



Appeal Decision

Site visit made on 26 July 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal Ref: APP/N5660/C/21/3285127

Eagle London, 349 Kennington Lane, London SE11 5QY

- 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 Mark Oakley, Wellesley Capital Investment Limited against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 25 August 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of blank timber boards completely infilling all window recesses on the north and east facing facades ("the unauthorised timber infill boards") and the removal of the decorative slatted timber fascia and sign boards and their replacement with blank boarding ("the unauthorised blank fascia boarding").
 - The requirements of the notice are:
 - a) Remove the unauthorised timber infill boards, and make good and expose the original window recess architraves and detailing as existed prior to the breach of planning control; and
 - b) Remove the unauthorised blank fascia boarding and reinstate the decorative slatted timber fascia and sign boards as existed prior to the breach of planning control; and
 - c) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. 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.
-

Decision

1. 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 1990 Act as amended.

Appeal on ground (c)

2. In an appeal on ground (c), it is for the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control stated in the notice does not constitute a breach of planning control. Section 171A(1) of the 1990 Act set out that a breach of planning control constitutes (a) carrying out development without planning permission; or, (b) failing to comply with any condition or limitation subject to which planning permission has been granted.
3. The appellant does not dispute that the timber infill boards amount to development for which planning permission is required. Thus, in the absence

- of any evidence of such planning permission having been granted, the installation of blank timber boards completely infilling all window recesses on the north and east facing facades amounts to a breach of planning control.
4. The appellant nevertheless argues that the removal of the decorative slatted timber fascia and sign boards and their replacement with blank boarding does not amount to development.
 5. Development is defined by Section 55(1) of the 1990 Act as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
 6. The appellant argues that the installed timber fascia is similar to that which it replaced and amounts to repair work only. Section 55(1A) of the Act states that building operations includes (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. The appellant argues that as repair works, the fascia installation does not fall within any of the building operations identified under section 55(1A).
 7. However, the list under section 55(1A) is not exhaustive. Works to repair a building can, as a matter of fact and degree, amount to building operations. It seems to me that the works undertaken are operations that would normally be undertaken by a person carrying on business as a builder. Moreover, Section 55(2)(a) states that the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, do not involve development. The fact that maintenance, improvement or alteration of a building is referred to in this section points towards such works being development in the first instance before one considers if they are exempted.
 8. Clearly, the replacement of the fascia does not affect only the interior of the building given it is situated on two of the external walls of the building. The question is then whether they materially affect the external appearance of the building.
 9. For works to materially affect external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole. Materially affecting the external appearance means an impact capable of having some effect in planning terms.
 10. The image provided of the building's façade prior to the works shows that the fascia then sat forward of the recesses below, sitting flush with the pilasters. The fascia was timber panelled with narrow, vertically placed boards across its entirety. It also contained three black painted decorative sign boards which sat flat to the fascia and were modest in size.
 11. In contrast, the development subject of the notice has resulted in the loss of the panelled fascia and its replacement with singular, solid boards which cover the whole of the fascia. The grain and texture of the original fascia has been replaced by the smoother finish of the new boards.
 12. With both facades being located on the corner of the busy thoroughfares of Kennington Lane and Durham Street, the changes in the external appearance of the building as a result of the replacement fascia are significantly noticeable

in visual terms from several vantage points. As a result, I consider the blank fascia boarding element of the breach has materially affected the external appearance of the building.

13. Consequently, I am satisfied the replacement fascia amounts to development for the purposes of the 1990 Act. Thus, in the absence of evidence of any such planning permission having been granted, the removal of the decorative slatted timber fascia and sign boards and their replacement with blank boarding amounts to a breach of planning control.
14. The appeal on ground (c) therefore fails.

Appeal on ground (d)

15. An appeal on ground (d) is made on the basis that at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by those matters stated in the notice.
16. Section 171B(1) of the 1990 Act sets out that where there has been a breach consisting in the carrying out without planning permission of building operations, as is the case here, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially complete. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the installation of the timber infill boards and the removal and replacement of the fascia with blank boarding, were substantially complete on or before 25 August 2017.
17. The onus of proof in ground (d) lies with the appellant. The appellant has proffered very little evidence that the works were substantially complete on or before 25 August 2017. The LPA in contrast points to Google Street View imagery which shows the development had not taken place in September 2017 but was present in January and April 2018. Thus, I must conclude that the development subject of the notice is not immune from enforcement action under S171B(1).
18. The appeal on ground (d) therefore fails.

Appeal on ground (a)

Preliminary Matters

19. At the date the notice was issued in August 2021, the development plan comprised The Lambeth Local Plan 2015. The LPA subsequently adopted the Lambeth Local Plan 2020-2035 in September 2021 (the 2021 Local Plan). It is incumbent on me to consider the deemed application on the basis of the development plan which is in place at the time of my decision. I have thus considered the development against the relevant policies in the 2021 Local Plan. Both parties have had opportunity to consider the implications of the new local plan, since its adoption pre-dated the submission of the appeal.

