



Appeal Decisions

Site visit made on 9 March 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021

Appeal A Ref: APP/H5960/C/20/3256739

Land at 106 - 108 Tooting High Street, London SW17 0RR

- 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 Muhammed Mueen against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 22 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the past 4 years, the erection of a ground floor front extension incorporating solid metal roller shutters.
 - The requirements of the notice are: Remove the unauthorised extension and solid roller-shutters and restore the Property to its previous condition.
 - The period for compliance with the requirements is 6 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/H5960/W/20/3256740

106 - 108 Tooting High Street, London SW17 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Muhammed Mueen against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2020/1746, dated 19 May 2020, was refused by notice dated 23 July 2020.
 - The development proposed is: Shopfront forecourt enclosure with steel roller shutters.
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Decisions

1. It is directed that the enforcement notice is varied by the deletion of 6 weeks as the period for compliance and its substitution with 3 months. Subject to this variation, Appeal A is dismissed and the enforcement notice is upheld.
2. Appeal B is dismissed.

Preliminary Matters

3. For the section 78 appeal, the description includes wording that is not a description of development and so I have omitted this in the heading above. It was clear from my site visit that the development has already been carried out and this is consistent with section 5 of the planning application form.
4. For the section 174 appeal, an appeal which was brought on ground (a) may not proceed due to the provisions of section 174(2A) of the 1990 Act as amended.

5. Since the planning application was refused the London Plan 2021 has been published and so is now part of the development plan. The previous iteration of the London Plan, referred to in the Council's decision notice, is now superseded, as are its policies. Consequently, the views of the main parties have been sought on any implications for the appeal development and I have taken any comments received into account in my reasoning.

Reasons

Appeal B: The Section 78 Appeal

6. Based on the Council's decision notice, the main issues in the section 78 appeal are the effect of the development on:
- the character and appearance of the area; and
 - highway safety.

Character and Appearance

7. The appeal premises contain a retail unit on the corner of Tooting High Street and Hoyle Road. The retail unit occupies the ground floor of 2 buildings within a terrace. At my site visit I saw the terrace has a consistent front building line and a generally uniform character and appearance of commercial uses behind timber, glass or powder coated aluminium shopfronts at ground floor, with residential uses above. A narrow strip of forecourt runs along the front of the terrace.
8. The appeal development consists of a metal framed enclosure with a metal sheet roof which has been constructed at ground floor level over the forecourt of the appeal premises. Its front elevation is open to the street and may be closed off by metal roller shutters. Its end elevations are finished in a metal mesh.
9. From the front elevation drawings provided, the former shopfront to Tooting High Street is removed as part of the application. This is consistent with my observations at my site visit, where it was apparent that significant parts of the former shopfront to Tooting High Street have been removed from the building.
10. In the context described above, the appeal development is entirely incongruous, particularly as a result of its bare metal poor quality materials and finish and its siting forward of the established front building line, spanning 2 building frontages. The appeal development bears no relationship to the host buildings or any others in the terrace.
11. I appreciate that metal roller shutters may be a common feature within the street scene. But this is no justification for the siting or finish of the appeal development and no information has been provided to satisfy me that those referred to are lawful.
12. The appellant has provided photographs of schemes which they consider are similar, in the surrounding area, stating that they are common features in Upper Tooting Road, Merton Road and London Road. But details have not been provided and I do not know if the structures referred to are lawful. In any event, from the information available to me they are not seen within the same context as the appeal site and so I give them limited weight in my decision.

13. My attention has also been drawn to external seating areas. But as these serve a different purpose, I do not find them comparable to the appeal development.
14. The appellant considers the appeal development introduces a vibrant element within the street scene, an active area at the front of the unit and an inviting environment for customers. But I am not satisfied the same cannot be achieved by a conventional shopfront, as seen on neighbouring premises.
15. The appellant states the appeal property is not a listed building and does not fall within a conservation area. But this does not change my conclusion on this main issue and does not justify the harm identified.
16. I conclude on this main issue the appeal development harms the character and appearance of the area. As such it does not comply with Policies PL 1 and IS 3 of the Local Plan Core Strategy 2016, Policy DMS 1 and DMTS 9 of the Local Plan Development Management Policies Document 2016 (the DMPD) or the adopted Shopfronts guide to good design 1988.

