



Appeal Decisions

Site visit made on 6 July 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal A, Ref: APP/C5690/C/22/3293897

Ground floor, 81 Sydenham Road, London SE26 5UA

- 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 Mr Cengiz Esengul against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 9 February 2022.
- The breach of planning control as alleged in the notice is unauthorised air conditioning unit at the rear of the premises.
- The requirements of the notice are:
 1. Remove the unauthorised air conditioning units.
 2. Make good all damage resulting from the compliance with the requirements of this notice.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B, Ref: APP/C5690/W/22/3293840

Ground floor, 81 Sydenham Road, London SE26 5UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Cengiz Esengul against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/21/122211, dated 10 May 2021, was refused by notice dated 18 January 2022.
- The development proposed is described as "1. Alterations to shop frontage pulling back towards to shop by 60cm and the installation of shutter. 2. Installation of fridges and freezers ventilation system at rear. Previously there was air conditions. 3. CCTV installation are at front and rear."

Summary of Decision: The appeal is allowed, and planning permission is granted subject to a condition set out below in the Formal Decision.

Appeal C, Ref: APP/C5690/H/22/3294513

Ground floor, 81 Sydenham Road, London SE26 5UA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Mr Cengiz Esengul against the decision of the Council of the London Borough of Lewisham.

- The application Ref DC/21/122296, dated 12 June 2021, was refused by notice dated 18 January 2022.
- The advertisement proposed is an externally illuminated fascia sign and an externally illuminated hanging sign.

Summary of Decision: The appeal is allowed.

Procedural Matters

1. There is some confusion over the correct postcode for the premises with SE26 5UA being stated on the enforcement notice and SE26 5EZ stated on application and appeal forms. On the basis that the Council would have had to carry out various official enquiries prior to issuing the notice, it is more likely than not that the postcode is SE26 5UA and I shall therefore proceed on this basis.
2. There is a typographical error in the wording of the allegation in that it refers to air conditioning unit (ACU) in the singular, whereas there are three units. There would be no injustice caused to the parties if this were corrected as it is clear from their submissions it is accepted there is more than one unit. I shall proceed on the corrected basis.
3. The description of development for the planning application composed by the applicant is different to that within the decision notice. It is not clear whether the appellant agreed to the changes but he includes the description of development from the decision notice within his appeal form, which to me suggests a later acceptance. The Council describes the development as shop front alterations together with the installation of condenser units to the rear and an acoustic screen. As this is more succinct, I shall proceed on this basis.
4. There is also a mistake in the decision notice for the planning application in that it lists "Policy DM 16 Shopfronts, signs and hoardings" when the correct reference should have been to DM Policy 19, which deals with that matter. The error was discovered when DM Policy 16 was not included with the questionnaire response. The appellant was apparently unaware and responded to DM Policy 16 entitled "Local shopping parades and corner shops". After the error was discovered, in the interests of fairness, he was given an opportunity to make any additional comments and I have taken these into account in determining this appeal.
5. The development that is the subject of the notice is the same as that for which planning permission has been sought and refused by the Council. The Council's reasons for issuing the notice are the same as those for refusing the planning application. Since the section 174 appeal on ground (a) and the section 78 appeal raise the same issues, I have dealt with them together in this decision.

Appeal A: The ground (a) appeal, the deemed planning application and part of Appeal B in relation to the ACUs

Main Issue

6. The main issue is the effect of the development on the living conditions of surrounding occupiers, having regard to noise.

Reasons

7. The appellant has installed ACUs on a flat roof at the rear of his premises. The flat roof is near an open staircase that provides access to an open landing area