Main Issue

20. The main issue is whether the development preserves or enhances the character or appearance of the Vauxhall Conservation Area.

Reasons

21. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering development in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area.
22. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
23. The appeal site is located on the corner of Kennington Lane and Durham Street, within the Vauxhall Conservation Area (the VCA). The significance of the VCA largely derives from its 18th and 19th century architecture. The appeal site is situated in part of Kennington Lane which is characterised by commercial uses, particularly at ground floor level. I was able to see from my site visit that there are several buildings on this part of Kennington Lane which have retained traditional shop fronts, reflective of the VCA's historical vernacular.
24. The appeal building is prominent given its location. It is a 19th century building which reduces to single storey on the Kennington Lane frontage. The image provided of the building's façades prior to the works being carried out show that the frontage of the building comprised several pilasters with recessed stall risers between. Above the stall risers were the sills and recessed windows with transoms and transom lights. The fascia above was panelled with thin, vertical timber and it sat flush with the pilasters, creating the recessed shop front below. As a result of these features, the building retained a significant amount of its historic fabric. It thus makes a substantial, positive contribution to the significance of the VCA.
25. Whilst the recesses behind the pilasters have been partly maintained, the installation of the blank timber boards within the recesses have resulted in the loss of the stall risers, the sills and the transoms. The depth of the recesses has also been considerably reduced. Thus, any appreciable understanding of the previous existence of windows and the traditional shop front design has been almost entirely lost. I note that the appellant accepts in paragraph 3.12 of their statement that the infill of the recesses causes less than substantial harm to the significance of the VCA.
26. Turning to the fascia works, they have resulted in the loss of the panelled, timber fascia and its replacement with singular, solid boards which cover the whole of the fascia. The grain and texture of the original fascia has been appreciably replaced by the smoother finish of the new boards. Again, any understanding of the historic fabric of the fascia and its contribution to the building's historic design has been lost as a result of the development.
27. I conclude, therefore, that the development fails to preserve or enhance the character or appearance of the VCA. As such, it conflicts with Policies Q5 and Q11 of the 2021 Local Plan which state that the local distinctiveness of Lambeth should be sustained and reinforced, and alterations to buildings should respond positively to the original architecture of the host building. The development also conflicts with Policies Q16, Q17 and Q22 of the 2021 Local Plan which state: the LPA will seek the retention of historic shop fronts; seek to

retain traditional fascia signage; and, that development affecting conservation areas will be permitted where they preserve or enhance the character or appearance of the conservation area. The LPA has also referred to Policy D5, however, that relates to the investigation and prioritisation of breaches of planning control. It has little relevance to the planning merits of the development before me. Finally, I afford great weight to the harm to the designated heritage asset in accordance with paragraph 199 of the Framework.

28. Given the extent of the development in terms of its scale and its locational context, I am satisfied that harm which arises amounts to less than substantial harm in the context of the Framework. However, less than substantial harm does not amount to a less than substantial planning objection. Less than substantial harm is still to be afforded great weight in line with the Framework.
29. Nonetheless, in considering harm to heritage assets, paragraph 202 of the Framework states that where a development will lead to a less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal.
30. I note that the boarding was done to increase soundproofing in line with current standards and to comply with the terms of the premises licence. I also note the difficulties the business has faced as a result of the Covid-19 pandemic. Overall, I give significant regard to the use of the building having important cultural value in what it offers those in the LGBTQ+ community and that any risk to its closure would have significant harmful effects upon those in the community.
31. However, little financial or other detail has been provided which demonstrates that the removal of the development would have undue financial impacts upon the operation of the business such that it would cease to operate.
32. Thus, whilst I afford substantial weight to the benefits of the development, I find that, on the evidence before me, none of these factors, either individually or cumulatively, outweigh the harm to the character and appearance of the LVA. As a result, I consider the public benefits of the development do not outweigh the great weight I afford to the harm to the designated heritage asset.

Other Matters

33. I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Sexual orientation is a protected characteristic.
34. In respect of the above, allowing the appeal could interfere with the rights of those in the LGBTQ+ community who could have reduced access to important cultural venues in the area. However, having regard to the legitimate and well-established planning policy aims to preserve or enhance the character or appearance of conservation areas, dismissing the appeal in this case would be proportionate and necessary. It would not unacceptably violate their rights under the Equality Act.

Conclusion

35. For the reasons given above, I consider the appeal on ground (a) should be dismissed and the deemed planning application refused.

Appeal on ground (f)

36. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.

37. The notice does not state which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove the infill boards and expose the windows as existed previously as well as remove the fascia boarding and reinstate the previous fascia. On that basis, it seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place. The purpose of the notice therefore falls under section 173(4)(a) of the 1990 Act.

38. As a result, it seems to me that the requirements do not go beyond what is necessary to remedy the breach of planning control. Whilst it is open to me to consider obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant, there are no such alternatives before me.

39. The appeal on ground (f) therefore fails.

J Whitfield

INSPECTOR