



Appeal Decision

Site visit made on 29 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 December 2020

Appeal Ref: APP/Z2260/C/20/3248639

166 Northdown Road, Margate CT9 2QN

- 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 Derick Holt against an enforcement notice issued by Thanet District Council.
 - The enforcement notice was issued on 23 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the removal of timber shopfront and display cases.
 - The requirements of the notice are to:
 - Reinstate the timber shopfront including the display cases, using the same materials, design and layout as removed and shown in the attached photograph.
 - The period for compliance with the requirements is 6 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matters

2. In April 2019 application (ref F/TH/19/0512) was made to the Council, retrospectively, for the replacement of the shopfront at the premises. It was refused planning permission in October 2019 on the basis that the design would detract from the special character of the conservation area within which the site falls. Given that the replacement shopfront was already in place, and had been considered so for a time less than the four year immunity period, the Council saw it expedient to issue the enforcement notice, now at appeal.
3. More recently, in October 2020 a new application (ref F/TH/20/1415) was submitted to replace the existing shopfront with a new one to a design more in keeping with that removed. This application has yet to be determined.

Matters concerning the Enforcement Notice

4. In the judgement of *Miller-Mead v MHLG* [1963] 2 QB 196, the Court held that *"the subject, who is being told he is doing something contrary to planning permission and that he must remedy it, is entitled to say that he must find out from the four corners of the document exactly what he is required to do or abstain from doing."*
5. The judgement continues *"Supposing then...that the owner or occupier...could not tell with reasonable certainty what steps he had to take to remedy the*

alleged breaches. The notice would be bad on its face and a nullity." The classic statement in *Miller-Mead* of the test for the validity of an enforcement notice is "*does the notice tell the person on whom it is served fairly what he has done wrong and what he must do to remedy it?*"

6. In the current case the enforcement notice requires for the reinstatement of a timber shopfront including the display cases, using the same materials, design and layout as removed, and shown in an attached photograph. Barring the distinctive checked yellow and orange tiling, which I noted at my site visit, there is no clear indication that the photograph - which is not of particularly good quality - is that of the appeal premises. Further, save for the profile of the former shopfront, there is no indication of the type of materials to be used in the reinstatement, nor annotations to illustrate clearly what the stipulated remedial works would here involve.
7. On the above basis I am not satisfied that the appellant, or any recipient of the enforcement notice, would have sufficient certainty as to what is actually meant by the wording "*using the same materials, design and layout*". It is open to interpretation and I am not convinced that, as it stands, the notice shows sufficient clarity to demonstrate validity.
8. Nonetheless, the thrust of the notice is clear. It requires that the replacement shopfront should be removed and, seeing that this would be the means to the Council's desired reinstatement, it is open to me to correct the notice and require only for the shopfront's removal. Correcting the notice in this manner would not cause injustice to either main party.
9. The replacement shopfront can be a matter for negotiation between the two parties and, in this respect, I note that the planning application currently with the Council proposes that a new shopfront be installed, similar in profile and features to the original design. Without prejudice to the application's determination, should the Council consider it an acceptable form of development, a planning permission with appropriate conditions would represent the most appropriate tool of securing its installation, the importance of which is heightened by the conservation area location.

The Appeal on ground (c)

10. The basis of an appeal on ground (c) is that the matters which are the subject of the allegation do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate this on the balance of probability. The planning merits of the development are irrelevant to an appeal on this ground.
11. S55(1) of the 1990 Act as amended defines the two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. It is then necessary to decide whether planning permission is required. S57(1) provides that planning permission is required for development, subject to certain exclusions which do not apply in this instance.
12. S55(2)(a) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which, affect only the interior, and do not materially affect the external appearance of the

building. In deciding whether works materially affect the external appearance, a measure of subjective judgement is involved.

13. The test raises subjective and aesthetic issues. The changes must be visible from a number of vantage points and be material to the appearance of the building as a whole. The replacement shopfront, particularly given Northdown's conservation area status, is a case in point.
14. Although I have had regard to the appellant's representations setting out the reasons why the works were carried out, with replacement structures there is a point where works do not amount to maintenance, improvement or alteration but, instead, to rebuilding.
15. In the circumstances, I am satisfied that the works undertaken constituted development under s55 which required the benefit of planning permission, but none was granted. The development therefore represents a breach of planning control. Seeing that no other grounds of appeal were advanced I conclude that, procedurally, the enforcement notice was correctly issued.
16. The appeal on ground (C) therefore fails.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed, and I shall uphold the enforcement notice with a correction.

Formal Decision

18. It is directed that the enforcement notice be corrected by deleting the wording of the requirements and substituting it for the following:

"Removal of the replacement shopfront installed."

Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Timothy C King

INSPECTOR