



Appeal Decision

Site visit made on 18 January 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/N4720/C/21/3282478

Dillcash Fabrics, 51 Shepherds Lane, Leeds LS8 5AT

- 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 Mrs Tasleem Hussain against an enforcement notice issued by Leeds City Council.
 - The enforcement notice, numbered 19/01065/USFS3, was issued on 10 August 2021.
 - The breach of planning control as alleged in the notice is: the unauthorised installation of external roller shutters to front, side and rear of ground floor retail unit.
 - The requirements of the notice are as follows: the unauthorised installation of external roller shutters to front, side and rear of ground floor retail unit should be removed in their entirety including the associated shutter boxes and rails.
 - The period for compliance with the requirements is 14 days.
 - The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited extent on ground (g) only. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. See formal decision below.

Matter of clarification

2. The parties have both referred to various paragraphs in the National Planning Policy Framework (NPPF). This was revised in July 2021. Where references have been made to previous paragraph numbers, I have considered all of the points raised and there are no fundamental differences to the paragraphs wording as set out in the revised 2021 version.

Background information

3. The appeal property is a two and a half storey, red brick, terraced building located at the end of a row on Shepherds Lane, at its junction with Markham Avenue. The ground floor comprises retail premises and there is residential accommodation to the first and second floors, with flat-roofed dormers to the roof space. There are single storey front and rear extensions to the premises which were granted planning permission in June 2018.

4. The surrounding area is predominantly residential and is characterised by high density, terraced Victorian properties. There are other commercial premises along this section of Shepherds Lane and in the surrounding area, some of which have been extended in a similar manner to the appeal property. The nearby Roundhay Road frontages also contains many commercial properties at ground floor and again, some have wrap-around front and side elevations similar to those at No 51. Many of the commercial properties in the locality have had roller

shutters installed and I refer to some of these below. At the time of my site visit the business was not open and the roller shutters were in the closed position.

5. When the planning permission was granted for the extensions to No 51, in 2018, conditions were imposed including one (No 5) which required that no roller shutters be installed without full details being approved by the LPA. It would appear that no such details were submitted for approval and the appeal shutters, with surrounding framing, were fitted. A retrospective planning application for these works was refused planning permission in October 2020 and the enforcement action, resulting in the issuing of this enforcement notice was considered by the LPA to be expedient.

The appeal on ground (a)

The main issue

6. The main issue is the effect that the roller shutter installation has had on the appearance of the host building and on the character and appearance of the wider street scene in this part of Leeds.

Relevant Policy

7. Section 38(6) of the Planning and Compulsory Purchase Act states that for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise. The development plan currently comprises the adopted Leeds Core Strategy (LCS); policies saved from the Leeds Unitary Development Plan (UDP); the Aire Valley Leeds Area Action Plan (2017); the Natural Resources and Waste Local Plan; the Site Allocations Plan (SAP) and any made Neighbourhood Plan. Policy HG2 (relating to the Green Belt) of the SAP, has been remitted to the Secretary of State following a legal challenge and is to be treated as not adopted. All other policies within the SAP remain adopted.

8. The most relevant development plan policies are Policy P10 of the LCS and Policies GP5, BD6 and BD7 of the UDP. Policy GP5 seeks to ensure that development proposals resolve detailed planning considerations, including amenity. Policy BD6 seeks to ensure that all alterations and extensions respect the scale, form, detailing and materials of the original building and Policy BD7 specifically refers to the use of security shutters and states that open mesh grilles will be encouraged and that solid shutters will only be permitted in exceptional circumstances.

9. The Council's supplementary guidance within the '*Security Design Guide for Shops and Other Commercial Properties*' SPD is a major material consideration and I have had regard to all of the relevant sections of the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (PPG).

The gist of the case for the appellant

10. On behalf of the appellant, it is contended that the installation of the roller shutters to the appeal building, in this mixed commercial and residential part of Leeds, accords with both local and national policies. It is stressed that all of the other commercial premises at this cross-roads junction have had similar solid roller shutters fitted for security purposes and that this also the case for many more premises further to the west. It is also stressed that such security features are common in all of our major towns and cities.

11. Whilst acknowledging that not all roller shutter installations in the vicinity have been granted planning permission, it is indicated that in the surrounding

streets, the commercial properties are almost exclusively fitted with similar solid roller shutters. It is stressed that, in an area of such high crime and vandalism, these are required for security and personal safety reasons.

12. It is argued that solid and utilitarian designs are necessary for security purposes and that the black shutters and rails are no more visually intrusive than other differently coloured or more open types of shutter. It is accepted that in conservation areas and in small village situations more bespoke designs need to be considered. However, this particularly mixed commercial and residential part of Leeds is characterised by similar installations which are considered to be acceptable.

