The Planning Inspectorate

Appeal Decision

Site visit made on 10 October 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal Ref: APP/X5990/C/20/3258033

Land at 96 Queensway, London W2 3RR

- 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 Rachid Lefkir of Nomads Property Ltd against an enforcement notice issued by City of Westminster Council.
- The enforcement notice was issued on 23 July 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the removal of a fully glazed shopfront and the installation of a fully openable timber framed shopfront, together with the installation of timber cladding on the pilasters and at fascia level.
- The requirements of the notice are:
  a) Remove the timber framed shopfront from the front elevation of the Property
  b) Remove the timber cladding from the pilasters and fascia to the front of the Property at ground floor level
  c) Reinstate a glazed shopfront to match the detail, location, materials and design of the previous shopfront; and
  d) Make good any damage which has been caused to the Property by complying with steps (a) to (c) of the notice.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision

Reasons

1. The appeal has been made on ground (a) only, namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the following main issues are raised:

   - Whether the development preserves or enhances the character or appearance of the Queensway Conservation Area, and

   - The effect of the development of the living conditions of the occupiers of surrounding residential properties, specifically in terms of noise and disturbance.

Character and appearance of the Queensway Conservation Area

2. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon decision makers to safeguard the significance of heritage assets for future generations. It states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

3. The appeal property is a four-storey mid-terrace building located on the east side of Queensway. The property is a locally designated Building of Merit, and is located within the Queensway Conservation Area.

4. The Queensway Conservation Area Audit (Audit) summarises the character of the conservation area as a whole as deriving from a core of mid-19th Century terraces at its heart, a vibrant mix of architectural styles to the rest of the street and a lively mix of uses, particularly at ground floor. The particular terrace of which the appeal property forms a part is a relatively complete example of a mid-Victorian terrace, with Italianate detailing. The terrace typically comprises of shopfronts on the ground floor with residential above. The Audit indicates that shopfronts in this terrace are almost all of a single plot width and are set below a continuous cornice.

5. I noted during my site visit that the similarity of form and detailing of the upper levels of the buildings results in this part of the conservation area having a uniform and coherent character and appearance at that level. At ground floor level, however, there is a considerable variety of modern shopfronts. Few of these shopfronts retain elements of the original shopfront surrounds. As a result, at ground floor level the appearance of this part of the conservation is far from uniform or coherent. Furthermore, because of the variety of shops, cafes and restaurants in this terrace, at ground floor level the character of this part of the conservation area is to a large extent defined by the bustle and activity associated with those outlets.

6. The ground floor of the appeal premises is in use as a restaurant. The shopfront now subject to the enforcement notice replaced a modern shopfront which, apart from a pedestrian door to one side, was predominantly glazed. The City Council acknowledge this but have identified two aspects of the shopfront which are considered to have a harmful effect on the character and appearance of the Queensway Conservation Area and the Building of Merit: the materials used for the pilasters/entrance to the flats, and the void created by the fully opening shopfront. I will consider those aspects in turn.

Materials

7. I recognise that the timber cladding used for the pilasters/entrance to the flats is not a traditional building material for properties of this age and in that respect is not sympathetic to the host building. However, this must be considered in context. The existing shopfront replaces a modern, fully glazed shopfront. The extensive and largely unrelieved use of that material was similarly unsympathetic to the host property. It follows that no elements of the original shopfront were lost as a result of installing the new shopfront. The installation of the new shopfront has similarly not resulted in the loss or alteration of any of the original features of the host property at first floor level and above: for example, the ornate metal balustrade directly above the shopfront has been retained. Consequently, when looked at as a whole, the

timber cladding of the new shopfront does not detract from overall character and appearance of the Building of Merit as it existed immediately prior to the existing shopfront being installed.

8. In terms of the appearance of the conservation area, the appeal property stands in the middle of a long line of relatively modern shopfronts. Although not constructed of timber cladding, the materials used in the construction of those shopfronts are also typically unsympathetic to their host properties. Furthermore, notwithstanding the use of modern materials, the existing shopfront also retains the appearance of being a single plot width, a characteristic identified in the Audit as being typical of the shopfronts in this terrace. In my view, considered in this context, the use of timber cladding in the new shopfront at least preserves the appearance of this part of the conservation area.

The void created

9. The City Council considers that, although the previously existing shopfront was fully glazed, due to the reflective qualities of the glass it did not have the appearance of an open space. The City Council then contrasts this with the fully openable new shopfront and considers that the relationship between the shop front and the pavement is markedly changed as a result.

10. I concur with the City Council insofar as the fully opening shopfront does fundamentally change the relationship between the shop front and the pavement. Where I depart from the City Council is in considering that to be harmful. The Audit summarises the character of the conservation area as a whole as deriving in part from a lively mix of uses, particularly at ground floor. I observed during my site visit, made in the early afternoon of a Saturday, that the area surrounding the appeal site is a busy, vibrant place. In that sense, it is entirely consistent with the character of the wider conservation area. In my view, far from being harmful, in this particular location opening up the restaurant to the street and establishing a flow between the two is entirely consistent with the character of the conservation area, insofar as it generates bustle and activity at ground floor level.

11. In reaching that view, I am mindful of the two appeal decisions cited by the City Council in which the Inspector reached a different conclusion. The first of these also relates to a property in Queensway (Ref: APP/C/95/X5990/639257). The other decision relates to a property in Hereford Road, also within the City of Westminster (APP/X5990/C/18/3207125). Whilst there are some similarities between those two cases and the development at the appeal property, there are also some significant differences. The former is a corner plot and a much larger premises than the appeal property. Although I have not been provided with details of the development then before the Inspector, I can understand that the effect of creating a void or voids in those elevations could potentially have had a significant effect on the character and appearance of the host property. That decision also pre-dates the designation of the Queensway Conservation Area in 2002 and the identification of the lively mix of uses as part of the character of that conservation area.

