

Appeal Decision

Site visit made on 16 August 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st September 2023

Appeal Ref: APP/X5990/C/22/3311025

52 Queensway, London W2 3RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Subramaniam Kamalanathan on behalf of Londonshop against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 12 October 2022.
 - The breach of planning control as alleged in the notice is within the last 4 years, the removal of the previous lawful shopfront and installation of a new shopfront and side entrance door, without the requisite planning permission.
 - The requirements of the notice are:
 1. remove the unauthorised shopfront and side entrance door, as shown outlined in yellow, in image A.
 2. reinstate a shopfront and side entrance door to match the design, detailing and materials of the previous shopfront, as shown in image set B.
 3. remove all debris from the property following compliance with steps 1 and 2.
 - The period for compliance with the requirements is: within six months of this notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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. The appeal is dismissed, and 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.

Reasons

The appeals on grounds (b) and (c)

2. An appeal on ground (b) is that the alleged breach of planning control, as stated in the enforcement notice, has not occurred and, importantly, was not occurring at the time the notice was issued. An appeal under ground (c) is that the matters stated do not constitute a breach of planning control as no planning permission is necessary in the circumstances. I will consider these matters jointly due to the overlap in the case made by the appellant in respect of both grounds. The onus of proof here lies with the appellant.
3. In relation to ground (b), the appellant says that they have only changed the colour of the shopfront and the doors which they have been using since an appeal was allowed in 2005 to change the shop front to use an aluminium frame with centrally located double doors.
4. Photographic evidence submitted by the City Council shows the shop front and side entrance door to the residential units above in June 2018 and June 2021. This comprises of large areas of glazing with red aluminium frames. There is a fanlight above the double inward opening central entrance doors. A side

entrance door to the upper floors with a fanlight above it is to the left hand side of the property. Due to the slight ground level changes, there is a small step up into the shop from the pedestrian footway.

5. Planning permission was granted in January 2020 for 'alterations to shopfront at 50-52 Queensway, creation of a new access door to the first floor flat and reinstatement of the pediments above the first floor windows to 50'. This scheme involved the installation of a new painted timber shopfront, stall risers, transom lights and fanlights and moving the residential entrance to the right-hand side of the property.
6. The shop front in situ includes a thin fanlight, sliding double doors to the centre, no small step, and a modest stall riser beneath the glazing either side of the sliding doors. The entrance door to the residential units above is set back from the front façade of the property.
7. The works carried out are materially different to the planning permission granted in 2020 as the shop front is not built of timber, the design and proportions are different, and the residential entrance door remains on the left-hand side of the property. That planning permission has also now lapsed.
8. The works are also materially different to the shop front present in June 2018 and June 2021, but also that granted on appeal in 2005 as these all had a deeper fanlight and no sliding doors. Hence the appellant's reliance on the 2005 planning permission is not well founded.
9. The changes made after June 2021 are not limited to altering the colour and the doors as the appellant suggests. Section 55(1) of the Act confirms the meaning of 'development'. The works are 'building operations' that fall within the remit of 'development' for the purposes of the Act. But, even if I were to consider the changes amounted to maintenance, improvement or another alteration, the works carried out have materially affected the external appearance of the building. They would still be 'development' even if the current entrance door was hidden behind a door flush with the façade of the appeal property which is said by the appellant to have been removed.
10. Consequently, for the reasons set out, those matters stated in the notice have occurred on the balance of probability, and I conclude therefore that ground (b) fails. The installation of a new shopfront and side entrance door do not accord with any planning permission, and they are not permitted development. Hence, there has been a breach of planning control and I conclude that the appeal under ground (c) fails.

The appeal on ground (a)

11. The main issue is whether the proposal preserves or enhances the character or appearance of the Queensway Conservation Area ("the CA").
12. The appeal property is a three-storey rendered mid-terraced building located in the CA. The appeal property has a pedimented first floor level with sash windows. The CA is characterised by unaltered mansion blocks and uniform terraces on the upper floors. The buildings are used for commercial and residential uses. The upper floors are typically used for residential occupation and are generally free of unsympathetic alterations. The ground floors contain many modern shopfronts and accompanying adverts of varying quality, design, materials and finish. These include several powder coated aluminium shopfronts with large areas of glazing and the absence of traditional

components of a shopfront. However, there are also timber framed shopfronts with traditional features such as stall risers, fanlights and transom lights which are complemented by more modern designs that include traditional features also. These positively contribute to the architectural significance of the CA.

13. The modern shop front does have a stall riser, but it has a modest depth. In tandem with the thin, and largely unseen fanlight, the shopfront has a vertical emphasis largely comprising of glazing broken by thin aluminium bars. The sliding doors add to the lack of traditional features and proportion in the shopfront's design and its uncomfortable relationship with the remainder of the building. As a result, the proposal causes harm to the character and appearance of the CA and its architectural significance as the shopfront is part of an active street scene in the CA.
14. Although the City Council is seeking to encourage the timber framed shopfronts within the street and the CA, the modern materials and colour used in this instance do not add to the harm that I have identified, though they do not lessen it either. Nonetheless, the harm that I have identified would, having regard to the National Planning Policy Framework, be less than substantial. I give great weight and importance to the conservation of the CA as it is an irreplaceable resource.
15. The appellant points to the use of sliding doors as an energy and cost saving measure but there is no substantive evidence before me to demonstrate that the claimed 50% saving has been made. It is also of note that the previous double doors could have potentially been kept closed whilst still allowing people in and out of the shop to address any energy and financial issues faced. In this case therefore, the public benefits do not outweigh the less than substantial harm that the proposal causes.
16. I conclude that the proposal does not preserve or enhance the character and appearance of the CA. Conflict arises with Policies 38, 39 and 40 of the City Plan 2019 – 2040 and London Plan Policies D3 and HC1. Jointly, these policies seek, among other things, development to be sensitively designed and to integrate important architectural details and proportions so that it positively contributes to the character and appearance of the area, and heritage assets so they are conserved and sensitively adapted, while allowing them to meet changing needs and mitigate and adapt to climate change.
17. Although the City Council refer to the Shopfronts, Blinds and Signs - A Guide to their Design Supplementary Planning Guidance document, it is not before me.
18. For the reasons set out, the proposal does not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. I am satisfied that ground (a) should fail and the deemed application for planning permission should be dismissed.

Conclusion

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

Andrew McGlone

INSPECTOR