



Appeal Decision

Site visit made on 1 July 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/N4720/C/20/3246851

Land at 188A High Street, Boston Spa, Wetherby LS23 6BT

- 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 Musuk Ali of Ali's Kitchen against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 16 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the replacement of a timber shopfront with an aluminium framed shopfront.
- The requirements of the notice are to remove the aluminium framed shopfront and replace with a traditional timber shopfront and window detailing in a style that existed prior to the installation of the unauthorised aluminium framed shopfront.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

The appeal on ground (a) and the deemed planning application

1. The main issue is whether the replacement shopfront preserves or enhances the character or appearance of the Boston Spa Conservation Area (BSCA).
2. As set out in the Boston Spa Conservation Area Appraisal and Management Plan (the Appraisal), the character of Boston Spa derives from its development as a spa resort between 1760 and 1830. Classically inspired Georgian architectural forms dominate, and its built environment is of extremely high quality, which is demonstrated by the very high density of listed buildings in the village.
3. As a result of the number of listed buildings in the settlement, many architectural details have been retained. Consequently, the area has a strong and attractive, well maintained historic character and appearance. The uniform style of architecture and unity of materials, scale and massing gives the settlement a strong and distinctive historic character.
4. The appeal property is a single storey mid-terrace building situated between two two-storey traditional buildings in a prominent location on a relatively small high street, identified as a secondary shopping frontage.
5. From the evidence before me I can see that the previous shopfront included features which respect and reflect traditional shopfront design, including decorated stall risers, a recessed central entrance and symmetrical display windows. Whilst the building is not listed and may be of little architectural

significance, the design and detailing of the former shopfront meant that it was in keeping with the traditional character and appearance of the area and made a positive contribution to the significance of the Conservation Area.

6. In contrast the replacement shopfront, notwithstanding the retention of the fascia, exhibits few of the main elements of good shopfront design. The stall risers and display windows have been removed and replaced by large areas of glazing, divided both horizontally and vertically with small top opening windows and the entrance positioned to one side, flush with the glazing which provides no visual relief. Combined with the use of non-traditional materials, the overall effect is an uncharacteristic modern shopfront which does not respect or reflect the typical architecture or historic character and appearance of the area.
7. The Appraisal identifies that shopfronts have a great impact on the character of the BSCA. Whilst there is no requirement in policy to use only traditional materials, the appeal scheme is an inferior replacement for the previous shopfront. As such it has had a harmful effect on the character and appearance of the appeal building and consequently does not preserve or enhance the character or appearance of the BSCA.
8. The appellant referred to other shopfronts within the BSCA, which they stated are not constructed from timber and do not conform to traditional styles. I had regard to those properties at my site visit and observed that whilst the Post Office and Tom Foolery incorporate modern materials, they do not have entirely modern appearances and their design and detailing include features of traditional shopfronts. Aqua, has a more contemporary appearance but retains a simple, symmetrical appearance.
9. Accordingly, these examples do not provide a precedent to justify the appeal scheme in the context of the special attention that must be paid to the desirability of preserving or enhancing the character or appearance of the area as a whole.
10. The appellant suggested facing the frame with wood however, this would not overcome the harm in respect of the design of the shopfront.
11. Given the scale of the proposal within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
12. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the proposal.
13. I understand that the former shopfront was removed due to its poor condition and its effect on conditions within the property. The appellant also stated that the previous doorway was too narrow for wheelchair access. Nevertheless, these are not matters which alter my judgement, particularly as it has not been demonstrated that the appeal scheme is the only means by which the desired

improvements could be provided. The proportionate response and that supported by the development plan is that the appeal should be dismissed.

14. Consequently, the public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation. Overall, I conclude that the development does not accord with the design and heritage protection aims of Policies P10 and P11 of the Leeds Core Strategy Adopted November 2014, Policies BC7, BD7, N18A and N20 of the Leeds Unitary Development Plan (Review 2006) and Policy Des 1 of the Boston Spa Neighbourhood Development Plan Planning for a Successful Future 2012-28 (the Neighbourhood Plan). It also fails to accord with national policy which seeks to conserve and enhance the historic environment.
15. The appellant referred to Policy Des 2 of the Neighbourhood Plan which states that exceptional modern design can be supported by justification. However, for the reasons given above I find that the shopfront does not constitute exceptional modern design and therefore does not accord with this policy.

Other matters

16. The misgivings expressed by the appellant regarding the lack of communication by the Council, the time taken to issue the enforcement notice and, the appellant's cooperation with the Council's highway team in respect of voluntarily removing a ramp, are separate from the planning merits of the appeal development and have no bearing on the outcome of this appeal.
17. For the reasons given above, the appeal under ground (a) is dismissed and the deemed planning application is refused.

The appeal on ground (f)

18. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
19. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the removal and replacement of the shopfront, I find the purpose is to remedy the breach of planning control.
20. The appellant suggested facing the frame with wood however, I have considered this matter under ground (a) and found that this would not overcome the identified harm.
21. The lesser steps advanced by the appellant would not remedy the breach of planning control. In order to remedy the breach of planning control, it is not excessive to require the shopfront to be removed and replaced. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

22. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the shopfront cost £5000, the replacement is more than the business can afford and they need more time to explore a compromise with the Council. Further, that as a result

- of the COVID-19 pandemic the business will not have the funds to replace the shopfront for some time. They did not however, suggest what they consider a reasonable period would be.
23. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be.
24. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence - when funds can be raised, and a contractor can be appointed.
25. Nevertheless, the removal of the shopfront and its reinstatement are works that would need to be carried out by a suitably qualified tradesperson. Such works would undoubtedly involve further cost and the impact of the COVID-19 pandemic will undoubtedly have had an impact on the business. I have some sympathy with the appellant in this regard.
26. I am satisfied that having regard to these circumstances that even if account is taken of the need to remedy the harm, given the current exceptional circumstances, the notice does not afford the appellant reasonable time to comply with the requirements of the notice. Looking at the case in the round, the requirements to undertake all the works within four months would place a disproportionate burden on the appellant.
27. Taking this and all other matters into account I conclude that the period for compliance should be extended to six months. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and their business. To this extent, the appeal on ground (g) succeeds.

Formal Decision

28. It is directed that the enforcement notice is varied by the deletion of four months and the substitution of six months as the period for compliance. Subject to this variation I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR