The Planning Inspectorate

Appeal Decision

Site visit made on 25 February 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/C5690/C/19/3229193
First and second floor of the premises at 52 Deptford High Street, London SE8 4RT

- 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 Declan O'Brien against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 5 April 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the installation of uPVC framed windows to the front side and rear elevation of the premises at first and second floor level.
- The requirements of the notice are to:
  1. Remove the unauthorised uPVC framed windows from the front, side and rear elevation of the premises at first and second floor level and replace with timber framed sash windows of the same design, detailing and appearance as the previous windows as shown on the Photographs attached to the notice.
  2. Remove all materials, debris, waste and equipment resulting from compliance with requirement 1 above from the land and premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that there has not been a breach of planning control. The appellant argues that the installation of the uPVC windows does not amount to development under Section 55 of the Act, since subsection (2)(a) excludes the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.

3. The 3-storey building, a traditionally built former public house, stands prominently on the junction of Deptford High Street and Reginald Road. The works that have occurred include the replacement of traditional timber-framed vertical sliding sash windows with outward opening uPVC-framed windows. On

my site visit, one of the replacement windows was open outwards on the elevation facing the High Street. Such a readily apparent and contrasting form of opening to the previous design produces a clear and material effect on the external appearance of the building, which is heightened by the reasonably large number of windows that have been replaced in this way, and also when taken together with other significant differences to the original window design including thicker frames, fewer glazing bars and larger panes.

4. Therefore, I find that development has occurred and accordingly a breach of planning control has resulted since required planning permission has not been obtained. The appeal under ground (c) therefore does not succeed.

Ground (a) and the deemed planning application

Main Issue

5. The main issue in this appeal is the effect of the development on the character and appearance of the host building and the Deptford High Street Conservation Area (CA).

Reasons

6. The host building lies within the CA. I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.

7. The Council has identified the building as high significance to the historic and architectural character of the CA and as making a positive contribution to it. I agree. The building is a substantial traditionally built structure at a prominent and relatively wide street junction within the CA, where there is strong visibility of the elevations (including the replacement windows) facing onto Deptford High Street and Reginald Road. As a former public house, retaining traditional signage, the building is highly associated with the significance of the CA which is partly derived from the historic commercial character of the High Street.

8. The readily apparent modern outward opening uPVC-framed windows harm the historic character and appearance of the building, and create disharmony within its overall architecture since there is visual conflict between the replacement windows and the remaining traditional timber-framed sliding sash windows. This harm to a prominent and highly significant building within the CA leads to significant harm to the CA as a whole. While I accept that there are a number of buildings within the CA and surrounding area which have modern replacement windows, including those with uPVC frames, there are also a significant number of properties with traditional window materials and finishes which notably influence the character and appearance of the CA. In my view, the loss of the traditional window features in such a prominent building together with the loss of architectural unity within its design would not preserve or enhance the character and appearance of the building and the CA and would significantly harm the latter's significance as a designated heritage asset.

9. Having regard to paragraph 196 of the National Planning Policy Framework (the Framework), whilst the harm caused to the significance of the CA would be less than substantial, it is a matter of considerable weight and importance. Furthermore, in this case there are no public benefits which would outweigh the

harm caused. I accept that the replacement windows would provide benefits to the residential occupiers of the building. They would be weatherproof, would be less likely than timber windows to deteriorate over time, would provide fire escape opportunities, and would provide a degree of sound insulation against the busy activities of the High Street including the regular market and use by the Council of the building's rear yard as an associated refuse and recycling area during early morning. However, these do not constitute public benefits and they do not alter my decision.

10. I have taken into account the appeal decisions submitted by the appellant. However, only 2 concerned conservation areas and one of these found that the appeal under ground (a) failed because the window installed failed to preserve or enhance the character of the area, as I have found in respect to the windows in the appeal before me. The other appeal involved replacement windows which the Inspector found to be no less desirable than the original windows, and is therefore materially different to this case.

11. I conclude the proposal would fail to preserve the character or appearance of the host building and the CA. There are no public benefits to outweigh this harm and the proposal is therefore contrary to Policies 7.4, 7.6 and 7.8 of the London Plan (2016), Policies 15 and 16 of the Lewisham Local Development Framework Core Strategy Development Plan Document (2011) and Policies DM30, DM31 and DM36 of the Lewisham Development Management Local Plan (2014) which together seek to ensure that proposals are of good design and protect the character and appearance of places, including conservation areas. The proposal is also contrary to the design and heritage protection principles of the Framework (Chapters 12 and 16).

12. The development does not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal under ground (a) does not succeed.

Ground (f)

13. It is clear from the way that the notice requirements have been drafted that the Council is pursuing the purpose of remedying the breach of planning control resulting from the installation of the uPVC-framed windows, rather than remedying injury to amenity. Therefore, for the appeal to be successful under this ground I must be satisfied that the steps required exceed what is necessary to achieve that purpose.

14. The appellant requests that the windows on the elevation fronting Reginald Road and the rear elevation be removed from any requirement for window replacement based on what he states is the limited impact of the alterations. However, not only would this not achieve the purpose of the notice to remedy the breach of planning control, but in my view the lesser steps would be unacceptable in planning terms given the significant visibility of those elevations within the CA and the harm caused by the new windows including the incongruity caused by the mix of original and new windows on the Reginald Road elevation.

15. No lesser steps than required by the notice would achieve the above purpose in restoring the building to its condition before the breach took place. Therefore, the appeal under ground (f) fails.

Ground (g)

16. The appellant has requested that the time given to comply is increased from 6 months to 9 months, to allow sufficient time to raise the necessary funds to complete the works. However, I seen no substantive evidence to persuade me that the financing and completion of the works could not be achieved within 6 months or that otherwise that period falls short of what should reasonably be allowed. Accordingly, the appeal under ground (g) does not succeed.

Conclusion

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

Andrew Walker

INSPECTOR