now residential accommodation. The property is within a designated area of high density and Portland Road is a London Distributor Road.
3. Planning permission was refused in December 2014 for 'alterations to frontage; retention of conversion of the basement and ground floor to form a one bedroom flat; retention of front infill extension and external alterations'¹. Planning permission was granted in April 2015² for a similar development and the grant refers to it being in accordance with the drawings submitted with the application but the grant does not specify any drawings. However, the grant of permission contained a condition requiring, before works commenced, the submission and approval of details of the window at ground floor level on the north-eastern elevation. It would appear that this condition was not complied with and the window that currently exists does not accord with any permitted scheme or approved details.
4. The Appellant was not the owner of the property at the time but purchased it 'as built'. He was not aware of the planning condition but in order to attempt to rectify the situation applications were made to both retain the existing windows and to discharge the condition with a proposed different style of window³. Both of these applications were refused and the notice was issued.
5. A subsequent application to discharge the condition has been approved (with a further differently designed window) because the details demonstrate an intent to restore some of the original features of a historic shop front and include details such as the window reveal and timber fascia⁴.

¹ Ref 14/04432/P

² Ref 15/00474/P

³ Drawing No M1755

⁴ Ref 17/00440/DISC

Appeals A and B - The ground (a) appeal, the deemed planning application and the s.78 appeal

6. In an appeal on ground (a) the Appellant is saying that planning permission ought to be granted for the matters stated in the notice, which in this case is the alterations to the shopfronts as identified in photograph 'A' attached to the notice and the development in Appeal B seeks the retention of the development as built.
7. The main issue in both Appeals A and B is the effect of the alterations to the shopfronts on the character and appearance of the host building and the surrounding area.
8. The appeal property is located on a prominent corner and its original shopfront included large windows that took up most of the north-east and north-west elevations; these windows had a wooden fascia board that extended around both elevations together with other decorative features. The development of the property resulted in the removal of the shopfronts and the construction of painted rendered walls with a white Upvc window in each elevation and a white Upvc partially glazed door one elevation.
9. There is no detailing and the elevations are of poor visual interest. The window in the north-east elevation is a three panel double glazed Upvc window with a white surround. It is located in an off-centre position which unbalances the appearance of the elevation and it does not reflect the scale and proportions of the building. The window on the north-west elevation is a two panel one and it too is not in scale with the elevation in which it sits resulting in a large amount of blank rendered wall above it.
10. The area is a mixed one with residential properties, commercial uses on the ground floor of a parade with residential uses above and commercial buildings and it has no consistent character or appearance. But, given the prominence of the site in the townscape, the bland, poor quality design and the location of the windows, the consequent appearance of the building has an adverse effect on the character and appearance of the surrounding area.
11. There are what appears to be some conversions of commercial buildings into residential use and there are a number of properties with Upvc windows. I have no information about the planning status of these various developments but none are comparable in location or design with the windows at No 226.
12. Policies UD2 and UD3 of the Croydon Replacement Unitary Development Plan (The Croydon Plan 2006) Saved Policies 2013; Policies 7.4 and 7.6 of the London Plan 2015; and Policy SP4.1 of the Croydon Local Plan: Strategic Policies 2013 aim to ensure, among other things, that development respects the character and appearance of an area, makes a positive contribution of the area and emphasise the need for good quality design. For the reasons set above I conclude that the alterations to the shopfronts do not comply with these Policies and that the alterations have a harmful effect on the character and appearance of the host building and the surrounding area.
13. The appeal on ground (a) fails, the deemed planning application is refused and the s.78 appeal is dismissed.

Appeal C - Discharge of condition

14. The main issues in Appeal C are the effect of the proposal on the character and appearance of the host building and the surrounding area and whether the proposal would result in a loss of outlook for occupiers.
15. The details that are the subject of this appeal relate only to the north-east elevation⁵. Whilst the proposals included a fascia above the window, a pilaster and corbel detail and the size and location of the window were in scale and proportion with the building there was no proposal to alter the north-west elevation. Taking into account the reasons in Appeals A and B above, the resulting difference between the two elevations proposed in this appeal would have been incongruous and out of keeping with the host building and the area.
16. In addition the proposal included obscure/frosted glass in the window. I appreciate that the window would permit views into the building from close proximity but a whole window with obscure glass would be oppressive and would result in the occupiers having no outlook whatsoever.
17. I therefore conclude that the proposal would have a harmful effect on the character and appearance of the host building and the surrounding area and that it would result in a loss of outlook for occupiers. The proposal would be contrary to the development plan policies to which I have referred above and to Policy UD8 which seeks to protect residential amenity.

Appeal A – ground (f)

18. In an appeal on ground (f) the Appellant is saying that the steps required by the notice exceed what is necessary to remedy the breach. The Appellant has not specified any lesser steps but in determining this ground of appeal I have to consider whether there are any obvious alternatives to the stated requirements that would remedy the breach⁶.
19. Although not strictly an alternative, since the notice was issued approval has been granted for details for alterations to the north-east and north-west elevations⁷. Although including this approval within the requirements would expand the steps given that the Appellant made the application in an endeavour to resolve the situation I consider that he would suffer no injustice if the notice was varied to include the approved details as one of the steps. This would provide the Appellant with three options, all approved by the Council, to comply with the notice.
20. The ground (f) appeal succeeds to that extent.

Appeal A - Conclusions

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

Appeal B - Conclusions

22. For the reasons given above I conclude that the appeal should be dismissed.

⁵ Drawing No 100 Shop front window details (discharge of condition) dated 10 November 2016

⁶ *Arnold v SSCLG* [2015] EWHC 1197 (Admin) (among others)

⁷ Ref 17/00440/DISC dated 16 March 2017

Appeal C - Conclusions

23. For the reasons given above I conclude that the appeal should be dismissed.

Decisions

Appeal A: Appeal Ref: APP/L5240/C/17/3168439

24. It is directed that the enforcement notice be varied by:

- 1) In part 5 the insertion in step C) after the words 'this notice' the word 'or'
- 2) In part 5 the insertion of step 'D) Fully implement the details approved under reference No. 17/00440/DISC shown on drawings M1755 1000 Rev A; M1755 1001; and M1755 1003 dated 25/26 January 2017'.
- 3) In part 5 the renaming of step D) as E) and the consequent inclusion of 'or D' after 'C'.

25. Subject to these 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 as amended.

Appeal B: Appeal Ref: APP/L5240/W/17/3169165

26. The appeal is dismissed.

Appeal C: Appeal Ref: APP/L5240/W/17/3169158

27. The appeal is dismissed.

Gloria McFarlane

Inspector