



Appeal Decision

Site visit made on 25 May 2023

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17TH JULY 2023

Appeal Ref: APP/Q1445/C/22/3298802

The property known as Montreal Arms, 62 Albion Hill, Brighton BN2 9NX

- 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 Charlie Southall, Dragonfly Architectural Services Ltd. against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 20 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the removal of the glazed ceramic tiles from the facades of the building on the Land.
- The requirements of the notice are: I. Cease the removal of the glazed ceramic tiles from the façade of the building on the Land, except the minimum amount required to be removed to repair the lintels. II. Reinstate glazed ceramic tiles to all elevations where tiles have been removed or damaged as a consequence of the unauthorised works set out in paragraph 3. III. Reinstate the glazed ceramic tiles removed to repair the lintels. IV. The new tiles being reinstated shall match the colours and finish of the existing tiles on each area of the elevation so that the four horizontal bands of colouring are replicated, as shown on the photographs attached at Annex 2. V. All moulded details to the fascia and window cills being reinstated shall be replicated in material, colour and finish and reinstated. VI. The lettering to the fascia being reinstated shall be replicated in font, size, colour, material and finish, where removed or damaged as a consequence of the unauthorised works.
- The period for compliance with the requirements is: 12 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matters

1. It has been claimed that the enforcement notice fails to comply with the requirements of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) and that it is therefore a nullity through failure to accord with section 173(10) of the Act. Regulation 4(a) of the Regulations requires an enforcement notice to specify the reasons why the local planning authority consider it expedient to issue the notice.
2. Paragraph 4 of the enforcement notice sets out the reasons why the Council considered it expedient to issue the notice. Although those reasons are brief and do not explicitly state whether the breach of planning control alleged has a positive or negative effect on the character of the building, it is plainly clear on any reasonable reading of the enforcement notice that the claimed effect is negative. This is because the enforcement notice states the effect is contrary to Brighton and Hove Local Plan Policy HE10 and City Plan Part 2 Policy DM 28.

3. An appeal has not been lodged under ground (a), but I do not consider it was impossible for the appellant to know whether or how the breach of planning control alleged in the enforcement notice failed to comply with those policies. Any recipient of the enforcement notice would have been able to properly understand the Council's objection to the alleged breach of planning control and would not have been prevented from submitting an appeal under ground (a). The enforcement notice is not defective on its face, and it is not a nullity.
4. Reference has also been made to an erroneous date being referred to within Annex 1 attached to the enforcement notice. It is a clear error in the annex, as the date referred to as the deadline for an appeal to be submitted pre-dates the date of issue of the enforcement notice by over a year. Annex 1 does not form part of the enforcement notice; it merely accompanies it. The date on which the enforcement notice would have come into effect had an appeal not been made is clearly set out at paragraph 7 of the enforcement notice, which is also referred to by Annex 1. No parties have been prejudiced by the obvious error in Annex 1, demonstrated by the appellant's submission of an appeal before the enforcement notice came into effect. The erroneous date in Annex 1 attached to the enforcement notice does not render the enforcement notice a nullity or invalid.

Ground (c)

5. To succeed under this ground, the appellant would need to demonstrate that the matters stated in the notice as comprising the breach of planning control alleged do not constitute a breach of planning control.
6. Glazed ceramic tiles have been removed from the ground floor façade of the appeal building on the elevations which abut the public highway on Albion Hill and Montreal Road. Historically, the façade of these parts of the appeal building was finished with glazed ceramic tiles to create a distinctive green frontage incorporating a fascia and moulded details associated with the building's former use as a public house. Over time, many of those tiles appear to have been damaged and/or loosened to some extent prior to the alleged breach of planning control taking place through weathering, drilling of holes, the attachment of external fittings, the expansion and contraction of metal within the building fabric, and general wear and tear.
7. Section 57 of the Act states that planning permission is required for the carrying out of any development of land, subject to provisions set out therein. Section 55(1) of the Act provides the meaning of 'development' which includes the carrying out of building operations, amongst other things. Section 55(1A) of the Act clarifies that 'building operations' includes – (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.
8. Section 55(2) of the Act provides a list of operations which shall not be taken for the purposes of the Act to involve development, which includes the carrying out for maintenance, improvement or other alteration of any building or works which do not materially affect the external appearance of the building.
9. With the above in mind, it is necessary for me to ascertain whether the removal of glazed ceramic tiles from the façade of the appeal building constituted development requiring planning permission.

