
Appeal Decision

Site visit made on 18 April 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/G0908/C/22/3294910

Chattanooga, 96 Senhouse Street, Maryport CA15 6BS

- 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 Mrs Lesley Ann Bahreni against an enforcement notice issued by Allerdale Borough Council.
 - The enforcement notice, numbered COM/2021/0048, was issued on 4 March 2022.
 - The breach of planning control as alleged in the notice is the unauthorised installation of a replacement shopfront to the front elevation of the property.
 - The requirements of the notice are to remove the unauthorised shopfront and associated door and reinstall a replacement shopfront to replicate that which existed previously in terms of its design, proportions and materials (timber) incorporating a recessed door.
 - The period for compliance with the requirements is six (6) 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.
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Summary Decision: The appeal is dismissed and the enforcement notice upheld subject to corrections and a variation

Procedural Matters

1. On 1 April 2023, Allerdale Borough Council, Carlisle City Council and Copeland Borough Council merged to form a new Unitary Authority called Cumberland Council. Appeals against an Enforcement Notice continue to refer to the name of the Local Planning Authority that issued the notice, in this case Allerdale Borough Council.
2. The notice alleges a breach of planning control and should therefore refer to the installation of a replacement shopfront 'without planning permission' rather than an 'unauthorised installation' as stated in the notice. No injustice would arise from correcting and varying the notice in that respect. I shall therefore correct and vary the notice accordingly.

The appeal on ground (a) and the deemed planning application

3. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which main issue raised is whether the replacement shopfront preserves or enhances the character or appearance of the Maryport Conservation Area.

4. Section 72 of the Planning (Listed Building and Conservation Area) Act 1990 requires that special attention must be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The significance of the Maryport Conservation Area as a whole is that it retains its original street pattern based on two main thoroughfares in the town (Curzon Street and Senhouse Street), and which link the main commercial uses to the River Ellen and the harbours (the latter being outside of the conservation area). The conservation area as a whole is unified by a commonality of materials and features to the buildings within it, which gives the conservation area its distinctiveness.
5. The character and appearance of the conservation area in the vicinity of the appeal site is in no small part derived from the shops that front onto Senhouse Street and the activity associated with the retail units that front onto it. Where they remain, traditional shopfronts make a positive contribution to the character and appearance of this part of the conservation area. Where original shopfronts have been replaced by more modern designs, those replacement shopfronts generally fail to preserve the character and appearance of the conservation area through poor design, the loss of historical features and the use of inappropriate materials. However, sufficient examples of the original shopfronts and/or original features remain to retain a sense of the original character and appearance of this part of the conservation area.
6. The Maryport Conservation Area is presently on the Conservation Areas at Risk Register. This not to say that the conservation area is no longer of significance as a designated heritage asset but does reflect its current condition based on a number of factors. One of those factors is the poor quality and inappropriate design of some of shopfronts and signs within the conservation area.
7. In order to rectify this, Historic England has funded the Maryport High Street Heritage Action Zone (HAZ) regeneration programme 2020-2024. The appeal property is within the HAZ. As part of this ongoing scheme, a Maryport Shopfront Design Guide (SDG) was produced as guidance for replacement shopfronts. That guidance is a material consideration in relation to this appeal.
8. The SDG identifies the components of a traditional shopfront in Maryport. These include pilasters (with capitals) rising above a plinth, a fascia running between the capitals and across the full width of the shopfront, a clerestorey, a stallriser and a recessed threshold. The SDG points out that the fascia often incorporated a roller box housing a retractable canvas awning. These features are characteristic of the emergence of the core retail function of Maryport throughout the 18th and 19th Centuries.
9. The Enforcement Notice contains a photograph of the shopfront as it appeared before the development subject to the notice took place. The shopfront does not feature pilasters and the fascia appears to have been deepened/enlarged over time. However, the shopfront at that time did retain some features identified in the SDG as components of a traditional shopfront in Maryport. These include a stallriser and in particular a recessed threshold. There is no clerestorey although there appears to be an awning above the fascia, albeit not incorporated into a roller box housing. Moreover, even though some of the traditional components of a Maryport shopfront were absent or are now lost, the shopfront did nonetheless retain a traditional style and proportion and was constructed of traditional materials.

10. The replacement shopfront subject to the enforcement notice does include a stallriser and a clerestorey. In respect of the latter, the shopfront is more characteristic of a traditional Maryport shopfront than that which it replaced and as such represents an improvement. However, the replacement shopfront lacks a recessed threshold. The shopfront therefore presents an unrelieved frontage that departs significantly from traditional design of shopfronts in the town.
11. Furthermore, the shopfront is constructed out of uPVC frames rather than the traditional timber. The use of modern materials results in a heavier and chunkier frame to the shopfront. Overall, the loss of the traditional styled and proportioned shopfront and its replacement with an overtly modern shopfront has a detrimental impact on the character and appearance of this building and therefore the Maryport Conservation Area.
12. I conclude that the replacement shopfront fails to preserve or enhance the character or appearance of the Maryport Conservation Area. I therefore conclude that the breach of planning control is contrary to Policy S27 of the Allerdale Local Plan (Part 1) which, amongst other things, states that only proposals which do not harm any positive qualities of a heritage asset will be approved.

Other considerations

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the replacement shopfront fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
14. The appellant explains that structural damage to the shopfront caused in October 2017 required the replacement shopfront to be installed because windows kept breaking from the inside due to the deformed structure. This renders her Public Liability insurance invalid. Damage to other shopfronts was pointed out to me at the site visit, although I have no evidence as to the cause of the damage.
15. The appellant goes on to explain that the material in the previous shopfront was rotten to the core, and indicates that the expense and maintenance of that material was a constant and onerous requirement. The door was moved slightly forward because access through the recessed entrance was hindered by door faeces and urine left within the doorway.
16. The points raised by the appellant are all cogent arguments for replacing the shopfront from a business perspective and are clearly important to her. However, they are not planning matters. There are also other potential solutions to the problems cited by the appellant which would not involve the loss of traditional shopfront features. Consequently, these are matters to which I attach only very limited weight.

17. Paragraph 199 of the National Planning Policy Framework (Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. The harm to the Maryport Conservation Area as a whole would be less than substantial in this instance but, nevertheless, of considerable importance and weight.
18. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant has identified several benefits to her business that result from the installation of the replacement shopfront but those are all private benefits. I have not been made aware of any public benefits arising from the development that would outweigh the harm resulting from it.
19. Furthermore, the retention of the replacement shopfront would undermine the objective of the Maryport High Street Heritage Action Zone regeneration programme and would place the Maryport Conservation Area at further risk. That is a material consideration to which I attach significant weight.

Conclusion

20. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Indeed, the material considerations that I have identified above only serve to reinforce my conclusion that planning permission ought not to be granted.

Formal Decision

21. It is directed that the notice is corrected by:
 - In paragraph 3 of the notice, deleting the words "The unauthorised" and substituting there the words "Without planning permission,"
 - In paragraph 4(ii) of the notice, deleting the word "unauthorised" and substituting there the word "replacement"
22. It is directed that the notice is varied by:
 - In paragraph 5(i) of the notice, deleting the word "unauthorised" and substituting there the word "replacement"
23. Subject to those corrections and variation, 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.

Paul Freer
INSPECTOR