



---

# Appeal Decision

Site visit made on 12 March 2024

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 3 May 2024**

---

**Appeal Ref: APP/K5600/C/23/3328389**

**Wrap London, Ground Floor, 184 Westbourne Grove, London W11 2RH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Hannah Dashper (Selective Marketplace Limited) against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
  - The notice was issued on 18 July 2023.
  - The breach of planning control as alleged in the notice is: Without planning permission, the installation of roller shutters and a door grill to the front of the property.
  - The requirements of the notice are to: i) Fully remove the roller shutters, including housing at fascia level, frame and shutter; ii) Fully remove the steel mesh from the entrance door; iii) Remove from the land any resulting debris.
  - The period for compliance with the requirements is: 2 (two) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act). 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, 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.

## Preliminary Matters

2. The appellant has submitted a drawing (no.3260-300B) as part of their appeal which proposes an alternative scheme. The drawing shows three alterations to the existing installation in the form of the replacement of the roller shutters with micro perforated aluminium laths; a more perforated door grille; and recessing the shutter boxes within the shopfront.
3. Section 177(1)(a) of the Act provides me with the power to grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw<sup>1</sup> directs that, so long as there is an appeal under ground (a), I must consider whether the proposed alternative scheme would be 'part of the matters' stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker.
4. In this case, the alternative scheme which has been advanced proposes new works to replace the development that is the subject of the notice. I therefore

---

<sup>1</sup> *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

find the proposed alternative scheme is not within the scope of the matters stated in the enforcement notice and I have no power to grant planning permission for the proposed development shown in the appellant's submissions under the ground (a) and/or (f) appeals.

## **Ground (a) and the deemed planning application**

### **Main Issues**

5. The main issue is whether the development preserves or enhances the character or appearance of the Conservation Area in terms of its visual impact on the building and the street scene.

### **Reasons**

6. The appeal relates to a mid-terrace shop unit located on the north side of Westbourne Grove within the Pembridge Conservation Area (PCA). The frontage, although not original, is of a traditional design with a central glazed single door with stall riser, and a fixed display window with stall riser to either side. Solid security shutters and associated shutter boxes have been installed to the outside of the display windows, and a steel mesh or grille has been attached externally on the entrance door. All have been installed to provide security in response to acts of vandalism.
7. The appeal property (No. 184) is the ground floor of a Victorian terraced building with residential above. The buildings are three storeys in height with built out shop frontages at ground level. The premises is located within the Westbourne Grove Special District Shopping Centre, a busy area of shops, commercial and residential properties. The PCA Appraisal (2017) describes the row in which No. 184 is situated as originally forming a long terrace of 29 properties some of which have been amalgamated to form larger shop units.
8. The shops within the PCA are highlighted as making a particularly important contribution to its character. They provide the setting for residents to meet socially, while in visual terms their prominent locations and variety in style and finish make for welcome interest in what is predominantly a residential area. For these reasons and from my observations during my site visit, I find that No. 184 makes an important and positive contribution to the historic and architectural significance of the PCA as a whole.
9. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the decision-maker to have special regard to the desirability of preserving or enhancing the character or appearance of conservation areas. This is also reflected in the approach set out within the National Planning Policy Framework (the Framework), which 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.
10. Policy CL3 of the Kensington and Chelsea Local Plan (September 2019) (the LP) requires development to preserve or enhance the character or appearance of the conservation area and protect the special architectural or historic interest of the area and its setting. Policy CL10 of the LP requires shopfronts to relate well to the buildings above and to either side to provide an attractive setting for the display of goods and to drive up the quality of the area. The policy states that alterations to existing shopfronts should therefore preserve those

elements that contribute to their traditional character and specifically resist external security shutters that have a solid appearance.

