The Planning Inspectorate

Appeal Decision

Site visit made on 30 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

Appeal Ref: APP/P4605/C/21/3288298
107 Alcester Road, Birmingham B13 8DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by MR MEHMET CATAK against an enforcement notice issued by Birmingham City Council.
- The notice, numbered 2020/1390/ENF, was issued on 5 November 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised installation of a shop front and signage in the approximate position marked in green on the attached plan.
- The requirements of the notice are to: Remove the shop front and signage in its entirety and and [sic] remove the demolished materials from the Land.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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. It is directed that the enforcement notice is corrected by the deletion of 'and' at section 5, so that it reads 'Remove the shop front and signage in its entirety and remove the demolished materials from the Land'.

2. Subject to the correction above, 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.

Ground (c)

3. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that planning consent is not required for non-illuminating fascia signs and the internal lighting can be permanently removed to ensure that the sign is not illuminated.

4. Section 55 of the Act sets out the meaning of development as the carrying out of building…operations. Section 55(2)(a) states that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building are not taken to involve development of the land.

5. The Council has provided me with a photograph of the appeal site prior to the works, which comprised a timber shop front, with panelled stallrisers, mullions and transoms so that the display window appears well-proportioned. The stallrisers, transoms and mullions have been removed, creating a large window area. The fascia has been replaced with a black aluminium box fascia which

protrudes further towards the highway and the writing within the fascia is illuminated. As a matter of fact and degree, I therefore find the works materially affect the appearance of the building and are development for the purposes of the Act.

6. Section 336(1) of the Act defines advertisement as 'any word, letter, model, sign, placard, board, notice…or representation…employed wholly or partly for the purposes of, advertisement…'. The fascia which has been erected advertises the premises and is therefore an advertisement for the purposes of the Act. Section 220 of the Act sets out the legal basis for the restriction and regulation of the display of advertisements and section 222 states that planning permission is not needed for advertisements complying with regulations.

7. The display of advertisements is regulated by the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (as amended)(the Regulations). The Regulations set out when consent is required for the display of an advertisement and in particular, Schedule 3 sets out classes of advertisement for which deemed consent is granted, subject to certain conditions and limitations.

8. Deemed consent is granted for other advertisements on business premises, as set out in Class 5 of Schedule 3, subject to certain conditions and limitations. Illumination is only permitted where the advertisement relates to goods or services relating to human health or veterinary services or supplies and 5(6) requires that the area of the advertisement does not exceed 1.55 square metres. Even if the sign were not illuminated, I am not persuaded it would not require express consent due to its size, which exceeds 1.55 square metres.

9. Class 13 of the Regulations deals with advertisements on sites used for preceding ten years for display of advertisements without express consent. An advertisement does not fall within this description if, during the relevant 10-year period, there has either been a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in the manner in which it has been so used.

10. Illumination is not permitted under this class unless it was displayed with illumination on 6th April 2007 or it was first displayed after that date, and the advertisement most recently displayed was illuminated. The replacement is a larger structure with illumination and is a material change which means that any deemed consent that had been built up over the previous 10 years has been lost.

11. Consequently, the use of the site for the display of the subject advertisements is not deemed to have planning permission granted by section 222 of the Act. Moreover, since the works to the shop front appear to comprise a single act of development, even if advertisement consent were not required, planning permission is required for the operational development.

12. Thus, for the reasons given above, the appeal under ground (c) must fail.

Ground (d)

13. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. To succeed under this ground, the appellant would

need to show that the works to the shop front were substantially completed on or before 5 November 2017 and the advertisement has been so used continually for the preceding 10 years without express consent.

14. The Council has provided photographs which it states show a timber shop front in place, dated June 2014 and October 2020. Although an aluminium shop front was *in situ* historically, this appears to have been removed and a timber shop front erected. The appellant suggests the timber shop front did not have the benefit of planning permission, however, even if this were so, there is no right to replace unauthorised works with what was there previously.

