



Appeal Decision

Site visit made on 13 May 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 May 2020

Appeal Ref: APP/X2410/C/19/3241789

Land at 4 King Street, Sileby, Leicestershire LE12 7NA

- 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 Serif Gokce against an enforcement notice issued by Charnwood Borough Council.
- The enforcement notice was issued on 22 October 2019.
- The breach of planning control as alleged in the notice is unauthorised replacement shopfront.
- The requirements of the notice are: -
 - a. Remove the current unauthorised shopfront and remove any resultant waste materials from the site
 - b. Replace the shopfront to the same design and appearance using materials as detailed in the photograph annexed hereto Ref: SH1 of the original shop front.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

The Notice

1. I have powers under Section 176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the enforcement notice. To ensure clarity I consider that the alleged breach of the notice should be corrected by deleting the word '*Unauthorised*' at the beginning of paragraph 3 of the enforcement notice and replacing it with the wording '*Without planning permission the installation of a*'. I can make the necessary corrections to the notice without causing injustice to the appeal parties.
2. To also ensure clarity I consider that all of the wording of requirement b. should be deleted and replaced with '*Reinstate a shopfront to match the materials, design and appearance of that which was in place prior to the breach of planning control as shown detailed in the photograph annexed hereto Ref: SH1.*' I can make the necessary corrections to the notice without causing injustice to the appeal parties.

Preliminary Matters

3. The appellant's Grounds of Appeal document states that he is appealing on ground (e). However, he has subsequently confirmed that this was a typographical error and that he meant to appeal on ground (c). I have dealt with the appeal on this basis.

4. The evidence before me refers to the fascia sign that is on the front of the appeal property. Nevertheless, as the alleged breach of control and the requirements of the enforcement notice only relate to the replacement of the shopfront the fascia sign does not form part of the development comprising the alleged breach. I have dealt with the appeal on this basis.

The ground (c) appeal

5. In this ground of appeal, the onus is squarely upon the appellant to show that, on the balance of probabilities, the matter alleged in the notice does not constitute a breach of planning control.
6. It is first necessary to consider whether the replacement of the shopfront constitutes '*development*'. Section 55 (1) of the 1990 Act says that the word '*development*' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55 (1A) says that for the purposes of the 1990 Act '*building operations*' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. Section 57 (1) of the 1990 Act says that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
7. The installation of a replacement shopfront is not specifically mentioned as being within the term '*building operations*' as set out in section 55 (1A) of the 1990 Act. However, given the manner and nature of the work involved in removing the existing shop windows and door, altering the position of the door, installing a new door and shop windows that form part of the replacement shopfront and tiling elements of the shopfront this involved a building operation. The work would have involved an element of pre-planning and specific skills would have been needed. The scale of the operation suggests that the work was undertaken by people who would normally carry on trade as a builder. As such, I find that the replacement of the shopfront at the appeal property falls within the concluding clause of the definition of '*building operations*' as being work normally undertaken by a person carrying on business as a builder.
8. Section 55 (2) of the 1990 Act excludes from the definition of development works for the maintenance, improvement or other alteration of any building which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. In deciding whether works materially affect the external appearance, a measure of planning judgement is involved. Although the size of the overall opening of the shopfront has not been altered, the position of its door has been moved so that it is no longer inset from the front elevation, its timber and glazed door has been replaced with a 'frameless' glass door, the moulded timber frame to the shop windows has been replaced with a relatively plain aluminium frame, its cornice and pilasters are no longer visible and black glossy tiling forms the predominant material visible on the shopfront.
9. These alterations have a material affect when compared to the traditional timber shopfront that pre-existed in the appeal building. The shopfront is a distinctive feature of the property and is integral to its design and function. It is visible from a number of vantage points and is material to the appearance of

the building as a whole. I conclude, therefore, that the replacement shopfront is not excluded from the definition of development by virtue of section 55 (2) of the 1990 Act.

10. Express planning permission is required for the replacement shopfront unless the appellant can show that it benefits from permitted development rights set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The appellant has cited Schedule 2, Part 2, Class C which states that the painting of the exterior of any building or work is permitted development. Whilst, the fascia sign has altered colour and therefore may have been painted it does not form part of the development before me. Moreover, the majority of the shopfront appears to have been tiled rather than painted and the timber frame to the shopfront window has been removed and replaced with an aluminium frame. Therefore, even though the colour of the shopfront has changed from red to black that alteration has not been achieved by applying paint to the timber of the pre-existing shopfront. Consequently, the development is not permitted under Schedule 2, Part 2, Class C of the GPDO.
11. As a matter of fact and degree, express planning permission is required for the replacement of the shopfront. Therefore, the matters alleged constitute a breach of planning control. Consequently, the appeal on ground (c) fails.

The ground (a) appeal and deemed planning application

Main Issue

12. The main issue is the effect of the development on the character and appearance of the building at 4 King Street (No 4), whether or not the development preserves or enhances the character or appearance of the Sileby Conservation Area (SCA) and whether the significance of the heritage asset is harmed.