11. Further guidance to support the development plan policies is provided in the Shopfront Supplementary Design Guide (the SSDG). The SSDG describes the Borough as an area of outstanding historic and architectural interest with shopfronts playing a key part in establishing and defining visual character of the high streets and shopping parades. It emphasises how the architectural merit of buildings and the collective townscape qualities of the street can be eroded by poor quality alterations or the unsympathetic replacement of shopfronts. Accordingly, the SSDG provides that external shutters are not acceptable in most parts of the Borough, but if used they must still enable the window display to be viewed. In these cases, the appearance must be appropriate, and the shutter box housing should be integrated within or recessed and flush with the shopfront. Shutter guides should either be removable or integrated into the shopfront design and colour coated to match.
12. I acknowledge that security against vandalism is the key reason for the development, and that is a material consideration, and I appreciate the frustration of the appellant who is endeavouring to protect their property. There are examples of security measures on other commercial premises, some of which have been brought to my attention by the appellant and some I observed whilst walking around the area. There are examples of internal and external security measures and while some are more appropriate than others, the general feature is one of a grille style that enables an active frontage when the premises are closed.
13. The development that is the subject of this notice is an uncharacteristic addition in the street scene and this is particularly so during the hours when the shop is closed, and the roller shutters are lowered. The security measures, albeit in three separate sections which lessen the negative impact, have an overall industrial form and this disrupts the rhythm and coherence of the terrace. As a consequence, the development detracts from the architectural quality of the building and its immediate setting. The development is visually harsh and has an obtrusive appearance in this prominent location, and this undermines the special interest and significance of the terrace and the PCA as a whole.
14. The Framework at paragraph 205 requires 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. It makes a distinction between a development causing substantial harm to the significance of a designated heritage asset and works that would lead to less than substantial harm. Where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal.
15. In these circumstances, I find that the works would cause less than substantial harm. I agree that security can be a deterrent to crime and that this could be seen as a public benefit. However, in this case, I am not persuaded that alternative measures such as perforated or link-grille shutters, which allow for an open appearance from street views, would not achieve the required security to protect the premises from further damage. Examples of such are displayed on other premises within the locality and therefore it would appear that these

security measures are capable of being provided without resulting in the harm I have identified. Accordingly, I attach very limited weight to any wider public benefit that arises from the development that has been installed.

16. For these reasons I conclude that the security development to the shop frontage is visually harmful to the building and the street scene. Consequently, the development fails to preserve or enhance the character or appearance of the PCA, contrary to the requirements of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Accordingly, I find there is conflict with the Framework, with Policies CL1, CL2, CL3, CL6, CL10 and CL11 of the LP and the guidance provided by the SSDG. These set out that new development should be of the highest architectural and urban design quality, contribute positively and respond to local context, protect the special architectural or historic interest of the area and its setting, and not harm the existing character and appearance of the building and its context.

17. The appeal on ground (a) therefore fails.

### **The appeal on ground (f)**

18. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. The appellant considers that the requirement to remove the 'housing at fascia level' exceeds what is necessary to remedy any breach of planning control because the alleged breach does not refer to the installation of a housing.

19. The housing is part and parcel of the roller shutters and I am not persuaded that the omission to include reference to "the housing" in the allegation should require its removal from the steps for compliance with the notice. The notice clearly cites in its reasons that the roller shutters, their housing and mesh to the face of the door are the elements of the development which are the subject of the notice.

20. The purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place. There are no lesser steps that have been suggested that would remedy the breach. Therefore, the appeal on ground (f) fails.

### **The appeal on ground (g)**

21. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The period for compliance with the notice is two months. The appellant requests a period of twelve months to allow time for pre-application dialogue with the Council regarding alternative security measures and the submission of an application for planning permission. The extended time is deemed necessary due to delays with Council services and the threat and reality of crime without security measures in place.

22. While I appreciate the reasons stated for requesting an extension of time to comply with the notice, I am not persuaded that 12 months is necessary to agree on alternative security measures that would provide the protection required and be sympathetic to the historic environment. Furthermore, the appellant has stated that the current measures were temporary and that designs were to be progressed to find a suitable alternative.

23. As I have found that the current external security measures are harmful to, and neither enhance or preserve the character or appearance of the PCA, I consider that the period for compliance with the notice is reasonable. Therefore, the ground (g) appeal does not succeed.

**Conclusion**

24. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, 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 s177(5) of the Act.

*S A Hanson*

INSPECTOR