



Appeal Decision

Site visit made on 21 November 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2024

Appeal Ref: APP/C5690/C/22/3311948

Ground Floor Commercial Unit, 48 - 50 Deptford High Street, LONDON, SE8 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Victory Land Ltd against an enforcement notice issued by London Borough of Lewisham.
 - The notice, numbered ENF/21/00229, was issued on 26 October 2022.
 - The breach of planning control as alleged in the notice is "unauthorised change of shop frontage (front and side elevation) and solid roller shutters to the front elevation without planning permission".
 - The requirements of the notice are: 1. Fully reinstate the previous shop frontage by re-introducing framing bars to the front and side elevation and a front door to the front elevation as shown in Appendix A attached to this notice; 2. Remove the solid roller shutter to the front elevation of the ground floor commercial unit and replace with the previous shutter as shown in Appendix B; 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of this notice from the property and its premises.
 - The period for compliance with the requirement is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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. It is directed that the enforcement notice is varied by the removal of the word "with" in Step 2.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

The appeal on ground (c)

3. Although no ground (c) is ticked on the appeal form, there is a hidden ground (c) in the final comments. The appeal on ground (c) is that the removal of the shopfront does not require planning permission and therefore there is no breach of planning control in respect of the removal of the shopfront.
4. S.55 of the Town and Country Planning Act 1990 provides the meaning of development which includes "building operations". S.55(1A) says 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.
5. I consider that the removal of a shopfront, which materially affects the appearance of the building falls within (d) and it is not excluded from development by virtue of S.55(2). Therefore, a building operation has taken place and I have not been made aware of any permission or approval that has been granted for it. The appeal on ground (c) fails.

The appeal on ground (a)

6. The main issue is whether the alterations to the shopfront preserve or enhance the character or appearance of the Deptford High Street and St Paul's Church Conservation Area.
7. The conservation area is centred on Deptford High Street. It is characterised by narrow plots, a variety of building heights of between one and four storeys, a mixture of roof forms, and a contrast between frontages and rear elevations – the rear elevations revealing earlier origins. There are dozens of pre-1800 buildings which are now rare in London. There are also buildings and shopfronts dating from the first half of the 20th century. There is surviving architectural detail such as doorcases, cornices and plasterwork. The street patterns, narrow plot boundaries and surviving historic buildings are evidence of Deptford's history of being a separate town from London. The area has a retail and market character containing small independent retailers and it has popular markets. The high street displays a variety of finishes to front elevations, including render, paint and artwork. Shopfronts are a characteristic of ground floors on the high street. The significance of the conservation area is derived from its age; its development as a town; its historic layout; its historic architecture; and its vibrant retail activity. The conservation area is on the Heritage at Risk Register.
8. The building previously had a shopfront at the front and side. This has since been removed and roller shutters have been installed on the front elevation to secure the building when the shop is not open. There are also roller shutters on the side elevation but these are not subject of the enforcement notice.
9. The appeal building is on a corner plot. It is 4-storeys high with two frontages and is therefore fairly prominent in the street-scene. The removal of the shopfront has resulted in the building looking top heavy as there is a gap at the bottom instead of a shopfront, whereas previously, the glazing and glazing bars provided some visual support. The lack of glazing breaks the adjacent continuity of glazed shopfronts.
10. The solid security shutters are unattractive due to their solid metal design which lacks the finesse of the building's architecture above. The shutters' bulky and rudimentary appearance are an unattractive feature in the street-scene at the ground floor level. When closed, the shutters result in a loss of visual interest and vibrancy to the street. Graffiti makes the shutters look even less attractive, but coating the shutters in anti-graffiti paint would not overcome the above problems.

11. Policy DM 19 of the Lewisham Development Management Local Plan 2014 indicates that roller shutters should be of an open mesh variety leaving the shop window visible, and that open shopfronts without a traditional glazed screen that break up the visual continuity of a shopping frontage should be refused.
12. In addition, the Council's Deptford High Street and St Paul's Church Conservation Area Appraisal and Management Plan, 2019 (CAAMP) cites solid roller shutters, particularly when associated with the removal of shopfronts to create and open frontage, as a key issue which detracts from the conservation area. The Council's design advice in the CAAMP is that solid security shutters will be resisted in favour of open grille shutters unless, in exceptional circumstances, it can be demonstrated that a specific security risk requires it.
13. The appellant says that there is a high crime rate in the area and that the risk of crime is likely to be exacerbated by the adjacent bookmakers. The police identify the general area as a high crime hotspot and the appellant says that when the shop was a betting shop, the door was kicked in, the shop was robbed and a member of staff was hospitalised.
14. I appreciate that a solid roller shutter must offer some protection when the premises are shut but the appellant has not submitted any substantive evidence that the roller shutter is more robust than security glazing together with an open grille shutter, as existed before. Open grille roller shutters allow criminals to see what is inside the shop however, the contents of the shop can be seen when the shop is open. The shop sign also gives an indication of what is inside. I have no substantive evidence that being able to see inside a shop when it is closed increases the risk of a break in. Therefore, no substantive evidence has been presented to demonstrate that there are exceptional circumstances relating to the security of the specific appeal unit which would justify the retention of the solid roller shutter. The appellant points out that the premises is no longer a betting shop but this factor is of little relevance to the operational development that has occurred.
15. The appellant also comments that linked roller shutters do not protect from insects and vermin. However, a glazed shopfront would be a solid structure providing a barrier.
16. I have had regard to the appeal decisions that the appellant has submitted in support of their case. The appeal decision¹ for 93-95 Deptford High Street which describes anti-social behaviour and crime in the area, refers to a change of use rather than a shopfront. Notably, that decision was subject to a condition that a shopfront window display shall be provided at all times. In the current situation, a shopfront window display is missing. That appeal decision, therefore, does not support the appellant's case.
17. I note the appellant's reference to the appeal decision² at 44 Deptford High Street. I do not disagree with that Inspector's description of the conservation area and the shopfronts within it. Nonetheless, whilst the area has evolved over time and contains modern shopfronts and various alterations to them, this does not mean that any development is acceptable. The existence of other inappropriate development, including solid shutters and open frontages, does

¹ APP/C5690/A/11/2151228

² APP/C5690/Z/17/3177728

not justify further harm. In any event, that case was relating to a different premises and was for a very different proposal i.e., an ATM, which is not directly comparable to the development before me. I have considered the appeal before me on its own merits.

18. The appellant also says that the appeal building has not been identified as a positive contributor to the conservation area. However, this factor does not mean that there should be no planning control over the building.
19. Granting planning permission for the development sought would be clearly against the objectives in the CAAMP. Furthermore, I have a statutory duty under S.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
20. For the above reasons, the shopfront alterations fail to either preserve or enhance the character or appearance of the conservation area. Given that the shopfront affects only a small part of the conservation area, I consider that the harm to the significance of the conservation area to be less than substantial and at the lower end along the scale of less than substantial harm.
21. Paragraph 205 of the National Planning Policy Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. The Framework advises that less than substantial harm must be weighed against the public benefits of the scheme.
22. Paragraph 208 of the Framework advises that less than substantial harm must be weighed against the public benefits of the scheme. The shop has a Forecourt Trading Licence and the appellant says that there are people in the community whose cultural habits lead to an appreciation of open-fronted shops. However, there is nothing before me that indicates that the pavement trading would have to cease if the shopfront were restored or that a shopfront would prevent people using the shop. The appellant also says that small, independent traders and businesses contribute to the character of the conservation area. However, there is no evidence that enforcement of the breach of planning control would erode this particular characteristic. In addition, I have not found that the development increases security. The claimed benefits of the scheme, therefore, do not constitute public benefits sufficient to outweigh the less than substantial harm to the conservation area.
23. I conclude that the development harms the character and appearance of the area and the significance of the conservation area. Therefore, it conflicts with Policies 15 and 16 of the Lewisham Core Strategy 2011; Policies DM 19, DM 30 and DM 31 of the Lewisham Development Management Local Plan 2014 and London Plan Policy HC1. In combination and amongst other matters, these policies seek to ensure high quality design; to protect heritage assets and local character; and to ensure that shopfront design makes a positive contribution to the streetscape. It is also contrary to the Lewisham Shopfront Design Guide Supplementary Planning Document which seeks to ensure good shopfront design.

The appeal on Ground (f)

24. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
25. The appellant argues that the side elevation roller shutter is not subject of the enforcement notice and as it is permanently in place, there is no point in requiring the shopfront to be replaced behind it. However, the requirement in Step 1 is to reinstate the shopfront and the side elevation contains part of the shopfront. The purpose of the requirement therefore clearly comes under S173(4)(a) of the 1990 Act which is remedying the breach by restoring the land to its condition before the breach took place.
26. I note the appellant's comments that the shutter is permanently down but another user might not wish to keep it down. Therefore, it not excessive to require the shopfront to be reinstated.
27. The appellant says that it is impossible to "replace with the previous shutter" as it was broken and has gone for scrap. The purpose of the requirement in Step 2 also clearly comes under S173(4)(a) of the 1990 Act which is remedying the breach by restoring the land to its condition before the breach took place. Nevertheless, the breach can be remedied by a replica shutter. I will vary the requirement in Step 2 by removing the word "with" which will allow the existing shutter to be replaced with a shutter identical to the previous shutter as shown on Appendix B to the notice. This will make the requirement less onerous for the appellant but it will achieve the same objective, i.e, to remedy the breach.
28. Therefore, although I will vary the notice in relation to Step (2) of the requirements, the appeal on ground (f) must fail.

Conclusion

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

S Watson

INSPECTOR