



Appeal Decision

Site visit made on 19 May 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Appeal Ref: APP/P4605/C/22/3308408

96 - 97 Leopold Street, Birmingham B12 0UD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Shazia Kamran against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 8 September 2022.
- The breach of planning control as alleged in the notice is the unauthorised erection of 3 roller shutters to the ground floor front fascia of the premises and the unauthorised erection of brickwork walls at the front first floor windows of the premises in the approximate position marked in green on the attached plan.
- The requirements of the notice are to:
 - I. Remove the 3 unauthorised roller shutters to the ground floor front fascia of the premises.
 - II. Remove the unauthorised erected brickwork walls to the front first floor windows.
 - III. Remove any demolished materials from the premises associated with requirements I & II.
- The period for compliance with the requirements 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The ground (d) appeal

1. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the Enforcement Notice (the Notice) was served on 8 September 2022, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
2. The appellant has provided photographic evidence, dated August 2018, which clearly shows the central of the three shutters in situ (referred to as 'Shutter 1' by the parties). The Council acknowledges this and respectfully concedes that this shutter has been in situ for in excess of four years and is therefore immune from enforcement action.
3. The appellant confirms that Shutter 3 (positioned to the right of Shutter 1) has not been in situ for more than four years prior to the Notice being served and as such should not be considered under this ground (d) appeal.

4. The only remaining shutter in dispute as to whether it has been in situ for four years prior to the Notice being served is Shutter 2. The appellant has provided photographic evidence, dated March 2019, which shows Shutter 1 and 2 in situ. They contend that following the installation of Shutter 1, work continued with the installation of Shutter 2, which they expect to have been completed within August 2018.
5. However, the March 2019 photograph also depicts what appears to be workmen filling a skip with rubble and bricks. I also note a pile of rubble and bricks within the entrance of Shutter 2. The photograph raises the question as to whether the works taking place in the picture include the opening up of the entrance that Shutter 2 covers. If that were the case, it would seem unlikely that Shutter 2 was installed approximately 6 months (August 2018) before the entrance was created as appears in the March photograph. Consequently, the ambiguity regarding what the photograph actually depicts raises significant doubt over the appellant's argument that Shutter 2 was installed in August 2018.
6. No argument is advanced that the brickwork in the first-floor windows is immune from enforcement action.
7. Consequently, the ground (d) appeal succeeds to the extent it has been demonstrated that, on the balance of probabilities, Shutter 1 has been in situ for in excess of 4 years prior to the Notice being issued. However, the ground (d) appeal fails in respect of Shutters 2 and 3 and the brickwork in the first-floor windows as it has not been demonstrated that, on the balance of probabilities, they have been in situ for in excess of 4 years prior to the Notice being issued. Accordingly, I shall correct the allegation and the requirements of the Notice to delete reference to 3 shutters.

The ground (a) appeal

Main Issues

8. The main issues are the effect of the development on the character and appearance of the non-designated heritage asset host building and the setting of the adjacent Grade II listed building, Samuel Heath and Sons Head Offices.

Reasons

9. Leopold Street is a mixed-use area comprising various commercial and industrial uses. Buildings vary greatly in scale and design, ranging from modern, single-storey buildings to grander, three-storey period properties.
10. The appeal property is a three-storey, red brick period building with finely detailed crittall windows with brick arch surrounds at ground and first floor and stone headers and cills on the second floor. Adjacent to the appeal site is the Grade II listed building, Samuel Heath and Sons Head Offices. Although slightly different in their finer architectural detailing, the scale and proportions of the two buildings and their fenestration create a cohesive link to the historical industrial context of the area from which the street has evolved through the introduction of more modern buildings and additions. This link to the historical industrial context of the area makes a positive contribution to the character and appearance of the area.

11. Given the above, I find that the significance of the non-heritage asset and the setting of the listed building, insofar as it relates to this appeal, to be primarily associated with their historic industrial context and architectural character and design.
12. The shutters are uncoloured steel with guide channels and a rectangular box which contains the shaft assembly and motor. Their design is very much utilitarian in appearance and are common additions to industrial buildings. Whilst the appeal property is an industrial building, the simple, utilitarian design of the shutters is in stark contrast to the fine architectural quality of the building. They significantly detract from its character and appearance and erode its significance as a heritage asset.
13. The first-floor windows have been partly bricked-up for safety purposes due to the raising of the internal floor level. However, the brickwork has reduced the height of the windows thus detrimentally altering the proportions of the fenestration in the building. It is these proportions that help create the important historical and architectural link with the adjacent listed building. Therefore, not only does the brickwork harm the character and appearance of the appeal building, thus eroding its significance, but also erodes the significance of the setting of the listed building.
14. Consequently, the erosion of the historical industrial context and architectural quality of the appeal building diminishes the historical context of the setting of the adjacent listed building.
15. I note there are numerous roller shutters of a similar design to those that are the subject of this appeal. However, these are installed on more modern buildings that have limited architectural merit. The appeal shutters encroach into the fabric of the historical industrial context of the street, which is otherwise untouched by such additions.
16. I have had regard to Shutter 1, which I have found to be immune from enforcement action. However, that does not mean it is immune from causing harm. The retention of Shutters 2 and 3 would cause greater harm than the remaining presence of Shutter 1, which itself is harmful, although immune from enforcement action.
17. I have also had regard to the fact that the shutters were installed prior to the listed building being listed. However, the shutters were not immune from enforcement action at the time it was listed and therefore I have not considered them to form part of the setting of the listed building at the time.
18. I conclude that the shutters and brickwork harm the significance and special architectural and historic interest of the appeal building and the setting of the adjacent listed building by being incongruous additions and represent 'less than substantial' harm in terms of the National Planning Policy Framework (the Framework).
19. In which case, under paragraph 202 of the Framework the harm to the setting of the listed building should be weighed against any public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use. There is no evidence before me that shutters and brickwork provide any public benefits. Accordingly, there are no public benefits that outweigh the harm to the heritage assets.

20. In relation to the harm to the non-designated heritage asset, paragraph 203 of the Framework sets out that a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset. The numerous shutters in the vicinity indicate that there is potential for crime in the locality and shutters provide some security for the building. However, there is no evidence before me of any actual crime in the area or that there are no suitable alternative options to the use of roller shutters. Consequently, the benefits of the shutters do not outweigh the scale of the harm to the non-designated heritage asset.
21. Against this background, the shutters and brickwork significantly harm the character and appearance of the appeal building. Furthermore, I consider that public benefits would not be sufficient to outweigh the less than substantial harm that I have identified, giving considerable weight and importance to paying special attention to the desirability of preserving the setting of the listed building setting. As such, the development conflicts with Policies PG3 and TP12 of the Birmingham Development Plan 2031, which, amongst other things, seek to ensure development conserves heritage assets. It would also fail to comply with the heritage objectives of the Framework.

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

22. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed application. Therefore, the ground (a) appeal fails.

Formal Decision

23. It is directed that the enforcement notice is corrected by:
- (a) The deletion of the word "3" in paragraph 3 and substituting "2".
 - (b) The deletion of the word "3" in requirement 1 of paragraph 5 and substituting "2".
24. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Alexander Walker

INSPECTOR