



Appeal Decision

Site visit made on 14 August 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/N5090/C/18/3212161

Land at 230 High Street, Barnet EN5 5TD

- 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 Nicholas Foster against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 16 August 2018.
- The breach of planning control as alleged in the notice is Without planning permission the installation of a replacement shop front.
- The requirements of the notice are Restore the property to the state in which it was prior to the breach by: a) dismantling and removing/demolishing the shop front; and b) replacing it with the shop front as per existing plan number PL-001, included as part of planning application reference 18/2479/FUL, dated 27th July 2018, including the stall risers, recessed doorway and timber framed door and windows.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice, as varied, is upheld.

The appeal on ground (e)

1. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. The appellant's case is that the Notice was missing a second page such that it did not stipulate the requirements; the effective date of the notice and the time given for compliance.
2. I note that the copy of the notice sent to the Planning Inspectorate by the Council as part of its appeal documentation appears to be complete, but that it does not seek to deny the possibility that the appellant's copy may have been incomplete.
3. I have taken into account that the version of the notice copied by the appellant to the Planning Inspectorate, included a cover letter and annex, both of which included the date on which the notice came into effect. Furthermore both documents stated that a failure to appeal would mean that the required steps would need to be taken within the period specified.
4. If the information in question was missing, the prompts in the aforementioned documents to certain steps needing to be taken within a set period of time would reasonably give rise to the expectation that the appellant would contact the Council about such an oversight. It would appear that no such contact was made. Furthermore I note that the appellant was able to lodge an appeal

within the relevant timescale; also that no other recipients claim not to have received a full copy of the notice.

5. The requirements of the notice are to restore the shop front to its previous condition. The appellant has set out as part of his case that the shop front was previously in a poor physical state and that the works undertaken are considered to make a significant improvement to the quality of the appearance of the building and street scene prior to those alterations being carried out. Therefore, even if the appellant was unaware of the requirements of the notice, he has clearly been able to set out a reasoned case, albeit inadvertently, opposing those requirements.
6. The appellant states that because the requirements of the notice were omitted, it has not been possible to use the ground (f) appeal, namely that the steps required to comply with the requirements of the notice are excessive. However I have taken into account the appellant's intention to explore the possibility of an alternative to the restoration of the original shop front and am satisfied that, in principle, the notice does not prevent this. Furthermore the appellant has been able to submit a ground (g) appeal with a view to allowing sufficient time to make a planning application for a revised shop front design, which I have duly taken account of in my decision.
7. In terms of the timing of the notice, that it was served during the period when an appeal could have been made in relation to an unsuccessful application for retrospective planning permission has not resulted in prejudice to the appellant's case, as the planning merits have been duly considered as part of the ground (a) appeal.
8. Even if the notice had been deficient as claimed, section 176(5) of the Act provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced by the failure to serve him. Drawing the above considerations together, on balance, I am therefore satisfied that the appellant has not been substantially prejudiced by any original omission.
9. Consequently the appeal on ground (e) fails.

The appeal on ground (a)

Main Issue

10. The appeal on ground (a) is that planning permission should be granted. The main issue is the effect of the development on the character and appearance of the building and wider Monken Hadley Conservation Area (CA).

Reasons

11. The appeal site is within a busy street characterised by commercial property at ground floor level, and buildings varying in design, scale and materials. Within this part of the CA there are some modern buildings such as a car show room with a substantial glazed frontage. However more traditionally designed building frontages, incorporating materials such as painted timber, sliding sash windows and glazing bars are represented.
12. It is apparent from the photographs provided that the appeal site used to have a traditionally designed shop front with a recessed centralised door; furthermore that it had traditional stall risers to either side, contributing to the

balanced proportions of the frontage; also that the three storey building height and the similar size, position and proportions of the upper floor windows contribute to a strong sense of symmetry between the appeal site and the adjoining property.

13. The previous design of the appeal shop front itself was not symmetrical in relation to the curved bay and glazing bars of its neighbour at ground floor level. However, whilst I note that the Council raises no objection to the relocation of the front entrance door to one side, and also that the door has been recessed to give the frontage a sense of profile, it seems to me that the large expanse of glazing and the lack of substantial stall risers results in a contemporary design which detracts to a degree from the overall visual balance and group value of the two buildings. Whilst taking into account variation in building design along the street; the previous condition of the shop frontage and the points made by the appellant regarding the retention of the original awning in contrast to alterations to original features elsewhere, for the aforementioned reasons there is nevertheless some harm to the heritage significance of the appeal property.
14. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I conclude that the development causes less than substantial harm to the character and appearance of the building and wider CA. However in terms of the guidance in the National Planning Policy Framework (the Framework), there would still be real and serious harm which is a consideration of significant weight.
15. In such circumstances, where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that this harm is weighed against the public benefits of the proposal. A convincing case has not been made that there would be public benefits from the scheme, sufficient to outweigh the harm I have identified.
16. For the aforementioned reasons the development is therefore in conflict with the Framework and also with Policies 7.4 and 7.6 the London Plan 2016; Policy CS5 of Barnet's Core Strategy 2012; Policies DM01 and DM06 of the Council's Development Management Policies Development Plan Document 2012; the Council's Design Guidance No 10 – Shopfronts and the CA Character Appraisal Statement 2007 insofar as they seek to secure a high standard of design that recognises local characteristics and protects Barnet's heritage.

The appeal on ground (g)

17. The appeal on ground (g) is that insufficient time has been provided for compliance with the notice, as it does not enable sufficient time for the appellant to resubmit a planning application for a modified shop front design. Taking into account the above matters, I consider that it would be reasonable for the compliance period to be extended to enable the appellant to explore with the Council, potentially through a fresh planning application, whether a modified frontage design, that would be an appropriate alternative to the restoration of the previous design, is achievable.
18. I am satisfied that this would not prejudice the Council's case and therefore direct that the compliance period be extended to 9 months to allow time for a

planning application to be submitted and considered, should it be forthcoming. The ground (g) appeal succeeds to this extent.

Conclusion

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

Formal Decision

20. It is directed that the enforcement notice be varied by deleting the words "2 months" in paragraph 6 and substituting the words "9 months" instead.
21. 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 section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR