

Appeal Decision

Site visit made on 9 August 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/H5390/C/20/3266088
158-160 Goldhawk Road, W12 8HJ

- 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 Hamid Ali (Top Notch Tyres) against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 17 November 2020.
 - The breach of planning control as alleged in the notice is, without planning permission the insertion of three external roller shutters, as follows; one to each of the two large shopfronts fronting Goldhawk Road one to the shopfront of the two-storey brick building fronting Stowe Road.
 - The requirements of the notice are:
 - (i) Remove from the shopfronts, described in section 2b, the roller shutter, fascia incorporating the box housing, runners and all associated fixtures and fittings.
 - The period for compliance with the requirements is four 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 (the 1990 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 1990 Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - (i) Renumbering the sections 'What are you required to do', 'Time for compliance' and 'When this Notice takes effect' as '4', '5' and '6' instead of '2', '3' and '4'.
 - (ii) The deletion of '2b' in the section 'What are you required to do' and the substitution with '2.a'.
2. Subject to the corrections, 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.

Preliminary Matters

3. The Council submitted incorrect documents with its questionnaire. It transpired that it had also sent its appeal notification letter with the wrong reference number and alleged breach of planning control. The Council was therefore given opportunity to send corrected appeal notification letters and to submit the same along with the correct questionnaire documents. The appellant was offered opportunity to respond. No response was received.

The Enforcement Notice

4. A notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it¹. A notice may be a nullity if it is "hopelessly ambiguous and uncertain"².
5. In this case, the alleged breach is, *"the insertion of three external roller shutters, as follows; one to each of the two large shopfronts fronting Goldhawk Road one to the shopfront of the two-storey brick building fronting Stowe Road."* Because there are two roller shutters attached to the two-storey building fronting Stowe Road, the appellant asserts that it is unclear which one the enforcement notice refers to.
6. However, one of the two roller shutters attached to that building is to a doorway. The other sits across the remainder of the frontage. As the allegation relates to the shopfront of the building fronting Stowe Road, it is sufficiently clear in that it does not relate to the doorway roller shutter. I do not therefore find the notice to be hopelessly ambiguous or uncertain so as to amount to nullity.
7. However, I note that the enforcement notice contains several numbering errors; the requirements, time for compliance and when the notice takes effect paragraphs should be numbered 4, 5 and 6, rather than 2, 3 and 4. The requirements also refer to an incorrect paragraph number - 2b instead of 2a. I am satisfied that I am able to exercise my powers to correct such minor errors under s176(1)(a) of the 1990 Act, so as to put the notice in order, without causing injustice to either party.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

8. The main issue is the effect on the character and appearance of the area and the Coningham and Lime Grove Conservation Area (the Conservation Area).

Reasons

9. The appeal site occupies a prominent location on the corner of Goldhawk Road and Stowe Road and is occupied at ground floor level by a tyre and alignment business. The site falls within the 'Goldhawk Road Frontage' sub-area of the Conservation Area, which is largely characterised by 19th Century, three storey properties built from stock brick with ground floor commercial frontages.
10. The Goldhawk Road frontage of the appeal site is reflective of that character, comprising a pair of linked three storey, hipped roof properties, with ground floor shop frontages. They are constructed in the vernacular stock brick with architraves and stucco detailing. The easternmost building has a single storey front extension, bringing it further into the street scene. The Character Profile³ identifies the pair as locally listed Buildings of Merit. In combination with No 162, the buildings essentially 'book-end' the entrance into Stowe Road from Goldhawk Road, making a positive contribution to the character and appearance of the Conservation Area.

¹ S173 of the 1990 Act

² Miller-Mead v MHL [1963] 2 WLR 225

³ L.B. Hammersmith & Fulham Conservation Area No. 33 – Coningham and Lime Grove Character Profile

11. The rear part of the site, fronting onto Stowe Road, differs in scale, providing a visual transition between the commercial frontages of Goldhawk Road and the residential scale of the villas, paired properties and terraces that fall within the adjoining 'Godolphin Road and Environs' sub-area of the Conservation Area. That area is characterised by the grand 19th Century properties built with of stock brick and render with hipped slate roofs. The buildings within this part of the appeal site comprise a gable fronted garage and attached two storey hipped roof building. Both are constructed in stock brick.
12. I visited the site during the daytime and evening so I was able to see the roller shutters on Goldhawk Road both lowered and rolled up. The Stowe Road shutters were lowered both during the daytime and evening.
13. The shutter runners on the westernmost Goldhawk shopfront sit in proud of the plinth and pilasters as does the shutter housing. Consequently, they obscure part of the shopfront and appear as an overly bulky and prominent projection from the face of the building. The eastern most shutters have the runners recessed inside of the plinth and pilasters of the shopfront. As a result, the projection of the shutter housing off the face of the building is not as great.
14. The roller shutter on Stowe Road is also fixed onto the front of the building, largely obscuring the ground floor frontage. Again, the projection of shutter housing appears bulky and obtrusive. All three shutters relate poorly to the architectural design of the host buildings.
15. When lowered the shutters also present a harsh, 'dead' frontage which creates an unwelcoming appearance to the street scene and contribute to a perception of an unsafe environment. The roller shutter fronting onto Stowe Road also appears in stark contrast to the neighbouring residential properties on Stowe Road.
16. I appreciate that the roller shutters are finished in the company colours. However, the solid red (on Goldhawk Road) and orange (on Stowe Road) compound their prominence and draw undue attention within the respective street scenes, and in those views where they can be seen together due to their exposed corner location.
17. The appellant asserts that the appeal shutters are typical in design and projection to others along Goldhawk Road and surrounding area and my attention has been drawn to a number of examples. However, those serve to demonstrate the disruptive effect that such additions can have to the appearance of a building and the Conservation Area. They also present an easy target for graffiti, which adds to the harmful effects on the street scene.
18. I note the appellant's particular reference to those shutters at No 2a Godolphin Road but those are not as prominently sited as the roller shutters on Goldhawk Road. They are finished in a darker, more recessive colour and are not attached to a Building of Merit. Furthermore, I have no information on the planning history or lawfulness of any of the examples cited. For these reasons they do not provide justification for exacerbating the harmful effects of the alleged roller shutters.
19. I conclude that the alleged roller shutters result in unacceptable harm to the character and appearance of the area and therefore fail to preserve or enhance the character or appearance of the Conservation Area, as anticipated by Policy

DC8 of the Hammersmith and Fulham Local Plan February 2018 (LP) and Key Principles CAG2 and CAG3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (SPD). I also find conflict with LP Policies DC1 and DC4, which, amongst other things, state that all development within the borough, should create a high quality urban environment that respects and enhances its townscape context and heritage assets.

20. The revised National Planning Policy Framework (the NPPF) expects that great weight is given to the conservation of heritage assets irrespective of whether that harm is substantial or less than substantial. In this case I conclude that the development leads to less than substantial harm to the Conservation Area taken as a whole. In such circumstances the NPPF requires that any identified harm is weighed against any public benefits the development might secure.
21. I sympathise with the business needs of the appellant and recognise that paragraph 81 of the NPPF states that planning decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth. However, it has not been shown that there are no other security measures which could be used without the associated harm. Moreover, the appellant has not explained why the make-up of the shopfronts make it impossible to incorporate internal shutters, as sought by SPD Key Principle SD5, without significant alterations.
22. The benefits do not therefore justify the harm caused by the roller shutters or prevail over the great weight that should be given to the conservation of the heritage asset.
23. Whilst I appreciate that the alleged shutters have attracted no objection, that does not negate my duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Richard S Jones

INSPECTOR