Reasons

13. No 4 is a traditional brick building with a decorative cornice to its eaves and the window and door openings have painted surrounds and cills. These architectural details ensure that the upper floors of the host building have an elegant and attractive character and appearance. It is located within the centre of Sileby close to the junction of King Street and High Street and is within SCA. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
14. Based on the information before me, including the SCA Character Appraisal (SCACA), and my own observations I consider that the significance of SCA is mainly drawn from the range of built development within it, including the number and quality of traditional buildings, the relationship of the buildings to each other and the spaces around them and the variety of uses it contains. No 4 is one of many traditional buildings within this part of SCA and a number have attractive, vernacular style shopfronts, with inset entrance doors, which enliven the principal facades of those buildings. I recognise that there are a number of shopfronts in the vicinity of No 4 that fail to conform to traditional designs on account of their proportions and materials. Nevertheless, overall

the traditional buildings and their architectural features including their shopfronts provide a high-quality streetscape along King Street and High Street which makes a considerable contribution to the character, appearance and significance of SCA.

15. The SCACA states that *'As a longstanding commercial area, a particular feature on High Street and King Street is the large number of surviving timber shop fronts that make a significant contribution to the historic character of the Area. Typical shop fronts contain large shop windows framed by decorated pilasters with brackets supporting a cornice over the fascia'*.
16. From the evidence before me, I consider that the decorative mouldings to the pilasters, cornice and the shop windows of the timber shopfront that was within No 4 in combination with its inset entrance doorway complemented the elegant and attractive appearance of the upper floors of the host building. In addition, its aesthetic and evidential value made a positive contribution to the significance of SCA.
17. However, the shopfront that has been installed at No 4 is characterised by large expanses of frameless glazing set within an outer perimeter frame. This perimeter frame due to its relatively slim proportions and plain design is hardly noticeable as a feature. In addition, the edges of the doorway are not clearly expressed and the predominant feature visually is the glossy black tiles. When set against the traditional shop front that pre-existed at No 4 and other traditional shopfronts that make a positive contribution to SCA, the materials and detailing of the installed shopfront represent a modern and somewhat incongruous addition to the host building and the surrounding area. The overall impression is of a modern, minimalist shopfront wholly at odds with the elegant character and appearance of the upper parts of the building.
18. Consequently, the shopfront by reason of its materials and detailing does not contribute positively to the host building or the significance of SCA. Moreover, the loss of the pre-existing shopfront has eroded the aesthetic value of the overall building and the aesthetic and evidential value it made to the significance of SCA. Thus, I find that the development has resulted in an appreciable degree of harm to the character and appearance of the host building and to the surrounding area, including SCA.
19. As such, it is contrary to the expectations of the Act and I must attach considerable importance and weight to these considerations when reaching my decision. Given the localised nature of the impact, the harm to SCA as a whole, in the language of the National Planning Policy Framework (the Framework), results in less than substantial harm to the significance of the heritage asset. In those circumstances, paragraph 196 of the Framework says that this harm should be weighed against the public benefits of the development. I have little evidence to indicate that there are any public benefits associated with the development. As such, the proposal does not comply with paragraph 196 of the Framework.
20. It also conflicts with Policies CS2 and CS14 of the Charnwood Local Plan 2011 to 2028 Core Strategy (CS) which, amongst other things, require new development to respect and enhance the character of the area and to protect heritage assets. In addition, it does not comply with Saved Policies EV/1 and CA/12 of the Local Plan 1991-2006 which, amongst other things, seek to ensure a high standard of design in all new developments and that replacement

shop fronts maintain or improve the appearance of the frontage into which they will be placed and relate well to the wider street scene. With regard to paragraph 213 of the Framework I consider that these policies are broadly consistent with the Framework. Consequently, the conflict with these policies has full weight.

Conclusion – ground (a) appeal and deemed planning application

21. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Other Matters

22. No appeal on ground (g) was made in respect of the 3 months period of time for compliance with the enforcement notice, and in my view 3 months is a reasonable period of time to comply with the requirements of the notice under normal circumstances.
23. However, since the enforcement notice was issued it is of course now clear that the current Coronavirus pandemic has placed severe restrictions on the ability of people, services and businesses to move about freely and to carry out works. The main parties were given the chance to comment on this issue.
24. The Council has stated that as the restrictions are in the process of being lifted, albeit the Authority accepts this is a slow process, it is not considered necessary at this point to agree an extension of the compliance period given within the Notice. I am also mindful that the Council could exercise its own powers under section 173A(1)(b) of the 1990 Act to extend the period of compliance, should it be satisfied that it becomes reasonably necessary to do so. This is a purely discretionary power within the Councils' gift to exercise.
25. Nevertheless, the appellant has stated that on account of the difficulties and limitations arising from the Coronavirus pandemic that 6 months is requested as the compliance period.
26. I consider that even though restrictions are being slowly lifted 3 months may not now give sufficient time for the appellant to carry out remedial works and/or for scheduling contractors to undertake them. As such, I agree with the appellant that 6 months is a reasonable time period for compliance in these circumstances and I intend to vary the notice in this respect.

Conclusion

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

Formal Decision

28. It is directed that the enforcement notice be corrected and varied by: -
- Deleting the word '*Unauthorised*' at the beginning of paragraph 3 of the enforcement notice and replacing it with the wording '*Without planning permission the installation of a*';

- Deleting all of the wording of requirement b. and replacing it with *'Reinstate a shopfront to match the materials, design and appearance of that which was in place prior to the breach of planning control as shown detailed in the photograph annexed hereto Ref: SH1.'*
 - Deleting, in paragraph 5, *'3 months'* and substitution of *'6 months'* as the time for compliance.
29. Subject to these corrections and variations 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.

D. Boffin

INSPECTOR