10. The appellant's architect has referred to loose and dangerous tiling being observed at the appeal site during a measured survey on 15 March 2022. Following that survey, the appellant has explained that sections of glazed ceramic tiles were removed by friends using borrowed tools because those tiles posed a significant health and safety risk and to facilitate inspection and subsequent repair of failing metal lintels and large cracks to external walls. It is claimed tiles were not removed by persons who normally carry on business as a builder, 'nor by people with skills and experience'. It is claimed the tiles could have been removed by any able-bodied person, and that such people usually do remove decorative ceramic tiles.
11. The Council's appeal statement refers to the use of a scaffold tower, demolition drills, angle grinders and other tools to remove tiles from the façade of the appeal building, but the appellant has clarified that angle grinders were not used.
12. Despite the many comments submitted by interested parties in addition to the main parties' submissions, there is a paucity of clear and unambiguous information before me as to exactly how the tiles have been removed. Based on everything I have read and seen, it appears more likely than not that power tools were used extensively across the façade of the appeal building with some sort of scaffold tower by people who do not normally carry on business as a builder. This does not mean that such works would not normally be undertaken by a person carrying on business as a builder.
13. Considering the extent of tiles removed, the use of power tools and a scaffold tower, and the intention being to assess the state of lintels and the structural stability of the building, it would be reasonable to expect such external tile removal over the public highway to normally be undertaken by a person carrying on a business as a builder. Whether the people who undertook the removal of tiles in this case were builders is not determinative as to whether the removal of those tiles comprised 'building operations'.
14. Although the tiles would have provided a weatherable face to part of the appeal building and are claimed to have been removed to inspect and repair cracks and lintels, I have not been provided with sufficient evidence which convinces me that the removal of the tiles comprised a structural alteration to the appeal building.
15. Taking all matters raised into account, with regard to section 55(1) and (1A) of the Act, I am satisfied that the extensive removal of tiles from the façade of the appeal building comprised building operations. I am also satisfied that the purpose of the building operations was to maintain, improve or alter the building. This would remain the case even if the appellant intended to reinstate tiles and preserve the external appearance of the appeal building but was prevented from doing so by any Temporary Stop Notice and Stop Notice.
16. The glazed ceramic tiled façade of the appeal building has historically formed an important part of its character. The arrangement of 3 shades of green and lettered tiles across the ground floor façade of the building has marked it out as a former United Breweries public house, similar to other public houses previously owned by that brewery. The glazed ceramic tiles, even where severely weathered and damaged before the alleged breach of planning control took place, made a significant positive contribution to the character of the

building and the surrounding area. The glazed ceramic tiled finish of the appeal building is an important feature of the non-designated heritage asset¹.

17. The extensive removal of tiles from the façade of the appeal building has had a substantial negative impact on the external appearance of the building. It is clearly noticeable from a range of public viewpoints that many tiles have been intentionally removed and/or damaged on account of the extent and layout of those tiles effected. The effect on the external appearance of the building has gone far beyond what could reasonably be interpreted as normal weathering, accidental damage, or wear and tear. The visual impact of the tile removal on the external appearance of the appeal building is therefore material to how it is seen and experienced in its surroundings.
18. The removal of glazed ceramic tiles from the façade of the appeal building materially affects the external appearance of the building and those building operations constitute development requiring planning permission. As no planning permission exists for that development, it is in breach of planning control.
19. It is claimed that the enforcement notice is contradictory because step I at paragraph 5 of the notice does not prohibit the removal of glazed ceramic tiles from the façade of the appeal building which are the minimum amount required to be removed to repair lintels. Step III requires such tiles to then be reinstated. This is not unusual or confusing, and is often referred to as 'under-enforcement', where the Council has considered it appropriate to grant planning permission for that development under the provisions of section 173(11) of the Act. This does not mean that the removal and reinstatement of any other glazed ceramic tiles which the appellant may consider necessary to investigate and/or rectify any perceived risk to the building or members of the public would not constitute development requiring planning permission.
20. The fact that the enforcement notice does not specify the type of planning application required to regularise the breach of planning control, or how approval could be sought, does not confirm that planning permission was not required.
21. The appeal under ground (c) must therefore fail.

Ground (f)

22. To succeed under this ground the appellant would need to demonstrate that the steps required by the enforcement notice to be taken, or the activities required by the enforcement notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by such breach.
23. Reading the enforcement notice as a whole, it is clear on its face that its purpose is to remedy the breach of planning control. It would achieve this by requiring the land to be restored to its condition before the breach of planning control took place.
24. It is claimed that steps II to IV of the enforcement notice are gratuitous and unnecessary, as it is suggested repairs to cladding do not require approval. It is

¹ The appeal building is a locally listed building and is not a designated heritage asset.