- at first floor level and to all of the 1950s flats above the shops. A low wall marks the edge of the landing area and forms a backdrop to the flat roof area.
8. As well as the flats, there are houses in Earlsthorpe Road that are near the ACUs. These are separated from the units by gardens and a rear service lane known as Earlsthorpe Mews. The application also requested permission for an acoustic timber screen. At some point the appellant attempted to enclose the units with timber pallets and at the site visit I saw one unit was crudely enclosed by insulation panels.
 9. The application was accompanied by an acoustic report dated 24 December 2021 but this was updated with another dated 26 May 2022 submitted after the refusal of planning permission and the issue of the notice. The 2021 report concludes that noise levels during the operation of the ACUs relative to prevailing background noise levels are acceptable. This conclusion is based on a noise survey carried out over a 24 hour period from Monday 13 December 2021 to Tuesday 14 December 2021.
 10. The 2022 report states the same conclusion in the Summary and includes the noise survey details but in section 4 of the report sets out a different conclusion based on predicted noise associated with the ACUs. It is now stated that the ACUs would operate +12/13dBA above the Rating Noise Level Limit and as such will require attenuation. Section 5 of the report sets out possible attenuation treatment with the conclusion that the identified harm can be mitigated.
 11. I have found contradictions between the two reports and there is no explanation from the appellant as to why this is the case. When these are added to the deficiencies in the 2021 report highlighted by both the Council's Environmental Health Officer and a third party's acoustic consultant, this reduces the weight I can give to them. Furthermore, there is no response in both appeals either to the criticisms or to the findings made in the acoustic consultant's own detailed noise assessment. Notwithstanding this, the appellant accepts without mitigation, the development causes harm to the living conditions of neighbouring occupiers. As such, the development conflicts with Policy 15 of the Council's Core Strategy (CS)¹, which requires amongst other matters that any adverse impact on neighbouring amenity from small-scale development will need to be addressed.
 12. The appellant invites me to impose a condition which would require the imposition of mitigation measures. Third parties are concerned that any details of attenuation measures submitted could involve development that would be harmful to the Sydenham Thorpes Conservation Area (the CA) in which the appeal site is located. However, this would be considered when the discharge of condition application would be dealt with.
 13. A more immediate concern to me is the fact that the development has already occurred and the consequences if the appellant failed to discharge the condition. For these reasons I consider it is necessary to impose a particular condition requiring the submission of an Attenuation Scheme (AS) which is drafted in such a way as to require the appellant to comply with a strict timetable. Provided the condition is complied with, this would make the development acceptable.

¹ Lewisham Local Development Framework, Core Strategy, Development Plan Document, adopted June 2011

14. A strict timetable is necessary for the following reasons. Unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of outstanding detailed matters as the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
15. Third parties are also concerned that the ACUs have been in operation unfettered for some time but it is open to the Council to make use of other powers which provide for the abatement of harm to living conditions.

Other Matters

16. As the appeal site lies within a CA, I am also required to have regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area as a whole.
17. The CA is centred on a particular stretch of Sydenham Road to the east of the railway station and on the Victorian/Edwardian residential area to the north of that stretch of Sydenham Road. There are various ground floor commercial units along Sydenham Road, which is a busy thoroughfare, with flats above, many in purpose built period shopping parades. The parades are attractively detailed with, for example, prominent shopfront features at ground level and Dutch Gables at second floor level.
18. I find that the distinctive character and appearance of the CA stems in part from the architectural decoration of the various shopping parades and the detailed design of the residential streets to the north.
19. The ACUs, having regard to their location, tucked away at the rear, are small in scale with a modest effect on the appearance of the host property. For these reasons I find they preserve the character and appearance of the CA when considered as a whole. I find there is no need to consider the effect of or permit the proposed acoustic screen as this matter would be dealt with by condition.

Conclusion

20. For these reasons I conclude that Appeal A on ground (a) succeeds. I shall grant planning permission with a condition for the ACUs as described in the notice, as corrected. I also conclude that part of Appeal B relating to the ACUs should be allowed with the same condition. The appeal under ground (g) does not therefore need to be considered.

