



Appeal Decisions

Site visit made on 7 August 2024

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal A Ref: APP/P4605/C/23/3330167

407-409 Coventry Road, Small Heath, Birmingham B10 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ibrar Afzal against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 22 August 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey side extension marked in blue in the approximate position on the attached plan and the erection of a shop front canopy in the approximate position marked green on the attached plan.
- The requirements of the notice are:
 - (i) Demolish the unauthorised single storey side extension in its entirety.
 - (ii) Demolish the unauthorised shop front canopy in its entirety.
- The period for compliance with the requirements is 4 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). 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.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld.

Appeal B Ref: APP/P4605/W/23/3321701

407 Coventry Road, Small Heath, Birmingham B10 0SP

- 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 Mr Muntasar Abdulhaq against the decision of Birmingham City Council.
- The application Ref is 2023/00305/PA.
- The development proposed is single storey side extension and fruit and veg canopy.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The description of development was changed following the submission of the planning application to 'retention of single storey side extension and canopy to front.'
2. Regarding Appeal A, the appeal statement indicates that the appeal is made by Mr Muntasar Abdulhaq. The appeal form states that the appeal is made by Mr Ibrar Afzal. I have therefore used the appellant's name as indicated on the appeal form for this appeal. Also, I have considered the appeals together because they relate to the same development at the same address.
3. Since the appeals were made, the Government published the revised National Planning Policy Framework (the Framework). Policies material to these

decisions have not fundamentally changed. Therefore, I have not sought the main parties' views on this.

Appeal A on ground (a) and Appeal B (s78 appeal)

Main Issues

4. The main issues are the effect of the development on the character and appearance of the appeal property, a non-designated asset, and the surrounding area.

Reasons

5. The appeals concern a two-storey detached property located on Coventry Road at its junction with Cyril Road. The ground floor of the property is in retail use with residential use above. The surrounding area comprises a mix of commercial and residential properties with the commercial properties located along Coventry Road.
6. The Council considers the appeal property is a non-designated asset. Its significance arises from both its architectural significance and its location. Historically in use as a bank it has an ornate frontage extending along both the northeast (Coventry Road) elevation and the southeast (Cyril Road) elevation. The southeast elevation also has an original bay window. The aesthetic of the original building is attractive, communicates a sense of status and contributes to its significance which is strengthened by its corner location.
7. Despite its flat roof and overall height, the single storey side extension conceals the majority of the ornate frontage and bay window facing Cyril Road. Whilst the main entrance is retained, the historic form and detailing of this elevation is almost entirely lost behind the appeal development. Albeit the timber will mellow and age over time, the timber construction with its yellow roller shutters appears at odds with the ground floor level ornate stone façade and the red brick with window and eaves detailing at first floor level. Furthermore, whilst the extension is not forward of the front building line along Cyril Road, due to its size and scale, the side extension dominates this side of the building and reduces the sense of openness at this junction. The proposed staining/painting of the timber and roller shutter as suggested by the appellants would not overcome the identified harm.
8. Turning to the canopy, despite its open nature, due to its size, scale and design, views of the building's architectural features on the northeast elevation are obstructed and it appears as an incongruous addition which harms the character and appearance of the appeal property and the surrounding area. I accept that it provides cover for produce and the outside display of produce may encourage the spontaneous purchase of fruit and vegetables which has its health benefits. However, these factors do not justify retention of the canopy.
9. I saw at my site visit examples of shop canopies and outside displays of produce in Coventry Road. I accept that some have similar features to the appeal development. Whether or not these canopies are immune from enforcement action as stated by the appellants, I note the Council's comments that these canopies do not have permission. In any event, each case falls to be considered on its own merits and existing developments elsewhere do not justify the appeal development. Furthermore, the location and context in which

each of these canopies is seen are not directly comparable with the appeal development or those canopies shown in the images from the 1900s.

10. The arguments that the original features, albeit enclosed, remain intact should the extension be removed in the future and the appeal development occupies underutilised parts of the site carry little weight because the physical presence of the appeal development alters the character and appearance of the appeal property and the surrounding area to a harmful degree.
11. In determining these appeals, I have considered a split decision as suggested by the appellants but given that I find both the side extension and the canopy individually harmful there seemed little benefit in that approach.
12. The appellants have also suggested the granting of a temporary planning permission (three years) to ensure the future removal of the appeal development. Whilst a temporary permission would ensure its removal in the future, the harm I have identified would not be reduced because the appeal development is temporary rather than permanent. Any benefits afforded by the appeal development do not outweigh the identified harm.
13. I conclude that the appeal development has a harmful effect on the character and appearance of the appeal property, a non-designated asset, and the surrounding area. Accordingly, there is conflict with Policies PG3 and TP12 of the Birmingham Development Plan 2031 (2017), the Birmingham Design Guide (2022) and the National Design Guide (2021) which state that all new development will be expected to demonstrate high design quality, contributing to a strong sense of place. Furthermore, new development affecting a non-designated asset will be determined in accordance with national policy. The Framework requires that the significance of a non-designated heritage asset should be taken into account and a balanced judgement is required. The appeal development conflicts with these policies.

Other Matters

14. I note the appellants' comments that the introduction of a juice bar provides a new enterprise for which business tax is paid separately. However, I am mindful that the identified harm would be permanent and thus is not outweighed by this particular factor.
15. I acknowledge that the appeal property had been vacant and fallen into disrepair prior to its use as a grocery store. However, the benefit of bringing the building back into use is outweighed by the identified harm. Moreover, I have no substantive evidence that the appeal development "enhances the commercial appeal" of the property and ensures its viability.

Conclusion

16. For the reasons given above, I conclude that the appeal development conflicts with the development plan as a whole and there are no other considerations which indicate that the decision should be taken otherwise than in accordance with the development plan.

Appeal A on ground (f)

17. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve

the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act. As the notice requires the demolition of the side extension and the canopy, the purpose is clearly to remedy the breach of planning control. No lesser steps would achieve that purpose.

18. I have considered the appellant's argument regarding a split decision and granting a temporary permission. When dealing with ground (a) above, I have commented separately on the planning merits of the side extension and the canopy and found that whether looked at individually or cumulatively, the side extension and the canopy are considered unacceptable. Also, granting a temporary permission would not reduce the identified harm. Thus, a split decision as suggested by the appellant, nor a temporary permission would remedy the breach of planning control.
19. Moreover, as stated under ground (a) above, no substantive evidence has been provided to show that either the side extension or the canopy is necessary to ensure business viability.
20. I therefore conclude that the steps required by the notice are not excessive to remedy the breach of planning control and the appeal on ground (f) therefore fails.

Appeal A on ground (g)

21. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The appellant considers that a compliance period of four months is too short and seeks a period of eight months in order to look for a builder, finance the work and salvage the materials in good condition.
22. Having regard to the submissions from both parties I consider that a compliance period of eight months is too long. From all I have seen and read I see no reason why the necessary works could not be carried out in four months. If this reasonably proves to not be the case, as submitted by the Council, the appellant can ask the Council to extend the period specified in accordance with s173(9) in the notice using their powers under s173A91 of the 1990 Act as amended. The appeal on ground (g) fails accordingly.

Formal Decisions

23. **Appeal A** – It is directed that 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.
24. **Appeal B** – The appeal is dismissed.

Elizabeth Jones

INSPECTOR