15. Even if some aluminium had been retained to the shop front, the works carried out to the shop front constitute development and since they have been carried out since October 2020, they have not become lawful through the passage of time. Consequently, the appeal under ground (d) must fail.

Ground (a)

Main Issue

16. The main issue of the appeal is the effect of the appeal scheme on the character or appearance of the Moseley Conservation Area (MCA).

Reasons

17. The appeal site is located within the primary shopping area of Moseley Neighbourhood Centre and is within the Moseley Conservation Area (MCA). The MCA is a substantial area which is generally characterised by Victorian and Edwardian architecture. In my view, the significance of the MCA is derived from the fine architectural detailing and layout of the buildings.

18. The appeal building forms part of the Victoria Parade, a parade of shops with some interesting architectural detailing and rhythm which, given its prominent location along Alcester Road, makes a significant contribution to the character and appearance of the MCA.

19. Although not referred to in its enforcement notice, the Council has drawn my attention to the Moseley Shopfront Design Guide (1992)(MSDG), which sets out design shop front principles, with pilasters and corbels marking the division between each shop front, the fascia providing information about the shop, the cornice giving protection from the weather and separating the shop from the upper floor and the stallriser creating a strong visual base. This ensures shop windows and entrances are set off by their surround rather like a frame round a picture.

20. While I saw that a number of the shop fronts have been modified along the Victoria Parade, some with overly large facias which are unsympathetic to the fine architectural detailing used in the terrace, where shop fronts accord with the principles set out in the MSDG, they make a positive contribution to the MCA.

21. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the MCA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) 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.

22. The works comprise an aluminium surround around the windows, creating large window openings and a box facia, with an illuminated sign. The box facia is an overly dominant feature which contrasts with the delicate detailing of the building above and obscures detailing to the bottom of the bay window. However, the appellant states that the box sign does not form part of their ground (a) appeal and so I shall not consider it further.

23. As set out above, the shop front previously comprised a timber shop front, with panelled stallrisers, mullions and transoms so that the display window appears well-proportioned. Stallrisers, transoms and mullions have now been removed, creating a large window area. The aluminium surround is located where detailed pilasters and corbels would have marked the division between the shopfronts.

24. Policy TP12 of the Birmingham Development Plan (2017)(BDP) has been introduced to protect the historic environment and seeks to manage new development in ways which will make a positive contribution to its character. The removal of the stallrisers, mullions and transoms fails to comply with the requirements of the MSDG and has resulted in an overly large window area which fails to respect the period and style of building and has an adverse effect on the character and appearance of the Moseley Conservation Area.

25. I acknowledge that there are other examples of shop fronts in the area with facias which are overly dominant and where features such as stallrisers, pilasters, corbels, mullions and transoms have been removed or modified resulting in overly large glass frontages. However, the Council advise these shopfronts are already in place due to historic permissions or through the passage of time.

26. Even where planning permission has more recently been granted for shop fronts which do not fully comply with the Moseley Shopfront Design Guide (1992)(MSDG), including No 109 and No 115, the Council advise the shop fronts replaced existing aluminium shopfronts and so improved the appearance of the properties. The appeal scheme, by contrast, has replaced a shop front and removed features which are in keeping with the fine architectural detailing of the building and which are identified as good practice within the MSDG. Consequently, it fails to preserve the character or appearance of the MCA, contrary to policy TP12 of the BDP.

27. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Although the shop is located in a prominent position along Alcester Road, given its limited size relative to the MCA as a whole, I consider the harm to be less than substantial harm to the significance of the MCA.

28. Paragraph 202 of the Framework goes on to advise that where a development proposal will 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, where appropriate, securing its optimum viable use.

29. I see no reason why it would not be possible to design a shop front which is sympathetic to the character and appearance of the MCA and no other public benefits of the proposal have been advanced. I consider there are no benefits which outweigh the harm I have identified to the MCA, the conservation of which I attribute great weight to.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction, deleting a duplicated word in the requirement, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR