



Appeal Decision

Site visit made on 17 February 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/A5840/C/20/3259933

Ground Floor, 395 Walworth Road, Southwark, London SE17 2AW

- 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 Miss Fatima Sheriff against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 27 August 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the premises from Retail to a sui generis use (nail bar/tattoo/beauty treatments) ("the unauthorised change of use") AND Without advertisement consent, the installation of an illuminated sign at fascia level and the illumination of the projecting box sign on the front elevation.
- The requirements of the notice are 5.1 Cease the unauthorised use of the land for beauty treatments, nail bar and as use as tattoo/piercing studio; 5.2 Remove all equipment, items, materials, and all other paraphernalia associated with the unauthorised use from the land; 5.3 Remove the illuminated fascia signage on the front elevation and remove all fixtures, fittings, and any other equipment associated with this signage from the land; 5.4 Remove the projecting box signage on the front elevation and remove all fixtures, fittings, and any other equipment associated with this signage from the land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matter

1. Whilst arrangements had been made for me to visit the interior of the premises, unfortunately the appellant was not available to facilitate access at the scheduled time. However I was able to view the exterior of the premises and the surrounding area from Walworth Road. On this basis I am satisfied that I have sufficient information to make my decision without resulting in prejudice to the parties.

The appeal on ground (c)

2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant argues that she was not aware that planning permission was required, was not advised of this by her landlord, and that having obtained a license from the Council, considered that all the necessary permissions were in place.

3. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act and includes the making of any material change in the use of a building. The advertisement regulations do not permit illuminated business signs on premises within Conservation Areas, without the express consent of the Local Planning Authority, and the appellant does not seek to argue that the illuminated signage displayed on the frontage of the building did not require advertisement consent.
4. It would appear that the ground floor property was formerly in use as a shop. Although the appellant says that part of the existing business involves the sale of products and therefore retailing and that as such there has been no significant change to the previous shop use, there is no suggestion, from the information provided, that product sales constitute a primary use of the appeal site, or indeed that the services that are the subject of the allegation do not constitute a primary use.
5. The appellant refers to the fact that there has not been any major work undertaken to the building. Whilst I have no reason to doubt this, because of the type of services provided, the use of chemicals and the potential impacts, outside the premises, that may arise from this, I do not agree that there would be no material difference between the use of the premises as a shop and as a place for beauty treatments.
6. The question of whether a license is in place allowing the business to operate, and whether health and safety inspections have taken place, relates to a separate regime of Council control and does not have a bearing on whether planning permission or advertisement consent is needed. Even if the appellant was unaware of the need for permissions, this does not excuse the breach of planning control. For the above reasons the ground (c) appeal must therefore fail.

The appeal on ground (a)

Main Issues

7. The appellant's ground (a) appeal is that planning permission and advertisement consent should be granted for the development alleged in the notice.
8. The main issues are i) the effect of the development on the living conditions of adjoining residents with particular regard to odour and disturbance from noise and artificial light; ii) the effect of the illuminated signage on the character and appearance of the Walworth Road Conservation Area (CA) and iii) the effect of the development on the vitality and viability of the town centre.

Reasons

Living Conditions

9. I have read the objections to the alleged development from residents living in the flat above the business premises. They have complained about being disturbed by the odour from very strong chemicals, which would appear to permeate from the salon into their flat and into a communal hallway. They say that the installation of air conditioning units has not had the desired effect of improving ventilation. They also complain that the late hours of operation of

- the business and the running of the air conditioning units results in noise disturbance and that they are disturbed by light pollution from the illuminated signs.
10. The appellant has referred to the installation of a fan for ventilation purposes and doubts that chemical odours would be able to get into the flat above. She also makes the points that the upper floor residents should use blinds or curtains; that the signage could be switched off at the end of the day; that there is other illuminated signage in the vicinity and also potential disturbance from street lighting and traffic noise.
 11. I see no reason why it would not be possible, in principle, for measures to be put in place to satisfactorily control odour and noise emissions from the premises, such that the living conditions of neighbouring and nearby residents are protected. However at present, there is no information presented to me, for example technical reports into the issues described, to indicate whether these problems are continuing to occur and, if they are, whether and how they could be dealt with satisfactorily. I am not persuaded that it would necessarily be possible for me to gain sufficient information about these impacts from a single visit to the interior of the building.
 12. I consider that without such information, and therefore the knowledge that these issues could be satisfactorily controlled, it would be inappropriate to simply leave the issues to be resolved through the imposition of planning conditions.
 13. I noted from my visit that the illuminated projecting sign is close to an adjacent first-floor window and that the top of the sign is above the level of the lowest part of the window. This arrangement suggests that light from the sign would be able to shine directly into the window. In addition the Council's photographic evidence appears to demonstrate that the illuminated projecting box sign, in particular, results in a significant amount of artificial light penetrating the front windows of the adjoining first floor flat. I am therefore persuaded that the brightness of this sign is likely to result in disturbance and harm to living conditions.
 14. The point that the sign lighting can be switched off at the end of the day would not necessarily overcome the impact, notably at times of year when there are longer hours of darkness. Nor would it be reasonable to shift the responsibility for dealing with the problem to neighbouring residents, for example by requiring them to install light screening measures.
 15. The fact that there may be other noticeable sources of noise and light, entirely unrelated to the appeal premises does not, in itself, justify the development in this case. In the absence of evidence to the contrary, I conclude that the use of the premises and the associated illuminated projecting sign result in harm to the living conditions of adjoining residents with particular regard to odour and disturbance from noise and artificial light.
 16. Accordingly there is conflict with Saved Policies 1.10, 3.2 and 3.23 of the Southwark Unitary Development Plan 2007 (UDP) and with Policies P42 and P55 of the emerging Southwark Plan (SP) insofar as they seek to protect the amenities of local residents from the impact of changes of use and from outdoor signage.

