



Appeal Decision

Site visit made on 16 February 2021

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal A: APP/B3030/F/20/3259928

Smiths Discount Jewellers, 2-4 Balderton Gate, Newark, NG24 1UE

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Sonya Gordon against a listed building enforcement notice (LBEN) issued by the Newark and Sherwood District Council.
- The LBEN was issued on 26 August 2020.
- The contravention of listed building control alleged in the notice is, without listed building consent, the installation of a box security shutter on the exterior (front) of the building, as shown in Figure 1.
- The requirements of the notice are:
 1. Remove the external box security shutter shown in Figure 1 and subject of application references 20/00774/LBC & 20/01168/FUL.
 2. Reverse any other associated works in order to return the shop frontage to its previous condition, as shown in Figure 2.
- The period for compliance with the requirements is 3 months.
- The appeal is made on grounds (e) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).

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.

Appeal B: APP/B3030/C/20/3259924

Smiths Discount Jewellers, 2-4 Balderton Gate, Newark, NG24 1UE

- The appeal is made under section under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Mrs Sonya Gordon against an enforcement notice issued by the Newark and Sherwood District Council.
- The enforcement notice was issued on 26 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a box security shutter on the exterior (front) of the building, as shown in Figure 1.
- The requirements of the notice are:
 1. Remove the external box security shutter shown in Figure 1 and subject of application reference 20/01168/FUL.
 2. Reverse any other associated works in order to return the shop frontage to its previous condition, as shown in Figure 2.
- The period for compliance with the notice requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

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.

Appeal C: APP/B3030/W/20/3259907

Smiths Discount Jewellers, 2-4 Balderton Gate, Newark, NG24 1UE

- 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 Mrs Sonya Gordon against the decision of the Newark and Sherwood District Council.
- The application Ref: 20/01168/FUL, dated 3 July 2020, was refused by notice dated 26 August 2020.
- The development proposed is retention of security shutters.

Summary of Decision: The appeal is dismissed.

Background and Preliminary Matters

1. The appeal property is a retail jewellery shop comprised within two adjoining Grade II listed buildings, 2 and 4 Balderton Gate, located within the Newark Conservation Area (the NCA).
2. Appeals A, B and C all relate to the security roller shutter assembly that has been installed to the front elevation of the appeal property. Since the issues and considerations in the appeals are closely interlinked I will deal with all three appeals together.

Ground (e) of Appeal A, Ground (a) of Appeal B, and Appeal C

Main Issues

3. Appeal A is the listed building enforcement notice appeal. The main issue for ground (e), that listed building consent ought to be granted for the works, is the effect of the works on the special architectural and historic interest of the listed buildings.
4. Appeal B is the planning enforcement notice appeal. The ground (a)/deemed planning application seeks planning permission for the roller shutter assembly. This mirrors the appeal against the refusal of planning permission in Appeal C. The main issue in Appeals B and C is the effect of the works on the special architectural and historic interest of the listed buildings; and whether the character or appearance of the NCA would be preserved or enhanced.

Reasons

5. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the buildings or their setting or any features of special architectural or historic interest they possess. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. I have taken into account the provisions of the Framework¹ which is also a material consideration.
6. Nos. 2-4 were originally constructed as houses in C18th in brick with pantile roofs, and with some later alterations. The C19th ground floor painted timber and glass shopfront is also briefly described in the listing entry. Primarily located across No. 4, but also extending into No. 2, it has a central and side door with barred over lights, panelled pilasters, and a continuous cornice above. This attractive traditionally constructed shopfront is an intrinsic element of the listed buildings'

¹ National Planning Policy Framework (2019)

architectural and historic interest. The buildings are located at the heart of the historic town centre where there are many other historic buildings, some also listed, and which together form an integrally important element of the character and appearance of the NCA. As such, the two listed buildings subject of these appeals contribute greatly to the character and appearance of the NCA.

7. The electronically operated roller shutters rise and descend from an externally mounted rectilinear housing box which projects outwards at fascia-level. The shutters run between vertical guide rails in three contiguous sections; one section covering the full height to ground floor of the central doorway, and two sections covering the two shop windows either side. The shutters and guide rails are blue in colour to match the painted timber shopfront. The housing box is partly in matching blue but the front face of the box is white with blue shop signage.
8. I consider that the combination of the length and outward projection of the housing box results in it appearing as an obviously bulky and dominant modern addition to the more modest and traditionally crafted form of the shopfront. Additionally, it inappropriately covers over the original flat fronted fascia where signage would be expected to be seen. As such, the housing box by itself diminishes the aesthetic value of the vernacular design and materials of the historic shopfront which in turn adds to the special interest and significance of the listed buildings. Outside of shop opening hours the detailed features and overall form of the timber shopfront are masked by the roller shutters. Consequently, this results in some further harm to the significance of the listed buildings. I acknowledge that the additional harm to the fabric of the timber shopfront resulting from fixings is minimal, but this factor nonetheless adds a further degree of harm. This overall harm to the significance of the listed buildings thereby also fails to preserve or enhance the character or appearance of the NCA.
9. I note the other properties with external roller shutters in the wider area to which the appellant refers. However, the existence of those does make acceptable or mitigate the harm I have previously described to these two listed buildings. I also accept that the installed roller shutter assembly provides upgraded security to prevent loss of high value goods, and that to replace them now would put the appellant to additional expense. However, such additional expense could have been avoided if appropriate advice and any necessary consent had first been obtained for a more sympathetic alternative scheme of security measures. Consequently, these matters add little weight in support of allowing the appeals.
10. The appellant points to alternative shopfront security designs at other locations. However, they are different in form and design to that which has been carried out here. Any similar proposed scheme would need to be subject of separate applications for listed building consent and planning permission to the Council in the first instance. As such, I am required to determine the appeals before me solely in relation to the works that have actually been carried out.
11. As set out at paragraphs 195 and 196 of the Framework, the totality of the harm I have identified to the listed buildings and to the NCA (the designated heritage assets) is less than substantial and hence should be weighed against any public benefits.
12. In this regard I accept that the shop provides employment and contributes to the overall commercial viability and vitality of the town centre and as such is a public benefit. However, I note that it did so for some considerable time before

the unauthorised works were carried out. Against that background there is no convincing evidence before me to demonstrate that the property would not continue to be viable as a retail shop (its optimum viable use) without this particular scheme of security measures in place and if, as suggested might occur, the current occupiers were to move out. As such, I attach limited weight to this public benefit.

Conclusion

13. In balancing all of the factors before me I find that the harm to the significance of the listed buildings and to the character and appearance of the NCA is not outweighed by public benefits. As such, the works carried out conflict with Core Policy 14 of the Newark and Sherwood Amended Core Strategy and Policy DM9 of the DPD².
14. For all these reasons the ground (e) of Appeal A, ground (a) of Appeal B, and Appeal C therefore fail.

Ground (h) of Appeal A and Ground (g) of Appeal B

15. The period for compliance as set out in the notices is 3 months. The appellant seeks a period of 9 months for reasons which include providing sufficient time to secure suitable contractors specialised in undertaking work to listed buildings.
16. In response the Council in their submissions agree to such an extension, and I concur. I will therefore allow the appeals on grounds (h) and (g) to this extent and will vary the notices accordingly.

Formal Decisions

Appeal A

17. It is directed that the listed building enforcement notice be varied in Section 6 by deleting "3 calendar months" and substituting instead the words "9 months".
18. Subject to the variation, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended

Appeal B

19. It is directed that the enforcement notice be varied in Section 6A and 6B by deleting in both "3 months" and substituting instead the words "9 months".
20. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal C

21. The appeal is dismissed.

Thomas Shields

INSPECTOR

² Allocations and Development Management Development Plan Document