The Planning Inspectorate

Appeal Decision

Site visit made on 13 September 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH SEPTEMBER 2023

Appeal Ref: APP/K0235/C/21/3286561
Land known as 68a-70 Tavistock Street, Bedford, Bedfordshire MK40 2RG

- 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 Naser Khan against an enforcement notice issued by Bedford Borough Council.
- The enforcement notice, numbered 19/00169/UNLAND, was issued on 6 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, a material alteration to the appearance of the front elevation of the building as a result of the removal of render from both sides of the first-floor windows and the exposure of underlying brickwork.
- The requirements of the notice are i) reinstate the render to those areas currently without render on both sides of the first-floor windows on the front elevation to match the existing render in all regards and ii) paint the new render to match the existing render.
- The period for compliance with the above requirements is respectively i) three months and ii) four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) 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 allowed and the enforcement notice is quashed.

Ground (c) appeal

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.

3. The Council assert that the removal of render from both sides of the first-floor windows to expose underlying brickwork does not have the benefit of any planning permission. However, the appellant considers that planning permission was approved for the alleged breach of planning control as part of planning application 20/01759/FUL, dated 19 November 2020, for *'change of use from Use Class A1 (shop) to mixed Use Class A3/A5 (restaurant/hot food takeaway) with external alterations including installation of extraction flue and condenser unit to rear'.*

4. The above planning permission includes both existing and proposed drawings. Condition 2 of the planning permission states that *'the development hereby approved shall be carried out in accordance with the plans and documents listed on this notice, unless required otherwise by a separate planning condition*

of this permission'. The reason provided is *'to provide certainty on what is being authorised by this permission'*. The decision notice lists existing and proposed drawings and of relevance to this appeal is drawing No. 06284-PL102 *'existing elevations'* and drawing No. 06284-PL03 Rev F *'proposed elevations'*.

5. The evidence is that the removal of the render took place prior to the submission of the planning application. Indeed, a photograph of this development is included in figure 2 of the Planning Statement prepared by Smith Jenkins Town Planning, dated 12 August 2020. It is therefore not surprising that the existing elevations drawing showed the said exposed brickwork as that was the situation that existed at the site at that moment in time. On the existing elevations drawing, it is noteworthy that there is a letter 'A' and in the key it states that this is '*red facing brickwork'*.

6. In respect of the proposed elevations drawing, this also shows exposed brickwork around the first-floor windows of the proposed *'northeast elevation'*. There is a materials key on this drawing which states, *'all materials and finishes to be retained as illustrated on drawing 06284-PL02 unless noted below'*. The notes make no reference to any change to the red facing brickwork shown on the northeast elevation of the existing elevations drawing.

7. Given the above, and on plain reading of the planning permission, I do not find that there is any ambiguity or uncertainty in terms of what has been approved. The planning permission quite clearly approves the removal of render to reveal exposed brickwork either side of the windows on the northeast elevation. It is shown on both the existing and proposed elevations drawings.

8. I acknowledge that the planning statement submitted by the applicant did not make express reference to the external alteration. However, the evidence is that the work had already been carried out. I consider that it would not be unreasonable to take the view that the applicant's focus in terms of this statement was on the development that had not already taken place. In any event, the planning statement states, *'the proposals include'* and, in my judgment, it is not therefore reasonable to construe this as being a closed list of identified proposed alterations.

9. Similarly, the description of development as contained within the Council's decision notice, and the applicant's planning application form, refers to *'external alterations'*. The Council's description of development states, '*with external alterations including*' and so again this is not a closed list of identified alterations. Given the broad reference to *'external alterations'* in the applicant's description of development it was incumbent on the Council to check very carefully what was shown on the submitted drawings including comments in the respective keys.

10. I accept that the officer report and the consultation response from the Council's conservation officer are silent in terms of an assessment of the building alteration that is the subject of this appeal. However, that does not mean that planning permission has not been approved for the appeal development. It is not clear if the Council was satisfied with this development, noting that it had already been carried out, or simply that they erred in not considering the matter as part of the overall assessment of the planning application. Either way, it cannot reasonably be the case that it was not aware of this part of the development proposal given the clear references to it on both the existing and proposed elevations drawings. This is in the context that amendments were

also made to the planning application drawings and at no time did the Council require any changes to be made to them in terms of the exposed brickwork.

11. The Council has referred me to email correspondence between its Planning Enforcement Service and Smith Jenkins Town Planning dated February 2021. These post-date planning permission 20/01759/FUL and hence are not part and parcel of such a consent. In response to questions about what the owner intended to do about the removal of the render the consultant responded *'on the matter of the works to the render at first floor level, this was undertaken prior to my instruction and prior to Fireway taking the lease at the property. As I did in December when Mr Dawe made contact, I have asked my client to forward your email to the owner of the building for his immediate attention. Unfortunately, I can't assist any further on this particular matter'.*

12. I do not find that the above conclusively demonstrates that either the agent or the appellant were of the view that they did not have planning permission for the alleged breach of planning control. It is reasonable to take the view that the consultant, who perhaps was not instructed by his client in terms of enforcement investigation matters, was simply passing on information to him for the purpose of a response. In any event, I am satisfied, based on the documents that made up the planning permission, that the evidence clearly and unambiguously demonstrates that planning permission has been approved for the alleged breach of planning control.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances, the appeal under the various other grounds set out in section 174(2) to the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not need to be considered.

D Hartley

INSPECTOR