



Appeal Decision

Site visit made on 30 October 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11TH NOVEMBER 2024

Appeal Ref: APP/P4605/C/23/3336068

Palmyra, 13 St. Marys Row, Birmingham B13 8HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Subhi Al-sheikh (Palmyra Restaurant) against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 15 December 2023.
- The breach of planning control as alleged in the notice is without planning permission, the alteration of the shop front within the Moseley Conservation Area in the approximate position marked in green on the attached plan.
- The requirements of the notice are to:
 - (i) Reinstate the shopfront to its original appearance and;
 - (ii) Remove all building materials and rubble from the Premises arising from compliance with the requirement of (i) above.
- The period for compliance with the requirements is : Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) of the Town and Country Planning Act 1990 (as amended).

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

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b) of the 1990 Act, to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation will not cause any injustice to the appellants or the local planning authority. In light of the defects set out above, I have considered whether I am able to correct the allegation and vary the requirements of the Notice without causing any injustice to the appellants or the Council.
2. In paragraph 3, delete the words 'within the Moseley Conservation Area'. It is unnecessary to say this in the alleged breach and it can be deleted. In paragraph 5, step (i), delete the requirement in its entirety and substitute it with the words '*Reinstate the shopfront to its condition and appearance prior to the breach taking place.*' To require the original appearance of a shopfront to be reinstated might be difficult for the appellant to know and it would be excessive to remedy the breach. The appellant would be best placed to know the previous condition and appearance of the shopfront, and it provides the appellant with an understanding of what is required to remedy the breach.
3. The changes, set out above, do not alter the nature of the allegation or cause any injustice to the Council or appellant.

The Appeal on Ground (b)

4. The appeal on ground (b) is that the matters alleged in the enforcement notice which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant should demonstrate that, on the balance of probability, the matters stated in the enforcement notice have not occurred.
5. The appellant outlines in his ground (b) appeal that 'many of the shops around have changed the shop front to a suitable glazed front, as we did.' On the basis of the appellant's statement, it is clear that they accept that the shopfront has been altered to be fully glazed. In this regard, the appellant acknowledges that the alterations to the existing shopfront have occurred as a matter of fact.
6. Furthermore, from what I saw on site, the works to fully glaze the shopfront; infill the recessed doorway and relocate the access centrally has been carried out. As such, based on the evidence before me, the alterations to the shop front at the premises has occurred as a matter of fact.
7. Accordingly, the ground (b) appeal fails.

The Appeal on Ground (d)

8. An appeal on this ground is that, at the date on which the Notice was issued, no enforcement action could be taken in respect of the operational development carried out. The appellant needs to show that the alterations to the shopfront were completed four years prior to the date of the Notice being issued, which would be 15 December 2019. The legal test in this regard is again the balance of probability and the burden of proof is on the appellant.
9. The appellant has indicated that the alterations to the property occurred more than 5 years ago but has not provided a specific date when the works to alter the shop front were completed. Although I have had regard to the appellant's claims, the Council has provided details of a complaint indicating that a new shopfront had been installed at the appeal site. The email setting out the complaint is dated 10 February 2020, and includes photographs of the alterations to the shopfront being carried out at that time.
10. The Council's evidence indicates that the building operations were carried out less than 4 years prior to the Notice being issued on 15 December 2023, which contradicts or otherwise makes the appellant's version of events less than probable. Furthermore, aside from the statement made on the Appeal Form indicating the operations were carried out 5 years ago, the appellant has not provided any other evidence or information to corroborate his claim.
11. Based on the evidence before me I cannot conclude, on the balance of probability, that on the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged.
12. As such, the ground (d) appeal fails.

The Appeal on Ground (f)

13. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with 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 which has been caused by the breach.

14. The appellant has indicated in the ground (f) appeal that the changed front gives more value to the shop. Although I appreciate that the appellant considers the shopfront changes to be acceptable with a more accessible entrance, there is no ground (a) appeal and the planning merits of the development are not before me to consider. Further to this, the appellant has not provided any alternative or lesser steps to achieve the purpose of remedying the breach of planning control.
15. In this case, the Notice, as varied, requires the appellant to reinstate the shopfront to its condition prior to the breach taking place. I therefore consider that the purpose of the notice is to remedy the breach of planning control alleged under section 173(4)(a) of the Town and Country Planning Act 1990. Having regard to both the nature of the breach and requirements of the Notice, no other steps that would achieve this purpose are obvious to me. On this basis, I can only conclude that the steps required in the Notice are necessary and proportionate.
16. For these reasons, the appeal on ground (f) fails.

Conclusion

17. For the reasons given above, I conclude that the appeal on grounds (b), (d) and (f) should not succeed. I shall uphold the Notice with corrections and variations.

Formal Decision

18. It is directed that the Notice is corrected and varied by:

In paragraph 3, delete the words 'within the Moseley Conservation Area.'

In paragraph 5, step (i), delete the requirement in its entirety and substitute it with the words 'Reinstate the shopfront to its condition and appearance prior to the breach taking place.'

19. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR