



Appeal Decision

Site visit made on 22 October 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/H2265/C/19/3226751

Unit 2 Swanmead Way, Tonbridge, Kent TN9 1SG

- 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 Iain Pratt of B&M Retail Ltd against an enforcement notice issued by Tonbridge & Malling Borough Council.
 - The enforcement notice, numbered 18/00333/ADVH, was issued on 21 March 2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of 1no. internally illuminated fascia sign which is located above the entrance to the B&M retail unit.
 - The requirements of the notice are to remove the unauthorised 1no. internally illuminated fascia sign which is located above the entrance to the B&M retail unit in its entirety from the curtilage of Unit 2, Swanmead Way, Tonbridge.
 - The period for compliance with the requirements is one calendar month from the date the Notice becomes effective.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The ground (a) and the deemed application for planning permission

2. The ground of appeal is that planning permission should be granted.

Main Issue

3. The main issue is the effect of the fascia sign on the character and appearance of the site and surrounding area, including the setting of the Tonbridge Conservation Area (TCA).

Reasons

4. The fascia sign is displayed at the entrance to a retail unit, which is located within a large modern building that is divided into two retail units, set behind an open car park. The building fronts onto Cannon Lane (main A26), and the far side of the road marks the boundary of the TCA. Cannon Lane is a wide main road that is tree-lined. At this point it separates the modern functional appearance of the retail area from the contrasting historic character of this part of the TCA, which is centred on a group of buildings around a medieval Mill

Pond, surrounded by a predominantly C19 residential area. The appeal site is readily visible from the TCA and forms a backdrop to views from within it.

5. The sign is a large and dominant feature on the front of the building. Due to its location, size, height and design it is highly visible and eye catching. It is of a similar scale to the approved sign on the adjoining retail unit, which is also internally illuminated. However, due to the alignment of the building in relation to the TCA, it is closer to it and more visible from it. As a result of the alignment and proximity, there are glimpsed views of the sign between buildings from within the TCA. It is also apparent in views from the small square to the front of the group of historic buildings centred on the Mill Pond. They form an attractive focal point and entrance to the TCA and it is visible in the backdrop to views from here. It appears as a dominant and discordant element, and as a result of its internal illumination, this would be particularly apparent in the evenings and during the darker months of the year. Accordingly, it detracts from the character and appearance of the area and the setting of the TCA.
6. I acknowledge that the site is within an established retail area on a busy main road that has high traffic volumes. However, the appeal site is close to and readily visible from an entrance to the TCA, and this differs from other parts of the retail park which do not have the same relationship. I also appreciate that the original consent¹ for the subdivision of the unit indicated a location for a fascia signage panel. However, an application for advertisement consent has subsequently been refused.²
7. The suggested planning condition to restrict the hours of illumination to coincide with the opening hours³ of the retail unit would not overcome the harm that would be caused when the unit is open during the dark evening hours for a significant portion of the year. While a reduction in the level of illumination may be beneficial, it would not overcome my concern with the visibility of the sign in close proximity to the TCA. In coming to this conclusion, I have taken into account that the consent for the fascia sign on the adjoining unit was subject to a condition that the internal illumination should be less than 800 candela (cd)⁴ per square metre, whereas a limit of 140cd per square metre is suggested for this sign.
8. The appellant has also suggested that it could be externally illuminated. However, this would be a different development to the breach of planning control that is the subject of the enforcement notice.
9. For the reasons set out above, I find that the proposal would be harmful to the character and appearance of the site and surrounding area, including the setting of the TCA. It would therefore be in conflict with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Management Development and the Environment Development Plan Document 2010, which seek, amongst other things, to ensure that new development results in a high quality environment and respects the character and appearance of the site and its surroundings.

¹ TM/15/02144/FL

² TM/18/02756/AT

³ 9am to 8pm Monday to Saturday and 10am to 4pm on Sunday

⁴ Unit of luminous intensity

10. Paragraph 193 of the National Planning Policy Framework (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of degree of harm. Paragraph 194 sets out that any harm to the significance of a designated heritage asset should require clear and convincing justification.
11. In the context of the TCA as a whole, I consider the harm to the significance of the designated heritage asset would be less than substantial. In accordance with Paragraph 196 of the Framework, the harm, to which I afford considerable importance and weight, should be weighed against the public benefits of the proposal.
12. In terms of public benefits, the appellant argues that the use of the previously vacant retail unit has transformed a drab and deteriorating retail park on a principal route through Tonbridge. There has been significant investment in the unit. This has created 70 employment opportunities, with employees typically living within the local community and receiving a wide range of benefits. The retailer has extended the quality of choice of retailing to local residents. While these are important public benefits, it is not clear to me that the sign is necessary in order to achieve them. I am therefore not satisfied that the public benefits constitute clear and convincing justification to outweigh the harm I have identified to the significance of the TCA. The proposal would therefore conflict with the relevant policies of the Framework.

Other Matter

13. There are listed buildings at Grove House, Grove Cottage and Mill Cottage, which are all Grade II listed, and are a group clustered around the historic Mill Pond. While they form a focal point within the CA, and I note that the sign is visible from them, they are separated from it by boundary treatments and planting. I am therefore satisfied that the sign preserves their setting. In coming to this conclusion, I have had special regard to the desirability of preserving the setting of a listed building, as required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Conclusion in relation to Ground (a)

14. For the reasons set out above, I conclude that the appeal on ground (a) should fail and the deemed application for planning permission should be refused.

Ground (f) appeal

15. This ground of appeal is that the steps for compliance with the notice are excessive. The appellant argues that it is excessive for the notice to require the removal of the fascia signs, and that it would suffice to reduce the level of illumination, requiring the illumination to be switched off when the store is not open for trading, or externally illuminate the sign. Since the notice requires the fascia sign to be removed in its entirety, the purpose of the notice is clearly to remedy the breach. No lesser steps than complete removal would achieve that purpose, and the requirements of the notice cannot, therefore, be said to be excessive.
16. The appeal on ground (f) fails.

Ground (g) appeal

17. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for one month compliance period.
18. The appellant argues that 4 months would be reasonable, in order to allow time to agree revised details with the Council. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interest of the appellant. I consider that one month is too short a period to enable the consideration of revised details, and that four months would be an appropriate balance.
19. For the reasons given above the ground (g) appeal succeeds and I will vary the notice accordingly.

Formal Decision

20. It is directed that the enforcement notice be varied by substituting 'four months' as the period of compliance. 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.

N Thomas

INSPECTOR