Character and Appearance

17. The CA is a busy and vibrant area, characterised by terraces of attractively designed, historic buildings, often featuring fine architectural detailing, fronting the main shopping street. The Walworth Road Conservation Area Appraisal 2016 (CAA) recognises that signage is a key component of shop fronts and the shopping street; however that it can damage the character of the conservation area and careful consideration needs to be given to the design of new signage.
18. It is undisputed that the appeal site is within a designated Area of Special Control for Advertisements in the interests of protecting the visual amenity of the area. The CAA explicitly states that fascia or projecting signs that consist of large internally illuminated boxes are not acceptable, especially where they are too visually dominant for the overall elevation.
19. I do not concur with the view that when not illuminated the physical proportion of the signs appear to dominate the frontage of the premises and are incongruous in terms of the appearance of the adjoining commercial units. However from the Council's evidence it does seem to me that when illuminated the signs, because of their size and brightness both individually and in combination, appear strident and result in a dominant and disproportionate presence on the building frontage. I conclude that in this regard the signage results in harm to the character and appearance of the CA. Accordingly there is conflict with Policy 3.23 of the UDP and Policy P42 of the SP insofar as they seek to protect visual amenity and avoid harm to heritage assets. Whilst the appellant has referred to the existence of other illuminated signs in the vicinity, this would not justify the presence of the signs in this case.
20. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Drawing the above findings together, I conclude that the illuminated signage fails to preserve the character or appearance of the CA.

Vitality and Viability

21. Policy 1.10 of the UDP sets out that outside town centres, local centres and protected shopping frontages development will only be permitted for a proposal for a change in use between A use classes or from A use classes (which would include retail uses) to other uses, when the applicant can demonstrate that there would not be material harm to the amenities of surrounding occupiers; the use that will be lost is not the only one of its kind within a 600m radius and its loss would not harm the vitality and viability of nearby shops or shopping parades; or the premises have been vacant for at least 12 months with demonstrated sufficient effort to let or have not made a profit over a two year period.
22. The Council says that the emerging Southwark Plan seeks to expand the Elephant & Castle town centre to include this site and make it a protected secondary frontage; also that there are several other nearby examples of the type of beauty treatment use that is the subject of the notice, resulting in an over-concentration of such uses to the detriment of the vitality and viability of the town centre.

23. However, the Council has not set out precisely how the development would be in conflict with specific emerging policies in the Southwark Plan, insofar as they relate to vitality and viability. In any event the emerging Southwark Plan is yet to be adopted, therefore limiting the weight that I am able to give to this document.
24. I have already explained above that, at present, the development would fail the first criterion of Policy 1.10 regarding impact on residential amenity. However it was clear from my visit that the appeal site would not have been the only retail use within the radius specified in the aforementioned policy. Whilst there would appear to be several similar businesses operating in the locality, I am not persuaded that the development in this case results in harm to the vitality and viability of the retail offer, which to my mind continues to be significantly represented. Therefore, based on the information before me, although there would be harm to amenity, I conclude that the development does not fail on the other key criterion of Policy 1.10.

Conclusion

25. The appellant has not appealed on ground (f), that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. However it is apparent from the description of the alleged breach of planning control, and the reasons for issuing the notice, that the projecting sign was an existing fixture which has been made illuminated. On this basis I consider that it would be reasonable, with regard to the projecting sign, to allow for the option of the alternative remedy requiring the source of the illumination to be removed.
26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

27. It is directed that the enforcement notice be varied by deleting the wording of paragraph 5.4 in its entirety and substituting the following wording instead:
28. "5.4 EITHER Remove the projecting box signage on the front elevation and remove all fixtures, fittings, and any other equipment associated with this signage from the land OR Remove the source of illumination of the projecting box signage on the front elevation, so that the projecting box signage cannot be illuminated".
29. Subject to this 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.

Roy Merrett

INSPECTOR