13. It is contended that Policy BD7, which applies a complete ban on solid roller shutters, unless there are exceptional circumstances, is not in accordance with national and other adopted design policies and is out of date. It is stressed that the NPPF requires that consideration be given to providing safe places, including designing appropriately for crime and the fear of crime. It is also indicated that the NPPF seeks to ensure that shops be redeveloped and modernised to benefit local communities. Overall, and in this particular area, it is not considered that the roller shutter installation is harmful to its character and appearance.

14. The high levels of crime and vandalism in the area are referred to, as is the need for such installations and the requirement for insurance. It is stressed that insurance premiums will differ from area to area and that, in this particular case, all of the circumstances combine to indicate that exceptional circumstances exist to justify the installation of the solid roller shutters.

The gist of the case for the Council

15. The Council indicates that, during consideration of the original application to extend the building at No 51, it was concerned about the growing number of poor examples of roller shutters in the area. Thus, condition No 5 was imposed on the permission requiring details to be submitted to ensure that only security shutters that were deemed acceptable were installed at the site. The correct procedure was not followed and the LPA does not consider the installed security shutters to be acceptable. The retrospective application was refused and it is argued that permission on ground (a) and the deemed application should also be refused.

16. In view of the wording in Policy BD7 and when taking into consideration the visual amenity impact more generally, the Council stresses that '*exceptional circumstances*' need to exist in order to outweigh the clear adverse visual impact that is currently being caused by the use of the solid and largely unintegrated security shutters. It is considered that these '*only serve to provide a more harsh and utilitarian appearance to the building*'.

17. The Council indicates that the appellant had been given the opportunity to advance '*exceptional circumstances*' with the response that the shutters have been installed due to previous vandalism and graffiti and also because, due to the property history, the insurance company required solid shutters, otherwise the insurance would be void.

18. The LPA accepts that the area suffers from crime and anti-social behaviour. However this is the case in many inner city areas and this is not considered to be '*exceptional*'. The LPA states that no visible evidence of the reported incidents was present during a site visit and it is not clear how the introduction of solid security shutters would stop graffiti in any event. It is also indicated that the

reported claims are also not supported by any crime reference numbers or photographs.

19. With respect to the insurance company position, again this is not considered to be 'exceptional' as clearly many other examples of more open and visually permeable security shutters exist in this and other parts of Leeds. To suggest, therefore, that these would not be acceptable from an insurance perspective is not considered to be credible.

20. With regard to the other examples in the locality, the LPA accepts that a number of solid and non-integrated security shutters are present. However, it is stressed that these are not positive additions to the streetscene and are considered to be visually harmful. Most are also of a historic nature and have been installed either without planning permission or not in accordance with approved details.

21. It is also indicated that, due to the passage of time, some installations have become immune from enforcement action. It is considered that their presence is therefore unfortunate and acknowledged. However, it is also argued that these examples should not be used to justify more development that is both harmful and contrary to adopted policy. The LPA indicates that were such an approach to be taken, the built environment within whole areas could potentially decline.

22. The Council stresses that the shutters have been fitted to the front, side and rear elevations of the application building which are all readily visible from public areas. It is contended that the solid and utilitarian appearance and the black colour results in them being visually prominent. The LPA is also concerned about the way the shutters have been fitted, with the guide runners and housing box projecting beyond the main walls and remaining visually apparent, even when the shutters are open, rather than being properly integrated with what are new windows and doors.

23. It is stressed that shutters have the design and appearance that policy BD7 specifically states to be unacceptable unless exceptional circumstances exist. With no such circumstances existing it is contended that the works have failed to take the opportunity to improve the area's character and quality and that the retention of the shutters would be of significant detriment to the character and appearance of the street scene and the wider area. This would be contrary to Development Plan policies, SPG, PPG and the NPPF. It is not considered that there are other material considerations which are sufficient to justify the setting aside of these adopted policies.

24. The Council states that in considering the retrospective application it had been mindful of the positive working requirements set out in the NPPF and had sought amendments to the scheme. However, because the application had been retrospective in nature, no amendments have been forthcoming.

My assessment

25. Having seen the appeal shutters, as well as the many other similar shutter installations in the area, I share the Council's concerns about the negative visual effect that these utilitarian, solid, box-like additions have had on the appeal building itself and, on the character and appearance of the locality.

26. I consider that the Council's stance in imposing the planning condition relating to the design of any roller shutters is perfectly understandable. Over the years the proliferation of inappropriate and ill-designed roller shutters, which

have been added to commercial premises in the area, have clearly detracted from the character and appearance of the streetscene.

27. Irrespective of whether or not some of the installations benefit from planning permission, or have become immune from enforcement action over time, the fact remains that the overall result is one which has a most negative visual impact in this mixed use area of Leeds. The fact that there are so many other solid and utilitarian installations nearby cannot be justification for yet another poorly designed and inappropriate installation at the appeal premises.

28. Policy GP5 of the UDP seeks, amongst other things, to protect amenities including the visual amenity of an area and Policy BD6 seeks to ensure that all alterations and extensions respect the scale, form, detailing and materials of the original building. The roller shutters and housings fixed to No 51, in my view, have detracted markedly from the appearance of the building. I do not consider that they respect the form, detailing or materials of the extended building.

29. With regard to Policy BD7, I agree with some of the points put forward on behalf of the appellant. As a particularly restrictive policy the wording is not well-aligned with the general wording of the NPPF and PPG. Nevertheless, it remains as a relevant development plan policy which seeks to limit the impact that roller shutters might have on buildings in an area which has, in my view, been blighted by harmful developments such as roller shutter installations.

30. I acknowledge that the Council has not set out what, in their view, '*exceptional circumstances*' might be in relation to the use of solid roller shutters and there could well be situations where open mesh grilles might not be appropriate. On the other hand, open mesh grilles can be a positive advantage enabling a view of the interior of a shop, whilst at the same time providing a secure and safe barrier in order to protect illegal entry into the premises. I have seen many such installations, including some in other parts of Leeds.

31. During my visit I also noted some open mesh shutters along Roundhay Road and find it difficult to understand why solid state shutters are a definite requirement in order to get the necessary insurance cover. There are many situations where see-through shutters can be equally as secure as the more solid ones installed in this case and which do not cause visual harm.

32. I consider that each roller shutter installation should be assessed on its merits, irrespective of the '*exceptional circumstances*' required by the wording of Policy BD7. In this particular case I find that the installation as carried out is visually harmful to the host building, as well as to the character and appearance of the area. It is, therefore, contrary to the relevant development plan policies, as well as to section 12 of the NPPF which seeks to achieve well-designed places.

33. There are no other material considerations to suggest that the decision in this case should be made other than in accordance with the development plan. I do not consider, therefore, that planning permission should be granted for the unauthorised roller shutters as installed and the appeal must fail on ground (a). In reaching this conclusion I have taken into account all of the other matters raised in support of the retention of the shutters but none carries sufficient weight to alter my decision.

The appeal on ground (f)

34. The proposed lesser steps put forward on behalf of the appellant are that the colour and the solid structure of the shutters could be changed. It is contended that a suitable colour along with perforated shutters could be provided and,

therefore, that the requirements of the enforcement notice could be amended or varied accordingly. The LPA disagrees and contends that in order to remedy the breach the solid type roller shutters and the associated boxing need to be removed completely.

35. Having taken into account the overall installation and the planning history leading up to it, I do not consider that the proposition to amend the notice is justified. I accept that the proposals would constitute lesser steps but an appeal on ground (f) cannot be used as an alternative to reach the equivalent of a ground (a) success. The lesser steps under a ground (f) appeal need to be quite simple and straightforward without involving the necessity to more or less re-design any unauthorised works.

36. In this case there are numerous ways by which the solid shutters and housings could be altered. It is not simply a case whereby the requirements of the notice could be amended to specify a particular colour and perforated shutters. There are too many design and fitment variables to consider. In my view any simply changed requirements, such as those above, could not be sufficiently precise enough or detailed enough to meet the requirements and tests of any equivalent planning conditions.

37. It follows, therefore, that the appeal on ground (f) must fail.

The appeal on ground (g)

38. I agree with the case put forward on behalf of the appellant that the 14 day compliance period falls well short of being a reasonable time in which to carry out the requirements of the notice. Whilst a new design is properly prepared and costed, the security of the premises needs to continue. However, the suggested period of 9 months, in my view, would be excessive. I consider that a period of 6 months (even in these Covid restricted times) should be more than sufficient to achieve an approved alternative to the unauthorised shutters.

39. I shall, therefore, vary the enforcement notice accordingly and the appeal succeeds to this limited degree on ground (g).

Formal Decision

40. The appeal succeeds to a limited degree on ground (g) only.

41. I direct that the enforcement notice be varied by deleting the words 'Fourteen Days' in Part 6 (TIME FOR COMPLIANCE) and by substituting therefor, the words 'Six Months'.

42. Otherwise the appeal is dismissed and the notice is upheld as varied.

Anthony J Wharton

Inspector