
Appeal Decision

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2020

Appeal Ref: APP/G5180/C/19/3243399
162 High Street, Beckenham BR3 1EW

- 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 Saverjeet Gurwara against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 22 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the installation of metal shutters and shopfront on the Land.
- The requirements of the notice are:
 - (1). Remove the metal shutters and shopfront.
 - (2). Remove all materials associated with (1) above from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matter

1. The appeal on ground (a) was formally withdrawn by the appellant. Due to current Government policy regarding Covid-19 and restricting social contact, I have not undertaken a site visit, but instead made a desk-based assessment to determine the current appeal, which relates solely to the appeal on grounds (f) and (g) only. This is considered appropriate given that there is no ground (a) appeal and I am not considering the planning merits of the development. As both parties have been provided the opportunity to comment, I am satisfied that neither party would be prejudiced by this.

The appeal on Ground (f)

2. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
3. The appellant has referred to the previously refused retrospective application for the replacement shopfront¹, and states that the proposed changes will address this refusal and meet the satisfaction of the Planning Officer and Conservation Officer. However, no specific details of these lesser steps have been proposed, and I am not under a duty to search for solutions.

¹ Council Ref: 17/05042/FULL1

Furthermore, whilst an application has been submitted to the Council for a shopfront, no details of this revised proposal have been provided. As such, based on the evidence before me, there is currently no planning permission for the unauthorised development.

4. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not overcome the breach of planning control and planning permission would still be required.
5. The appeal on Ground (f) therefore fails.

Appeal on ground (g)

6. This ground of appeal is that the time given to comply with the notice is too short. The Council has given a 6 months compliance period, which in ordinary circumstances would be perfectly reasonable given the harm identified in the notice. However, in light of Government policy regarding Covid-19 and restricting social contact, I consider that this period needs to be prolonged by a further 3 months. I shall therefore vary the period for compliance prior to upholding the notice to 9 months. I also note that the current situation with the pandemic is fluid and it is unclear how long restrictions associated with this will last. In this respect I note that the Council have powers to extend the compliance period if necessary.
7. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

8. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (g) succeeds to that extent.

Formal Decision

9. It is directed that the enforcement notice is varied by:
 - deleting the words “within 6 months after this Notice takes effect” within section 6 (Time for Compliance) and its replacement with “within 9 months after this Notice takes effect”.
10. Subject to the variation, the enforcement notice is upheld.

R Satheesan

INSPECTOR