Appeal B, The shopfront alterations

Main Issue

21. The main issue is the effect of the new shopfront, and associated fittings, on the CA, having regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

Reasons

22. The new shop front, roller shutter, canopy and cameras are in position. As set out above, the architectural decorations of the various shopping parades are a distinctive feature of the area. The appeal site is one of seven units with flats above which appears to have been built in the 1950s as infill development. The design of this parade contrasts with neighbouring parades in that it has a more streamlined, stripped back appearance. In particular, there is a deep concrete cornice line, painted in a light colour which separates the flats above, faced in red bricks, from the commercial units below. This is a significant unifying feature of the parade which makes a bold architectural statement.
23. Each shop unit is framed by concrete pilasters and a slightly recessed fascia. The new shop front does not extend beyond the pilasters and the roller shutter, when closed, is flush with the front elevation with its housing flush with the pilasters. The Council are concerned though that the entrance door and surrounding slim metal framework glazed panels are set back from the front elevation, which allows for the installation of shelving in front of them to display fruit and vegetables for sale.
24. The setback is approximately 50cm. Traditional shopfronts sometimes included a recessed doorway which allowed for an increased window display area and some shop fronts were fully or partially openable to display, for example, wet fish for sale. However, the appellant's design is at odds with the modern parade in which it sits, where there is a degree of uniformity at ground level. This conflicts with the objectives of DM Policy 19² for new shopfronts to reflect and improve the character and quality of their surroundings.
25. Nevertheless, I find that the harm caused is modest due to the minimal setback and the entrance provides a level, step free access into the premises. The shelving enables the appellant to present a colourful display of goods for sale that is an attractive feature which contributes to the vitality and viability of the area. The use of a metal shopfront is not dissimilar to others in the parade and preserves the character and appearance of the CA.
26. The Council are also concerned that the roller shutter has a solid appearance, which obscures the shop window behind. The appellant submits that the premises are open 24 hours a day and it is therefore most unlikely that the shutter would be used. However, the appellant may not always occupy the premises and as such I am required to consider whether the design preserves or enhances the character or appearance of the CA.
27. As the objective behind DM Policy 19 is to maintain/replace/respect well designed shopfronts, it follows that shopfronts should not be obscured when a roller shutter is in use. The design of the appellant's roller shutter does not appear to be entirely opaque but the fitting of it sits flush with the pilasters and the housing does not project beyond the cornice. At my site visit I saw that some premises in the area were closed during the day, such as restaurants,

² Of Lewisham Local Development Framework, Development Management Local Plan, adopted 26 November 2014, (DMLP)

and that these made use of solid shutters, which seemed to have become part of the established appearance for the area. The larger store at the end of the 1950s parade, which is open during the daytime, also made use of solid shutters inside one of their shop windows. As such, whilst the appellant's development does not accord with the Council's policy, other material considerations indicate there is limited harm caused by the development and that it is therefore acceptable.

28. Two cameras are discreetly positioned to monitor the shelving area and the doorway. They are very small, are white in appearance and are hidden when the canopy is open. I find they are minor features that do not detract from the simple lines of the shop front and that their installation preserves the character and appearance of the CA.
29. The Council state that insufficient information was provided for them to consider the proposed canopy. This is described as a "New traditional shop blind" on the submitted plans and at the site visit I saw a retractable fabric blind had been installed which matches this description. It displays the name of the business and, as such, it appears to enjoy deemed consent in accordance with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
30. Although the roller shutter does not comply with DM Policy 19, overall, the shopfront alterations when looked at as one development preserve the character and appearance of the CA. As such, they accord with Policy HC1 of The London Plan³, Policies 15 and 16 of the CS and DM Policies 30, 31 and 36 of the DMLP. These require amongst other matters, that new shopfronts should use a design appropriate to the period and character of the building and should relate well to existing shopfront features. Despite their age, the CS policies remain consistent with the National Planning Policy Framework (the Framework) in terms of requiring good design and I therefore give them substantial weight.
31. The Council has suggested just one condition in the event that the appeal is allowed, namely that the development should be retained in accordance with the submitted application plans. However, this is not necessary as the Council has control over any future alterations that may take place. I find since the shopfront development is substantially complete, no conditions are necessary.

Appeal C

Main Issue

32. The main issue is the effect of the fascia and hanging sign on the character and appearance of the locality.

Reasons

33. The signs are in position. The fascia sign is sited below the cornice and within the pilasters framing the shop front. It is externally illuminated by a slim trough light neatly attached via brackets to the wall above the sign. It does not quite extend to the full width of the fascia space unlike some others in the 1950s parade. However, this detail is barely noticeable compared to the positioning of other signs nearby and is therefore acceptable. The hanging sign

³ The London Plan, The Spatial Development Strategy for Greater London, March 2021

is modest in size and together with two small trough lights above is suspended by a bracket at right angles to the fascia sign.

