



Appeal Decision

Site visit made on 19 July 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2022

Appeal Ref: APP/L2250/C/21/3285186

91 Sandgate Road, Folkestone, Kent CT20 2BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Dr M Ahsan against an enforcement notice issued by Folkestone and Hythe District Council.
- The notice was issued on 17 September 2021.
- The breach of planning control as alleged in the notice is the installation of a roller shutter on the front elevation of the ground floor of the building.
- The requirements of the notice are to remove the roller shutter including its enclosure from the front elevation of the ground floor of the property.
- The period for compliance with the requirement is: three 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. 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The provisions of s176(1) of the Act give Inspectors wide ranging powers to correct or vary enforcement notices in order to get them "in order", provided that such alterations would not result in injustice to any party. The enforcement notice specifies that the breach of planning permission falls under paragraph (a) of section 171 of the Act, that the development has been carried out without the required planning permission. However, the alleged breach of planning control does not specify that the development has taken place without planning permission. It is clear from the submissions that the appellant has understood that is the case, such that correcting this will not result in injustice to any party.

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

Main issue

2. Whether the roller shutter preserves or enhances the character or appearance of Folkestone Leas and Bayle Conservation Area.

Reasons

3. The roller shutter covers the shop front but retracts into the housing located below the shop signage. When closed, the shutter covers the windows. The shutter and its housing are constructed in plain metal.

4. The Folkestone Leas and Bayle Conservation Area includes a length of sea front with the roads leading inland. This part of the conservation area is on the edge of the town centre, Sandgate Road is a wide road parallel to the seafront with a mix of two and three storey buildings with shops on the ground floor, providing an active frontage to this area. The significance of this part of the conservation area as a heritage asset is the vitality of the town centre and relationship of the commercial buildings with the road.
5. When the shutters are closed, they stop views through the front windows to and from the road and light from the inside reaching the street. This affects the relationship of the shop front with the street scene. The housing slightly protrudes to the front of the shop and signage above. As a result, the shutter and its housing appear incongruous on this shop front and obtrusive in the street scene. It could be painted such that it would be less prominent, but this would not wholly overcome the effect on the street scene.
6. I note that there is a similar shutter at 87 Sandgate Road that is painted to reflect the corporate colours of that business. This means it is less prominent than that subject of this appeal. Nevertheless, I understand that also does not have planning permission such that its existence can carry limited weight in this appeal.
7. For these reasons, I conclude that the roller shutter does not conserve or enhance the character or appearance of the Folkestone Leas and Bayle Conservation Area. It harms the significance of the conservation area as a heritage asset. As such, it is contrary to Policies RL10, HB1 and HB8 of the Places and Policies Local Plan and the National Planning Policy Framework (the Framework) that seek development to make a positive contribution to their surroundings and not have a detrimental impact on the street scene. In particular, the policies seek to ensure security shutters do not introduce obtrusive features or detract from the character of the street scene.
8. The Framework advises at Paragraph 199 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. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Accordingly, while less than the 'substantial harm' referred to in Paragraph 201 of the Framework, the harm to the conservation area is nevertheless a matter of considerable importance in this case.
9. Paragraph 202 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The only public benefit in this instance is that the shutter provides security to the shop, which reduces the likelihood of vandalism to the building and assists the viability of the business. However, that benefit is modest and cannot outweigh the identified harm to the conservation area.

Conclusion

10. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

Formal Decision

11. It is directed that the enforcement notice is corrected by:

- The addition of "Without planning permission," before the allegation described in section 3, the matter(s) which appear to constitute the breach of planning control.

12. Subject to the correction, 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.

AJ Steen

INSPECTOR

