



Appeal Decision

Site visit made on 8 December 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2021

Appeal Ref: APP/Z1775/C/21/3279868

Land at 125 Fawcett Road, Portsmouth PO4 0DF

- 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 Saleem Ahmed against an enforcement notice issued by Portsmouth City Council.
- The enforcement notice was issued on 8 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the installation of single storey front extension to form new shop front; conversion of the basement to form additional floor space for retail use (Class E) and associated basement access.
- The requirements of the notice are: (1) Remove the unauthorised shopfront extension and reinstate the original shopfront. (2) Make safe the basement access located on the forecourt of 125 Fawcett Road by installing a means of enclosure, which is to be fixed to the ground, around the basement access, no more than 1 m in height and 1 m from the basement access. (3) Remove from the land all associated building materials, rubble and fixtures and fittings arising from compliance with the enforcement notice.
- The period for compliance with the requirements is 6 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matter

1. The scope of an enforcement notice is limited by s173(4)(a) and (b) of the Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its condition before the breach took place. There is no power to require the appellant to undertake works which would result in an improvement over the previous condition of the land. Relevant case law confirms that steps to be taken to remedy an injury to amenity should not impose more onerous requirements than to restore the land to its condition before the breach took place¹.
2. In paragraph 5 at (1), the notice requires removal of the unauthorised single storey shopfront extension. The notice under-enforces in respect of the associated basement works, including the access steps, which as a consequence would benefit from a deemed unconditional planning permission having regard to the effect of s173(11) of the Act, following compliance with the notice. However, paragraph 5(2) requires the erection of a 1 m high means of enclosure around the basement access steps, which are at the front of the appeal property. Given that there is no evidence of any means of

¹ *Bath CC v SSE & Grosvenor Hotel (Bath) Ltd* [1983] JPL 737.

enclosure being present at the edge of the pedestrian footway prior to erection of the extension, paragraph 5(2) clearly exceeds what is necessary to restore the property to its condition prior to the breach taking place. Also, constructing a means of enclosure would not comply with the terms of a planning permission, as no such permission exists.

3. The powers in s176(1) of the Act allow for the correction of any defect, error or misdescription in an enforcement notice, or for varying its terms, provided no injustice is caused. Having sought the views of both main parties, I shall correct the notice by deleting paragraph 5(2). The correction is necessary so that the requirements are within the scope of s173(4)(a) and (b) of the Act and would not cause injustice to the appellant or the Council. Substituting paragraph 5(2) with a requirement to cover over the access steps and reinstate the pre-existing ground levels would cause injustice to the appellant, as they would then be in a worse position than if they had not made an appeal and simply complied with the notice as issued. Whilst other works between the access steps and the footway might also be required for safety reasons, seeking and obtaining any relevant permissions in that respect will be a matter for the appellant to resolve.

Ground (a) appeal

Main Issue

4. The main issue in this appeal is the effect of the extension on the character and appearance of the surrounding area.

Reasons

Character and appearance

5. The property contains a two storey mid-terrace building. The ground floor is in commercial use, the first floor being used for residential purposes. Prior to erecting the extension the shopfront is likely to have been set back slightly from the street, a not dissimilar distance to adjoining property to the south, behind a short forecourt. For the most part, buildings in the terrace are set back from the street behind shallow front gardens. The terrace fronts onto a busy thoroughfare largely comprised of terraced buildings in a mix of commercial and residential uses. The terraces generally have a regular alignment in relation to the street and there are similarities in terms of their age, architectural style, scale and materials. Therefore, notwithstanding varying shopfront and signage styles, by and large the surrounding area exhibits a reasonably well-ordered and defined visual character.
6. The extension spans the full width of the site and it has a roof line higher than the pre-existing shop fascia, approximately level with the first floor window cills. Also, the extension protrudes well forward of the building and the rest of the terrace, up to the back edge of the footway. Consequently, the extension is of considerable scale and has a very conspicuous siting. In addition, the flat roof form together with the deep shopfront fascia give the extension a box-like profile which bears little resemblance to the more traditional built forms prevalent in the locality. Moreover, the large areas of glazing on the front and side elevations and bold colours of the fascia give the extension an assertive, overtly modern appearance. This sits uncomfortably with the more traditional

qualities and muted finishes of the external materials of the building and those generally found on nearby properties.

7. Due to all of the above factors, the extension fails to integrate visually with its surroundings and is seen from close up and further along the street as an obvious, alien addition to the building and the terrace, being entirely at odds with and failing to either reflect or respect the prevailing scale, characteristics and materials of its built context. The addition of a pitched roof would increase the scale of the extension and in turn the visual harm caused. Also, on its own that would not address the other aspects of the siting, design, and external materials of the extension identified above. As a result, adding a pitched roof does not represent an obvious alternative to removing the extension.
8. Therefore, the extension unacceptably harms the character and appearance of the surrounding area. By doing so, the extension does not accord with Policy PCS23 of the Portsmouth Plan, as it is not well-designed with respect to the character of the city and does not achieve excellent architectural quality given its scale, appearance and materials in context. In addition, the failure to achieve a well-designed place is inconsistent with the revised National Planning Policy Framework (the Framework).

Other matters

9. As any economic, social and environmental benefits arising from commercial use of the building's ground floor and basement are unlikely to be solely dependent on the extension, those factors carry limited weight. In itself, the absence of any representations from interested parties can have little bearing on my decision. The absence of harm to the living conditions of occupiers of adjoining residential property is a neutral factor which neither weighs in favour or against granting permission for the extension.

Conclusion

10. The extension does not accord with the Development Plan when taken as a whole and is inconsistent with the Framework. Therefore, I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

11. It is directed that the enforcement notice be corrected by deleting step (2) in paragraph 5. Subject to this correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR