
Appeal Decisions

Site visit made on 28 June 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 August 2022

Appeal Refs: APP/X5990/C/20/3260740 (Appeal A) & APP/X5990/C/20/3260741 (Appeal B)
Internet City Ltd, 11 Charing Cross Road, London WC2H 0EP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Shahid Qamar (Appeal A) and Mr Amir Sardar (Appeal B) against an enforcement notice issued by City of Westminster Council.
- The enforcement notice is dated 4 September 2020.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years the unauthorised removal of the shopfront and the installation of a roller shutter and associated running tracks and fixtures.
- The requirements of the notice are: 1. Remove the external roller shutter, the guide rails, and all associated fixtures from the shop, as shown edged in green in Photograph A attached to the notice; and undertake one of the following two options for the reinstatement of a replacement shopfront, either 2. Re-instate the shopfront with design, materials and proportions to match those shown in Photograph 'B' attached to the notice. Or 3. Install the shopfront approved by planning permission 17/04774/FULL as shown in Drawing 1 attached to the notice.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered. Appeal B is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.

Decisions

1. Appeal A and Appeal B are dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Ground (b)

2. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
3. There appears to be no dispute between the main parties that the previous shopfront has been removed and that the roller shutter has been installed at the appeal site. Although the roller shutter was not evident at the time of my site visit because the business was open, I have been provided with photographic evidence to show its presence at the site. I am therefore satisfied that the development has occurred as a matter of fact.
4. Accordingly, the appeals on ground (b) must fail.

Ground (d)

5. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
6. Section 171B(1) of the Act indicates that for operational development such as the roller shutter, no action may be taken four years after the date of the substantial completion of the development. As the enforcement notice is dated 4 September 2020, the development needs to have been substantially completed by 4 September 2016 in order to be immune from enforcement action. The onus of proof lies on the appellants, and in order for the appeals to succeed on this ground, their evidence needs to be precise and unambiguous.
7. Relying on information from the landlord of the property, the appellants state that the external roller shutter has been in place for at least 15 years. However, no photographs or any other documents are available from this time to substantiate the landlord's information. The appellants state that when they took on the premises, they changed its colour from silver to red, and then to black following an objection from the Council. They attach a photograph which shows the shutter in place. However, as it is undated, it does not assist in establishing the date on which the shutter was installed.
8. Conversely, the Council produce a photograph (their Appendix C) showing a Google Street View image with a date stamp of September 2018. This shows the shopfront with the door open, and the canopy above retracted, but there is no sign of the roller shutter. They have also submitted a photograph dated May 2019 showing the shop open with the shutter raised. The appellants do not comment on or dispute these pieces of evidence.
9. Moreover, in the absence of any substantive evidence to show that the development was in place on or before 4 September 2016, I am unable to be certain that the development is immune from enforcement action due to the passage of time.
10. The appeals on ground (d) therefore fail.

Ground (a) and the deemed planning application

11. Ground (a) is that planning permission should be granted for what is alleged in the notice.

Main issue

12. The main issue is the effect of the development on the character and appearance of the surrounding area, including the significance of the Leicester Square Conservation Area.

Reasons

13. The appeal site at 11 Charing Cross Road is located in the Leicester Square Conservation Area (CA). The CA takes in a small area with the public space of Leicester Square as its focus. It comprises a number of surrounding streets, including Charing Cross Road on its eastern boundary.
14. Leicester Square is a famous tourist destination at the heart of a lively area characterised by commercial and entertainment uses, including cinemas, clubs, hotels, cafes, and various shops and services. In terms of architectural

- character, the part of the CA surrounding No 11 is distinctive for the broad range of building types. Modern buildings sit amongst historic buildings, with a variety of materials and styles. At ground floor level are predominantly historic shopfronts interspersed with doorways, presumably accessing the upper levels.
15. No 11 is one of a terrace of tall brick-faced buildings. Its upper floors are characterised by central bay windows and single windows to each side, with pronounced decorative surrounds in contrasting white. On the ground floor, the property retains historic shopfront elements comprising a fascia board with a dentilled cornice above, and a decorative door surround and panelled door to one side. Although the removed elements of the shopfront were more modern in character, they gave structure to the opening, with a central door and glazed panels. To that extent, they made a neutral contribution to the building's character.
 16. Notwithstanding the later additions and changes, including the modern shop signage, these features are part of the significance of No 11, which in turn makes a positive and valuable contribution to the overall character and appearance of the CA.
 17. The unauthorised development comprises the removal of the previous shopfront and the installation of an external roller shutter. At the time of my visit during the day, the business was open and the roller shutter was hidden from view. Nonetheless, the guide rails that hold the shutters in place when closed are permanently visible. Although they are painted in a dark colour, they add visual clutter that detracts from the appearance of the frontage.
 18. The pictures provided show that the shutter is painted black and has a modern, utilitarian appearance. It is readily apparent to passers-by when lowered, and its solid appearance gives an impression of a blank façade to the shop. In combination with the guide rails, the roller shutter does little to preserve the building's special interest. Given the nature and type of the external shutter, I find that the development is incompatible with the architectural quality of the building and has an adverse impact on those elements that contribute to the special architectural interest of the CA.
 19. As noted above, the modern shopfront within the older surrounds has been removed, with the exception of one glazed side panel. As a result, the shop simply has an open frontage during business hours. This is harmfully at odds with the overall character of No 11, whose historic window and door openings are clearly defined. There is little evidence that this treatment is typical of the shops and commercial premises in the surrounding area.
 20. Accordingly, therefore, the development conflicts with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the scheme conflicts with Policy S25 of Westminster's City Plan and Policy DES9 of the City of Westminster Unitary Development Plan, which jointly seek to conserve, preserve or enhance conservation areas.
 21. Although serious, the harm to the heritage asset in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.

22. In the face of high rent and rates, and other issues, the appellants explain that they took the decision to change the business at No 11 away from the Internet Café. They say that each business has its own way of attracting customers in a competitive market. Whilst it is an important aim of the NPPF to underpin the economy, I am not convinced that the physical works to the building have been essential to support the business. The appellants have not provided compelling evidence of any need for the appeal scheme that would justify setting aside the policy aims to conserve the significance of the conservation area.
23. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Conclusion

24. For the reasons above, the appeals on ground (a) fail.

Overall conclusion

25. Appeals A and B are dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR