
Appeal Decision

Site visit made on 13 May 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/Q1445/C/19/3239974

7 Queens Road, Brighton BN1 3WA

- 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 Act).
- The appeal is made by Miss Julie Greenfield of Lighthouse Tattoo against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice, numbered ENF2019/00476, was issued on 18 September 2019.
- The breach of planning control as alleged in the notice is without planning permission the installation of security shutters across the front of the property on the Land.
- The requirements of the notice are:
 - The complete removal of the unauthorised security shutters and all associated mechanism housing.
 - Make good and repaint to match existing building fabric and appearance.
- The period for compliance with the requirements is three weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. An appeal was submitted on grounds (a), (c), (d) and (f). Given the situation with SARS-CoV-2 during the course of the appeal, I asked the parties whether the period for compliance with the notice should be extended. The Council indicated an extension would be appropriate, so I have dealt with the appeal on the basis that it includes an appeal under ground (g).

The Appeal on Ground (c)

2. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
3. There is no dispute that the shutters constitute development within the meaning of Section 55 of the Act for which planning permission is required.
4. The previous shutters, I understand, had been on the building for a long time. However, these have been replaced with new shutters that have altered the external appearance of the building. The works to remove the previous shutters and install replacement shutters comprise a building operation within the

definition of development at Section 55 of the Act. As such, they require planning permission.

5. No planning permission has been sought from or granted by the Council for the current shutters.
6. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
7. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

8. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
9. The development would become lawful were it to have been substantially completed for a period of 4 years beginning with the date on which the operations were substantially completed.
10. I understand that the previous shutters on the site had been installed for sufficient time that they had become lawful. However, these were removed and replaced with the new shutters that are materially different from those previously on the building. As the new shutters were installed less than four years prior to the issue of the notice and given my conclusions on the ground (c) appeal, at the date when the notice was issued I conclude that, on the balance of probability, it was possible for the Council to take enforcement action in respect of the breach of planning control.
11. For these reasons, I conclude that the appeal under ground (d) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

12. The effect of the security shutters on the character and appearance of the existing building and surrounding area, with particular regard to West Hill Conservation Area.

Reasons

13. 7 Queens Road is located within Brighton city centre on a busy street that is largely commercial and leads from the main shopping streets and seafront to the station. A number of properties in the street have security shutters. In most cases, the machinery housing is hidden either behind or below the shop signage. The shutters themselves tend to be in muted colours and reflect the branding of the shops. One set of shutters is painted with a graffiti design.
14. The shutters at 7 Queens Road are painted bright orange and the machinery housing is located on the signboard for the premises, without any advertising signage to show what business is located within the premises. Given the location and colour of the shutters and machinery housing, it is prominent in

views along the road, dominating the neighbouring properties that are predominantly painted in dark or muted colours. As a result, it stands out and is incongruous on this building and in the street scene.

15. Much of the west side of Queens Road and development to the rear is within the West Hill Conservation Area that comprises predominantly terraced residential development rising up the hill to the rear of Queens Road. A small part of the conservation area extends a short distance toward no. 7 on the opposite side of the road. However, no. 7 is outside the conservation area as defined on the map supplied by the Council. Given its separation from the conservation area and the modest nature of the development, the shutters do not affect the setting of the heritage asset.
16. I note that the shutters replace previous shutters that have been removed and that shutters have been located on the building for a significant period. The shutters could be repainted or punched lathes fitted that would reduce the prominence of the shutters. I have taken these factors into account in coming to my decision, but they do not outweigh the harm I have found.
17. For these reasons, I conclude that the security shutters harm the character and appearance of the existing building and surrounding area, although they do not affect the setting of the conservation area. As such, they do not comply with Policies QD5 and QD8 Brighton and Hove Local Plan (LP) and Policy CP12 City Plan Part One (CP) that seek to raise the standard of design in the city, including providing an interesting and attractive frontage within town centres and resisting the installation of solid shutters.
18. My attention has also been drawn to Policy HE6 of the LP and Policy CP15 of the CP that relate to development affecting heritage assets. As I have concluded that the shutters are outside the conservation area and would not affect its setting, they would not be contrary to those policies.
19. I note that the appeal has been supported by some neighbours and other interested parties. The shutters provide security in an area where I understand there has been vandalism in the past. However, I do not consider that these matters overcome the harm to the character and appearance of the building and surrounding area.

Conclusion

20. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

21. An 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek removal of the security shutters, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

22. The appellant suggests that they would be willing to install punched lathes into the shutter such that it would be less solid in appearance and allow some views through to the shopfront behind. However, that would retain the machinery housing on the shopfront, and the security shutters would still cover the shopfront when closed, such that the breach of planning control would remain.
23. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

24. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
25. I note that the appellant has been furloughed during the SARS-CoV-2 crisis that restricts their availability to manage the removal of the security shutters. It is unclear whether there are others able to manage this, or when this business will be able to re-open. The period of compliance for the removal of the shutters, at three weeks, is minimal. I note that the Council suggest that a longer period would be appropriate in the circumstances, although no longer period has been suggested.
26. Taking all of the above into account, I consider that a period of three months would be more reasonable to enable the removal of the security shutters.
27. For these reasons, I conclude that the appeal under ground (g) should succeed.

Formal Decision

28. It is directed that the enforcement notice is varied by amending the time for compliance at section 6 from 3 weeks to 3 months.
29. Subject to the variation, the appeal is dismissed, 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.

AJ Steen

INSPECTOR