
Appeal Decision

Site visit made on 3 December 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 17 December 2019

Appeal Ref: APP/D1780/C/19/3229020

Verde, 289 Shirley Road, Southampton SO15 3HT

- 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 Jon Ashley against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 10 April 2019.
 - The breach of planning control as alleged in the notice is: alterations to the shopfront including reforming the entranceway and the installation of a large area of decking, external seating area and fencing.
 - The requirements of the notice are, as follows:
 - Remove the unauthorised shopfront, decking, external seating area and fencing from the land.
 - Reinstate the shopfront to that which existed prior to the unauthorised development in accordance with the attached Existing Elevations Plan 1, No C17/046.04 and photographs.
 - Remove all resultant materials from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on ground (a) only 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 extent and the notice is varied. Otherwise the appeal is dismissed and the enforcement notice is upheld. See formal decision below.

Matter of clarification

2. Although the appeal was made on ground (a) only, the arguments put forward on behalf of the appellant include ground (f) arguments. Comment has been made on an approved scheme (17/01108) which included a small area of external seats and tabling. The requirements refer to reinstatement to accord with drawing C17/046.04 which shows the existing elevations prior to the above approval.

3. It is also indicated that the seating can be reduced to that defined in the approved planning application. I consider that these submissions amount to an implied appeal on ground (f). That is, that lesser steps than those in the notice would overcome the objections. I shall consider the appeal, therefore on ground (f), as well as on ground (a) and I am satisfied that this will not cause any injustice.

Background information and relevant policy

4. The appeal premises is located on the corner of Shirley Road and Lumsden Avenue and was formerly a retail unit. It currently operates as a café and in November 2016 planning approval was granted (17/01108/FUL) for works to convert the premises to a café. These works included two small areas of external seating; one facing onto

Lumsden Avenue (showing 3 tables) and one facing Shirley Road showing 6 tables. This left a reasonably wide pavement with space between the pavement and the seating areas. There was also a wide open area between the sections of seating which gave clear access to the front door.

5. The works, as carried out and now enforced against, extended the seating areas to produce a much wider wrap-around scheme with more tabling, seating, decking and a timber fence which extended to the lines of the pavements. The entrance to the café is now via the external tabling and seating area. It is stated on behalf of the appellant that the original shop front had dated back to the 1960s and that original brickwork features had been covered. It is also indicated that the plate glass shop windows were in poor condition and were replaced with the sliding folding door sets to allow the use of the external areas.

6. The most relevant policies are those contained within the City of Southampton Local Plan Review, March 2015 (CSLPR) and the Local Development Framework Core Strategy Development Plan Document Partial Review, March 2015 (DPDPR). The policies of the CSLPR are RE18 (Shopfronts); SDP(1)(i)(Quality of Development); SDP&(iii)(iv)(v) Context; SDP9(iii)(iv)(Scale massing and appearance); SDP16 (Noise). The policies of the DPDPR are CS3 (Town and District Centres) and CS13 (Fundamentals of Design).

7. The National Planning Policy Framework (NPPF) is also a major material consideration and the most relevant section is 12, Achieving good design. This seeks to ensure that the design of developments results in the creation of high quality buildings and places. It also indicates that permission should be refused for development of poor quality that fails to take the opportunities available for improving the character and quality of an area and the way it functions. In reaching my decision I have also had regard to the relevant national Planning Policy Guidance (PPG). The local policies generally accord with those of the NPPF and guidance within PPG.

The Main issue

8. The main issues in this case are as follows:

- The effect of the works on the character and appearance of the area.
- The effect on the living conditions of nearby residents with particular reference to the effect of the extended decking areas and the associated noise and disturbance which may be caused.

Reasons

Effect on character and appearance

9. Having seen the works as carried out from both near and distant viewpoints, I share the Council's concerns about their effect on the character and appearance of this part of Shirley Road. I consider that the timber fencing and decking has resulted in an obtrusive and alien development within the streetscene. The detailing is basic and crude and I agree with the Council's assessment set out in the enforcement notice that the overall scale and use of materials is harmful to the appearance of the property within this part of Shirley Road.

10. I also agree with the Council that due to the prominent corner location the works carried out detract markedly from the appearance of the original property and that this exacerbates the detrimental effect on the streetscene. Saved Policies contained within the CSLPR seek to protect the character and appearance of areas by ensuring that developments are of good quality and are of appropriate form, scale and massing within their particular context.