- also claimed steps II to IV would 'effectively require a new façade', which would not be practical.
25. It is evident that tiles on the façade of the appeal building were damaged before the breach of planning control took place². However, steps II and III of the enforcement notice do not require such tiles to be replaced, unless or if they were removed or damaged as a consequence of the breach of planning control or to subsequently repair lintels. These requirements are not therefore excessive or unreasonable to remedy the breach of planning control.
26. Step IV requires new tiles to be reinstated to 'match the colours and finish of the existing tiles on each area of the elevation so that the four horizontal bands of colouring are replicated, as shown on the photographs attached at Annex 2'. This could be considered unreasonable if any tiles damaged/removed as a consequence of the breach of planning control were already in a damaged state before the breach of planning control took place. Replacing them with tiles to match the finish of existing undamaged tiles would go beyond remedying the breach of planning control. However, this requirement would not be excessive, as it would probably be easier to replace those tiles with undamaged replicas.
27. Steps V and VI of the enforcement notice refer to 'all moulded details to the fascia and window cills' and 'lettering to the fascia' needing to be reinstated. Some glazed ceramic tiles on the appeal building create moulded details and fascia signage, some of which have been removed and/or damaged as a consequence of the breach of planning control. It would be excessive to require all moulded details and lettering to the fascia to be reinstated, other than those removed and/or damaged as a consequence of the breach of planning control.
28. As the appellant has objected to having to replace previously damaged tiles with tiles to match the finish of existing undamaged tiles, I shall vary steps IV - VI to require such tiles to be replaced to match the condition of the building prior to the breach of planning control, examples of which are shown in the photographs at Annex 2 of the enforcement notice. The photographs at Annex 2 of the enforcement notice do not show the condition of all tiles prior to the breach of planning control taking place in detail, and it would therefore only be necessary to refer to them as an example of the external condition of the relevant parts of the appeal building prior to the breach of planning control taking place. The appellant has explained that they were careful to document the condition of tiles prior to removal³, which should assist further in this regard.
29. Reports⁴ explain that the appeal building is in a poor state of repair, with water and damp ingress, live mould spores within walls, fungi and woodboring insects within structural timbers, and walls of bungaroosh construction. The evidence indicates that steel lintels above ground floor openings will need replacing. It is claimed these reports demonstrate that the entire fabric of the building requires significant upgrading or replacement, and that a complete replacement with modern building materials appears to be necessary.

² The appellant's Annex D: details and photographs of the condition of tiles.

³ Page 12 of the appellant's final comments.

⁴ Structural Survey by Leo Horsfield Surveying Limited, reference LH22207819, dated 4 April 2022; Report by Adelaide's Roofing & Property Maintenance Limited, dated 12 January 2023; undated letter from Allport Installations Limited; Report by Couch Consulting Engineers, reference S8341 - 2, dated 24 November 2022; Report by Mastersofroofing.com Limited dated 1 February 2023; Report by Rentokil, reference ENQ705144, dated 12 January 2023.

Notwithstanding these challenges, they do not make it impossible for the enforcement notice to be complied with, or for its purpose to be achieved.

30. It may well be the case that further glazed ceramic tiles will need to be removed from façades of the appeal building to address any public safety concerns, facilitate investigations into the structural stability of the building, and repair/replace lintels. However, I have not been referred to any extant planning permissions which would require or authorise further tile removal or demolition of any of the ground floor façades. The purpose of the enforcement notice, to remedy the breach of planning control, therefore remains capable of being achieved. Section 180 of the Act would be relevant if any planning permission which is inconsistent with the enforcement notice is granted subsequent to this appeal decision.
31. In conclusion on the ground (f) appeal, steps IV – VI at paragraph 5 of the enforcement notice exceed what is necessary to remedy the breach of planning control. These can be varied in the manner described above, and as set out in my Formal Decision to ensure they would not exceed what is necessary to remedy the breach of planning control.
32. The appeal under ground (f) therefore succeeds in part.

Conclusion

33. For the reasons given above, I conclude that the appeal on ground (c) should not succeed and that some of the requirements of the notice are unreasonable or excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Formal Decision

34. It is directed that the enforcement notice is varied by:
- i. the deletion of 'IV. The new tiles being reinstated shall match the colours and finish of the existing tiles on each area of the elevation so that the four horizontal bands of colouring are replicated, as shown on the photographs attached at Annex 2' and the substitution of 'IV. The tiles being reinstated shall match the colours and finish of the tiles that existed before the breach of planning control took place so that the four horizontal bands of colouring on each elevation of the building are replicated, examples of which are shown on the photographs attached at Annex 2' at paragraph 5; and
 - ii. the deletion of 'V. All moulded details to the fascia and window cills being reinstated shall be replicated in material, colour and finish and reinstated' and the substitution of 'V. All moulded details to the fascia and window cills being reinstated shall be replicated in material, colour and finish and reinstated to match those as they existed before the breach of planning control took place, examples of which are shown on the photographs attached at Annex 2' at paragraph 5; and
 - iii. the deletion of 'VI. The lettering to the fascia being reinstated shall be replicated in font, size, colour, material and finish, where removed or damaged as a consequence of the unauthorised works' and the substitution of 'VI. The lettering to the fascia being reinstated shall be

replicated in font, size, colour, material and finish to match that as it existed before the breach of planning control took place, examples of which are shown on the photographs attached at Annex 2' at paragraph 5.

35. Subject to the variations, the appeal on ground (c) is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR