



Appeal Decision

Site visit made on 8 February 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2022

Appeal Ref: APP/K5600/C/21/3279518

Beluga Deli, 10 Notting Hill Gate, London, W11 3JE

- 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 Act").
- The appeal is made by Mr Ali Atwi (Beluga Deli) against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
- The enforcement notice was issued on 15 June 2021.
- The breach of planning control alleged in the notice is without planning permission, the installation of a roller shutter to the ground floor elevation.
- The requirements of the enforcement notice are:
 - i) Remove all of the unauthorised roller shutter including housing at fascia level, frame and shutter;
 - ii) Remove from the land any resulting debris.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (d) 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 as set out below in the Formal Decision.

Appeal on ground (b)

1. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact.
2. This ground of appeal was made on the basis of the development having already been installed by a previous occupier "many years" previously. I deal with that point below in ground (d). There is no dispute that the development subject of the notice has in fact occurred, as I saw for myself during my visit to the appeal site and the surrounding area, hence the appeal on ground (b) must fail.

Appeal on ground (d)

3. The appellant did not lodge this ground of appeal. However, the Council noted his argument and have helpfully addressed the matter in their evidence. As such, no party would be substantially prejudiced by me also including ground (d) within my decision.
4. In order for an appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the roller shutter development was installed more than 4 years before the date on which the notice was issued. The relevant date therefore is 15 June 2017. The test of the evidence is on the balance of probability.

5. The Council's evidence¹ includes images of the shopfront taken in October 2018 and July 2019. They clearly show that the roller shutter development was not in place then and hence could only have been installed subsequently. There is no convincing evidence to the contrary.
6. On balance I conclude that the roller shutter development was not installed more than 4 years before the notice was issued. Therefore it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

Appeal on ground (a)/deemed application for planning permission

Main Issue

7. This is whether the roller shutter development preserves or enhances the character or appearance of the Pembridge Conservation Area (PCA).

Character and appearance of the area

8. This section of Notting Hill Gate, including the appeal site, is part of the lively commercial thoroughfare which forms the southern boundary of the PCA, a designated heritage asset.
9. No. 10 Notting Hill Gate sits in the middle of Nos. 8-12; together comprising a four storey Victorian corner terrace of three units constructed with unifying architectural detailing. The terrace as a whole mirrors the design of the three unit terrace on the adjacent corner at Nos. 2-6 Notting Hill Gate, and the two terraces together frame the street entrance to the architecture and detailing of the more elaborate architecture of the terraces on both sides in Clanricade Gardens.
10. The upper floors of Nos. 8-12 are in gault brick laid in Flemish bond pattern with painted stucco. Vertical sliding timber box sash windows sit within moulded architrave surrounds. At first and second floor the windows have console bracketed hoods with highly decorative panels. The central tripartite windows at first and second floors of No. 10 (directly above the appeal development) have prominent and imposing pediments. Additionally, although the ground floor front elevation of No. 10 is a typically modernised glass in frame design, it nonetheless still retains its original moulded masonry stallriser. As such, it still relates well to the upper floors of the host building and to the wider terrace.
11. For all these reasons, I find that No. 10 makes an important and positive contribution to the historic and architectural significance of the PCA as a whole. In this regard I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the PCA by virtue of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
12. The solid extended roller shutter covers the whole width of the shopfront to ground level. This results in a blank and dead frontage of a somewhat more 'industrial' design that jars with the much finer architectural detailing and historic character of the host building, and with the wider terrace, I have previously described. As such, it significantly harms the character and

¹ Council Statement of case, Appendices 1, 2 and 3 – Google Street view images, and 'existing' elevation of prior approval application PA/20/03335

appearance of the host building, and neither preserves or enhances the character or appearance of the PCA.

13. Although the harm to the PCA is significant, in the language of the National Planning Policy Framework (2019) it is 'less than substantial'. Accordingly the harm should be weighed against any public benefits.
14. It can be argued that added security leading to a reduction in crime in an area is a public benefit. In this regard I acknowledge the appellant's desire to provide security against crime, including graffiti.
15. However, in my view solid shutters are more likely, rather than less likely, to encourage graffiti as they provide a much taller and wider 'canvass'. In comparison, the variations in materials, colours and surface projections across the moulded stall riser, cill, frame and window do not provide such an easy to use and inviting canvass.
16. Moreover, solid shutters also obstruct natural surveillance from the street. Alternatively, perforated or link-grille internal shutters with rear illumination would provide security against illegal entry while also giving an 'open' appearance from street views and natural surveillance. Such security measures are capable of being provided without resulting in the harm I have identified to the character and appearance of the host building and the PCA. Accordingly, I attach very limited weight to any wider public benefit that arises from the installed roller shutter.
17. I have also considered whether the imposition of planning conditions would overcome the harm I have identified, but there are none that would do so.

Conclusion on ground (a)

18. For all these reasons I conclude that the development fails to preserve or enhance the character or appearance of the Pembridge Conservation Area, resulting in harm to its significance as a designated heritage asset. The harm is not outweighed by public benefits. It thereby conflicts overall with Policies CL1, CL2, CL3, CL4, CL6, CL9, and CL10 of the Kensington and Chelsea Local Plan (2019)
19. The appeal on ground (a) therefore fails.

FORMAL DECISION

20. 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 Act.

Thomas Shields

INSPECTOR