11. Policy RE18, in particular, seeks to ensure that the design of shopfronts and any associated works are appropriately designed in relation to their context and policy CS3 of the DPDPR seeks to generally protect district shopping centres such as this section of Shirley Road. Policy CS13 of the same document relates to the fundamental principles and requirements for new designs and this accords with the design policies within section 12 of the NPPF.

12. I have already referred to the poor detailing of the timber fencing and seating. This is noticeable particularly from close quarters when walking past the outside decking areas, as well as from a distance on the opposite side of Shirley Road. Both the finish of the materials and how they are put together is reminiscent of the crudest of detailing. In my view the design of these unauthorised works is far below what one might expect within the public domain along this generally attractive road. I find that the works are contrary to the above local policies as well as to those in section 12 of the NPPF. The appeal fails, therefore on this first issue.

Effect on living conditions

13. During my visit I noted the proximity of the decked area to the nearest dwellings in Lumsden Avenue and also noted that some of the upper floors along this section of Shirley Road appeared to be in residential use. Whilst acknowledging that the approved scheme had some external areas, these were more closely related to the building, as opposed to extending on to the wider area of pavement.

14. It is clear that the wider use of the pavement areas for café and bar use moves the source of any noise and disturbance further out from the building line and towards Shirley Road and Lumsden Avenue. This increases the potential for unacceptable levels of noise and disturbance emanating from the use of the poorly designed tabling, seating and decking. In my view the overall effect will be one which detracts from the expected levels of noise and disturbance associated with the various uses along Shirley Road and Lumsden Avenue. This will be significantly harmful to the living conditions of those living close to the premises.

15. I therefore find that the development as carried out is contrary to the local plan policies which seek to protect the amenities of residents living close to the appeal site. It follows that the appeal must also fail in relation to this second issue.

Overall conclusion on the ground (a) appeal

16. For the reasons set out above, I conclude that the unauthorised development as carried out is harmful to the character and appearance of this part of Southampton. I have also concluded that it is detrimental to the living conditions of those living close to the café Verde along this section of Shirley Road and within Lumsden Avenue. I do not consider that there are any appropriate planning conditions which could overcome the identified harm and, therefore, I do not consider that planning permission should be granted for the retention of the extended decking, tabling and seating as carried out. The appeal fails on ground (a).

The implied appeal on ground (f)

17. According to the submissions, the LPA granted approval for a change of use of No 289 Shirley Road, from retail use (Class A1) to café use Class A3). This included alterations to the building and the use of external areas for tabling and seating (see above). I have seen details of the approved drawings for that development. These include drawings submitted on behalf of the appellant which show the 'Approved Design' for application 17/01108/FUL. The plans clearly show some seating facing onto Lumsden Avenue, as well as a 'seating area' facing onto Shirley Road.

18. It is clear therefore, that the appellant has a reasonable fall-back position in that the he could revert back to the permission previously granted. On that basis, it could be excessive to require taking the building back to its state prior to that permission. I consider it appropriate, therefore, to vary the notice by providing an additional/alternative requirement to those set out in the notice. This will require compliance with the approved permission. I am satisfied that this would not cause any injustice. The appeal succeeds to a limited degree on the implied ground (f) and the notice will be varied accordingly.

Other Matters

19. In reaching my conclusions I have taken into account all other matters raised on behalf of the appellant and by the Council. These include the planning history; the initial appeal submissions; the subsequent statements and comments and the plans and photographic evidence (including those indicating similar external restaurant areas). However, none of these carries sufficient weight to alter my conclusions or to change my decision that the appeal should be dismissed.

Formal Decision

20. The appeal succeeds to a limited extent on the implied appeal on ground (f). I direct that the notice be varied by adding the following alternative/additional requirement, after the second and before the third bullet points, as set out in section 5 of the notice (WHAT YOU ARE REQUIRED TO DO).

- **OR**, *Reinstate the shopfront and external seating and tabling so that it is in full accordance with the approved design granted by application 17/01108/FUL, dated 2 November 2016 and shown on drawing psa 03.*

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 as amended.

22. For the avoidance of doubt the above variation does not affect the first and third bullet points in the requirements. These remain as drafted in the enforcement notice. As does the second bullet point. The variation simply allows an alternative to the requirement set out in the second bullet point.

Anthony J Wharton

Inspector