Highway Safety

17. The width, siting and protrusion of the appeal development towards the carriageway significantly narrows the footway available for pedestrians. This is exacerbated by the existence of pre-existing street furniture including a Legible London sign, a tree, 3 cycle stands and a lamppost. As a result, pedestrians may need to step on to the carriageway to pass one another on this busy section of the high street, particularly if one is travelling with, for example, shopping, luggage, a pushchair or wheelchair. Consequently, the safe passage of pedestrians is impeded and obstructed.
18. The appellant states that the enforcement notice does not reference that the proposal will result in any harm to pedestrian safety but the refused planning application does, and, that it is clear by its omission from the notice that the appeal proposal does not result in any harm to pedestrian safety.
19. But the Council is not bound to use the same wording in its refusal of planning permission as it did in its enforcement notice, particularly if circumstances have changed. I note there is a strong objection to the planning application from Transport for London and this postdates the issue of the enforcement notice. In my view, this means circumstances have changed and I have given significant weight to this objection in my decision. In any event, it seems to me that the issue of highway safety is implicit from the wording used in the enforcement notice where it states that the development obstructs pedestrian access.
20. I conclude the appeal development has a harmful effect on highway safety. This does not comply with Policy DMS 1 of the DMPD in respect of street clutter and obstruction, or the adopted Shopfronts guide to good design 1988 as a result of the obstruction caused by the appeal development.
21. The decision notice refers to the Mayor of London: Streetscape Guidance (2019), Mayor of London: Healthy Streets for London (2017) and Transport for London's Streetspace for London Plan objectives. However, it has not been explained exactly how these are relevant to this main issue or what status they may have in respect of the development plan. So they have not weighed in favour of or against the appeal development in my decision on this case.

Other Matters

22. The appellant states that during Covid-19, the presence of the appeal development has been imperative to allow him to trade successfully and is integral to keeping customers safe as well as staff. But his case is not further substantiated in this regard and in my judgement the appeal development has the opposite effect by significantly narrowing the footway in this location and so undermining the practise of social distancing.
23. The appellant also states the appeal development allows the external display of dry goods, offers protection from the elements and security when the premises are closed. But the same is true of a conventional shopfront with an awning and forecourt and so I give these points limited weight in my decision.
24. My attention has been drawn to needing to support businesses and specifically paragraphs 80 and 92 (d) of the National Planning Policy Framework. The latter of these concerns ensuring that established shops are able to develop and modernise. But these objectives should not be at any cost and must be balanced with other effects of the development, such as the effect on character and appearance and highway safety, which in this case I have ascribed more weight to.
25. The appellant states the appeal development has been erected within the extent of the original front forecourt. But this makes no difference to my overall conclusions.
26. Representations in support of the appeal development have been received but these do not justify approval of the appeal development in light of the harm identified above.

Appeal A: The Section 174 Ground (g) Appeal

27. The appellant considers the time period of 6 weeks to comply with the notice is too short and that a reasonable period to allow compliance is 12 months given current difficulties in relation to Covid-19 and to enable him to ensure the safety of customers and staff. But the appellant's case is not substantiated further in this regard.
28. The single requirement of the notice appears relatively straightforward, even taking into account the above pandemic and I must bear in mind the harm resulting from the appeal development. Given the notice requires restoration of the property to its previous condition, pursuant to section 173(4)(a) of the 1990 Act, in addition to removal of the unauthorised extension and roller-shutters, I consider a period of 3 months is what should reasonably be allowed. The appeal on ground (g) succeeds to this limited extent.

Conclusions

29. Appeal A does not succeed for the reasons given above and I uphold the enforcement notice with a variation.
30. Appeal B does not succeed for the reasons given above and is dismissed.

L Perkins

INSPECTOR