12. The Inspector's conclusion in relation to the second decision formed part of a wider consideration of the effect of that development on the character and appearance of the Bayswater Conservation Area. From my reading of the Inspector's decision, it is evident that many of the shopfronts in that

conservation area retained some degree of traditional detailing. That included the appeal property which, as described by the Inspector, originally included large single pane windows, a recessed door and a stall riser. The appeal before that Inspector can be distinguished from that now before me, in which the shopfront replaced no longer retained any original features or detailing.

13. For the above reasons, I consider that the two appeal decisions cited by the City Council do not create a binding precedent that I should follow. Indeed, I note that the Inspector in the second decision (APP/X5990/C/18/3207125) expressed the view that, in isolation, the fully opening shopfront before him was not itself incongruous. This supports my conclusion that, in the particular context of this appeal site, the creation of a void through fully opening doors at least preserves the character and appearance of the Queensway Conservation Area.

Conclusion on the first main issue

14. Having regard to the above, I conclude that the development subject to the enforcement notice preserves the character and appearance of the Queensway Conservation Area. I therefore find no conflict with Policies 7.7, 7.6 or 7.8 of the London Plan: Policies DES1, DES5 or DES9 of the Unitary Development Plan: or Policies S25 or S29 of Westminster's City Plan. These policies indicate, amongst other things, that Westminster's extensive heritage assets will be conserved and that planning permission will be granted for proposals that in locally appropriate situations use modern or other atypical facing materials.

Living conditions

15. The three floors of the appeal property above the restaurant are occupied as residential flats, split laterally. I understand that the upper floors of the neighbouring units are also occupied as residential units. As a matter of principle, the City Council discourages openable shopfronts on the grounds that noise can escape and cause nuisance for nearby residents.

16. However, Queensway is a busy commercial street with high levels of activity both during the day and into the evening. The City Council's case in relation to noise nuisance is purely speculative and the City Council has produced no technical noise evidence to support its concerns in this respect. I am mindful also that the openable shopfront has been in place since October 2016, a period of some four years. The City Council has not provided any evidence of complaints being received from the occupiers of surrounding residential properties during that time, and no objections to the development have been received in response to the notification of this appeal.

17. Nevertheless, I recognise that there would be some potential for noise and disturbance to transmit to the residential properties above from the comings and goings of customers, conversations, music and general ambient noise from the restaurant. Given the ambient noise levels during the day and early evening, I am satisfied that any potential harm to the living conditions of the occupiers of surrounding residential properties could be safeguarded by the imposition of a condition restricting the times when the shopfront could be fully opened. I note that in dismissing the appeal in relation to Hereford Road (APP/X5990/C/18/3207125) the Inspector took a similar view albeit, because the appeal was dismissed on other grounds, no such condition was imposed.

Conclusion on the second main issue

18. I conclude that, subject to the imposition of a suitably worded condition, the development would not have a harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. I therefore conclude that the development does not conflict with Policy 7.15 of the London Plan; Policies ENV6 or ENV7 of the Unitary Development Plan; or Policies S29 or S32 of Westminster's City Plan. These policies indicate, amongst other things, that the City Council will resist proposals that result in a loss of residential amenity.

Other matters

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. Although I have found that the development complies with the development plan, it is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

20. The City Council's Supplementary Planning Guidance: Shopfronts Blinds and Signs – A guide to their Design (SPG) contains specific guidance in relation to open fronted shopfronts. In summary, the SPG discourages this type of shopfront on the basis that it can detract from the architectural integrity of the building.

21. The SPG does, however, go on indicate that where such shopfronts exist, the installation of sliding glass panels which form a glass shopfront at night is the preferred solution. In this case, the bi-fold doors of the shopfront can be fully closed which would then close the void and give the impression of a shopfront, similar to that envisaged in the SPG. To that extent, the existing shopfront accords with the SPG. I am therefore satisfied that any divergence from the guidance in the SPG is not sufficient to indicate that determination should be made otherwise than in accordance with the development plan.

Conditions

22. The City Council has suggested two conditions. The first is that the openable shopfront must remain fixed shut from 21:00 until 08:00 hours daily. I consider that a condition to this effect would be necessary to safeguard the living conditions of the occupiers of the surrounding residential properties, and would be both reasonable and enforceable. Subject to a minor revision of the wording, I shall impose that condition.

23. The second condition suggested by the City Council is that no live or amplified music shall be audible outside the premises when the shopfront is fixed open. However, in my view it would not be reasonable to require that no live or amplified music should be audible outside the premises: the mere fact that the music would be audible does not necessarily mean that it would cause disturbance to the occupiers of the surrounding residential properties. The City Council has not specified a maximum level that the noise should not exceed, and in the absence of that I consider the condition suggested by the City Council to lack the necessary precision, such that it would not be enforceable.

Conclusion

24. Having regard to the above, I conclude that there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. I therefore conclude that the appeal on ground (a) should succeed and planning permission will be granted.

Formal Decision

25. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the removal of a fully glazed shopfront and the installation of a fully openable timber framed shopfront, together with the installation of timber cladding on the pilasters and at fascia level at 96 Queensway, London W2 3RR, subject to the following condition:

    The openable shopfront must, every day, remain shut/closed from 21:00 hours until 08:00 hours the following day.

Paul Freer
INSPECTOR