34. This is not unlike other projecting signs in the area and therefore does not appear out of place. Furthermore, I find little support for the Council's argument that the inclusion of a hanging sign results in visual clutter when the bracket supporting the sign is fixed at the top of the fascia level and the sign hangs below it, within the fascia area, not unlike others in the area.
35. The Council's second area of concern relates to illumination levels. Luminance however is different from brightness, which varies depending on other illumination in the area. Sydenham Road is a busy High Street. Several bus routes run along it and there is a railway station at the top of the hill. The area is well lit by Council streetlights. In addition, there is a night-time economy comprising several restaurants, hot food takeaways and other late night opening convenience stores, all of which have various illuminated signage. Bus stop shelters in the area are also illuminated.
36. In this context, the brightness of the appeal signage is acceptable. The trough lights are angled downwards onto the signs and are shaded by covers. In addition, there is a slight projection of the cornice above which acts as a further screen between the display and the flats above. Overall, the design of the signage is restrained and the colour scheme is sympathetic to the light colour of the ground floor parade. The character and appearance of the CA is therefore preserved.
37. The Council has drawn my attention to Policies D8 and HC1 of The London plan, Policies 15 and 16 of the CS and DM Policies 19, 27, 30, 35 and 36 of the DMLP. Whilst not decisive, I find the display would not conflict with DM Policy 19 which requires, amongst other matters, that new shop signs should not obscure architectural features such as cornices and pilasters. The display would also not conflict with DM Policy 27 which requires, amongst other matters, the protection of local character and residential amenity from light pollution by controlling illumination levels, light spillage and light angles. Notwithstanding this, the powers under the Regulations to control advertisements can only be exercised in the interest of amenity and public safety.

Conclusion

38. For the reasons given above I conclude that the illuminated fascia and hanging signs are acceptable on amenity grounds.

Formal Decisions

Appeal A

39. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of air conditioning units on land at Ground Floor, 81 Sydenham Road, London SE26 5UA referred to in the notice, subject to the following condition:
- 1) The operational development hereby permitted shall be removed and the land restored to its condition before the development took place within 28

days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- (i) Within three months of the date of this decision, submit details of an Attenuation Scheme (the AS). Such details shall include full specifications for a specialist acoustic enclosure(s) for the air conditioning units. These shall include siting, dimensions, design and external facing materials. The acoustic enclosure shall be capable of attenuating noise emissions by at least 24dB to achieve a rating level of 10dB below background noise levels.

The AS shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- (ii) Within 11 months of the date of this decision, the AS should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the AS or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted AS should have been approved by the Secretary of State.
- (iv) The approved AS shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition shall be suspended until that legal challenge has been finally determined.

Appeal B

40. The appeal is allowed and planning permission is granted for the shop front alterations together with the installation of condenser units to the rear at Ground Floor, 81 Sydenham Road, London SE26 5UA in accordance with the terms of the application, reference DC/21/122211, dated 10 May 2021 subject to the following condition:

- 1) The operational development hereby permitted shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within three months of the date of this decision, submit details of an Attenuation Scheme (the AS). Such details shall include full specifications for a specialist acoustic enclosure(s) for the air conditioning units. These shall include siting, dimensions, design and external facing materials. The acoustic enclosure shall be capable of attenuating noise emissions by at least 24dB to achieve a rating level of 10dB below background noise levels.

The AS shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- (ii) Within 11 months of the date of this decision, the AS should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the AS or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted AS should have been approved by the Secretary of State.
- (iv) The approved AS shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition shall be suspended until that legal challenge has been finally determined.

Appeal C

41. The appeal is allowed for an externally illuminated fascia sign and an externally illuminated hanging sign and consent is granted for their display. The consent is for five years from the date of this decision and is subject to the standard conditions set out in the regulations.

D Fleming

INSPECTOR