



Appeal Decisions

Site visit made on 30 April 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Appeal A Ref: APP/T5720/C/23/3316322

Land at Parkside House, 52-54 High Street, Wimbledon, London SW19 5AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Anthony Ferguson of Checkout Wimbledon Limited against an enforcement notice issued by the Council of the London Borough of Merton.
- The notice was issued on 10 January 2023.
- The breach of planning control as alleged in the notice is without planning permission the installation of roller shutters on the shopfront on the land.
- The requirements of the notice are to:
 - (a) Permanently remove the roller shutters.
 - (b) Permanently remove from the land all materials, fixtures, fittings and debris resulting from compliance with (a) above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/T5720/W/22/3312718

52-54 High Street, Wimbledon, London SW19 5AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Checkout (Wimbledon) Ltd against the decision of the Council of the London Borough of Merton.
- The application Ref is 21/P3884.
- The development proposed is replacement shopfront and signage along with awnings and roller shutters.

Decisions

Appeal A - APP/T5720/C/23/3316322

1. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of three months as the time for compliance in section five of the enforcement notice.
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 1990 Act as amended.

Appeal B - APP/T5720/W/22/3312718

3. The appeal is dismissed.

Preliminary Matter

4. An appeal on ground (a) is that planning permission should be granted for the matters stated in the notice. The reason for refusal in Appeal B relates only to

the roller shutters. Since the considerations in Appeal A are the same as for Appeal B I have considered the appeals together.

Appeal A on ground (a) and the deemed planning application and Appeal B

5. The main issue is whether the roller shutters preserve or enhance the character or appearance of the Wimbledon Village Conservation Area.
6. The Conservation Area is largely commercial in character, with a well-maintained historic character and appearance and high-quality built environment. The quality of shop fronts has a positive effect on the character of the area.
7. It is stated in the Wimbledon Village Conservation Area Design Guide (Design Guide) that the appeal property is a modern intrusion on a prominent corner site which is not an asset to the village being both out of scale and character with its surroundings. Moreover, it is stated in the Council's officer report that the building is of very little heritage value.
8. I see no reason to disagree however, the ground floor units, being in commercial use, make a positive contribution to the significance of the Conservation Area.
9. When lowered, as the majority were at the time of my visit which took place in the middle of the afternoon, the roller shutters cover the ground floor windows and doors across two sides of the property, which is a relatively significant area.
10. Although they may include small perforations and are the same colour as the shop fronts, they have an essentially solid, utilitarian appearance which presents a blank, featureless frontage to the street. They appear harsh and obtrusive and have a significantly adverse effect on the appearance of the building and do not therefore preserve or enhance the character or appearance of the Conservation Area.
11. The appeal building is not considered an asset to the village; however, this does not provide justification for development which further erodes its character and appearance, particularly in the context of the special attention that must be paid to the desirability of preserving or enhancing the character or appearance of the area as a whole.
12. I acknowledge the letter in respect of insurance however, I noted that the letter stated failure to comply with the requirement *may* [my emphasis] lead to a claim not being paid and *possibly* the voiding of the policy. In the absence of detailed evidence to demonstrate that the appeal scheme is the only way which the desired security and necessary insurance could be achieved, this is a matter of limited weight.
13. The appellant referred to two examples of roller shutters within the Conservation Area however, neither appear to be of comparable scale to the appeal development. Moreover, in the absence of substantive contrary evidence, I find that roller shutters are not a feature of the Conservation Area. Those limited examples do not therefore provide justification for the appeal development.

14. The appellant suggested a condition which would prevent the use of the roller shutters. However, in respect of Appeal A the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. In respect of Appeal B, the description of proposed development is *replacement shopfront and signage along with awnings and roller shutters*. A condition should not contradict a planning permission. If planning permission were granted such a condition would nullify the benefit of the permission. Accordingly, a condition could not be used to overcome the harm.
15. Given the scale of the development within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that the National Planning Policy Framework says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification. Where less than substantial harm is caused to the significance of such a heritage asset, that harm should be weighed against any public benefits.
16. The Design Guide states that solid metal roller shutters should only be used where there is a continuing problem of vandalism and damage. The appellant argued that due to the nature of the use, roller shutters are considered appropriate for security in an area susceptible to vandalism and damage. However, there is no demonstrable evidence that there is a continuing problem of vandalism and damage in the area. This is therefore a matter of little weight.
17. The appellant argued that the convenience store has a more active frontage because of the development. However, that is not because of the roller shutters, but the replacement shopfront which the Council identified no harm in respect of. Accordingly, this does not weigh in favour of the roller shutters.
18. Consequently, there are no public benefits to outweigh the great weight that I am required to attach to the heritage asset's conservation. I conclude that the development does not accord with the design and heritage protection aims of Policies DM D2, DM D3 and DM D4 of Merton's Local Plan Sites and Policies Plan and Policies Maps 9 July 2014, Policy CS14 of the London Borough of Merton Core Strategy 2011 and Policy HC1 of The London Plan 2021. Together these require development to relate positively to its historic context and use detailing and materials which complement and enhance the character of the wider setting and which conserves or where appropriate enhances the significance of heritage assets. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Appeal A on ground (f)

19. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
20. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the removal of the roller shutters, I find the purpose is to remedy the breach of planning control.
21. The appellant stated that the roller shutters are integrated in the shopfront and as such the entire shopfront would have to be removed. They suggested a

lesser step being removal of the shutter mechanism to prevent them being used. However, no details have been provided which demonstrate that the entire shopfront would have to be removed, nor that the mechanism could be removed to prevent use.

22. In the absence of details and since it is not excessive to require the roller shutters to be removed in order to remedy the breach of planning control, the appeal on ground (f) fails.

Appeal A on ground (g)

23. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
24. The appellant did not suggest a period but referred to the works taking at least one year to complete. This is on the basis that they would have to submit a planning application for a replacement shopfront and carry out such works if permission were granted. They referred to the time which the Council have taken to determine previous applications.
25. However, it appears from the appellant's original submissions, dated February 2023, in respect of the appeal on ground (f), that they have already submitted a planning application for the same shopfront but without the roller shutters (without the mechanisms).
26. Furthermore, whilst preferable to the appellant, 12 months is an exceptional period. As already stated, there are no details which demonstrate that the roller shutters could not be removed without removing the entire shopfront.
27. Nevertheless, one month would place a disproportionate burden on the appellant. I conclude that the period for compliance should be extended to three months. A period of three months would be a proportionate response to the breach of planning control. To this extent, the appeal on ground (g) succeeds.

Conclusion

28. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a 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).
29. For the reasons given above Appeal B should be dismissed.

Felicity Thompson

INSPECTOR