Planning Inspectorate

Appeal Decisions

Site visit made on 8 January 2025

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11th March 2025

Appeal A Ref: APP/A1530/C/23/3320051
35 North Station Road, Colchester CO1 1RQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr H Khorsid against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 15 March 2023.
- The breach of planning control as alleged in the notice is ‘’without the benefit of planning permission, the installation of roller security shutter, including shutter housing to the front of the shop. ("The Activity").’
- The requirement is to remove the roller security shutter including the shutter housing from the front of the shop
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990(the Act) (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.

Appeal B Ref: APP/A1530/Z/24/3354145
35 North Station Road, Colchester CO1 1RQ

- 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 Hawkar Khorshid against the decision of Colchester City Council.
- The application ref is 241389.

The development proposed is Replacement shopfront (recessed in opening) - Retrospective.

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:

   (i) the deletion of the words "one month” as the period for compliance and their substitution with the words "three months.”

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

3. The appeal is dismissed and planning permission is refused.

Appeals A and B

Preliminary Matters

4. Whilst the National Planning Policy Framework (the Framework) has been revised[1] the nature of the revisions do not affect the consideration of the appeals.

[1] 12 December 2024 and 7 February 2025

5. The appellant's surname has been spelt differently in both appeals. I am satisfied that the appellant is the same person for both appeals but have retained the spelling provided for each appeal.

6. Both parties have provided and referred to a number of appeal decisions. However, it remains the case that each appeal has to be assessed based upon its own facts and circumstances. A number of the decisions provided also relate to developments and proposals which are not within a Conservation Area.

7. The description in the planning application is 'Replacement shopfront (recessed in opening) – Retrospective.' The submitted plan shows a recessed shop front with aluminium frames and those frames are the only materials listed in the planning application. The reference in the plan to the shutter being the subject of an existing appeal (the enforcement appeal) was for information only and does not, in my view, mean that the shutter formed part of the planning application. Although there is an awning and a security roller shutter with housing (the shutter) at the front of the shop, those matters did not form part of the planning application.

8. The enforcement appeal relates to the shutter only and includes a deemed planning application under ground (a) for planning permission. I am therefore considering whether to grant planning permission for the shutter in the enforcement appeal (Appeal A) and the recessed shop front under the planning appeal (Appeal B). The parties agree that the existing awning at the front of the shop is not part of either appeal.

Appeal A - ground (a) and the Deemed Planning Application

Main Issues

9. The main issues are

- whether the shutter preserves or enhances the character or appearance of the Colchester Conservation Area No 4: North Station Road and Environs (the CA)

- the effect of the development on the fear of crime

Reasons

Conservation Area

10. The appeal property is located within the CA. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

11. The CA was designated in 2019 and 35 North Station Road forms part of a terrace dating from the third quarter of the 19th century. Whilst only a draft of the CA Appraisal has been provided by the Council, the historic importance of North Station Road as a through route and the number of buildings of architectural importance including listed and locally buildings is unlikely to have altered. The significance of the CA is based upon its historical and architectural importance and the appeal property is located in a prominent location on North Station Road which forms the spine of the CA designation.

12. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 212[2] of the Framework states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 212[3] of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

13. The development consists of shutter housing, the shutter itself and the shutter frame. I visited the site during daytime and evening and was able to see the front of the shop when it was open with the shutters rolled up and also lowered. The presence of a sloping wooden sign with the name of the shop, the awning and the shutter housing altogether result in a cluttered appearance. I have no information as to whether the awning is authorised but nevertheless the combined effect is of visual clutter. The shutter housing is largely hidden by the awning elements when viewed from the front but is visible from the side and adds bulk. When lowered the shutter presents an austere appearance in a prominent location where there is a mix of residential and retail uses and locally listed and listed buildings.

14. I am not aware as to whether other shutters in the vicinity are authorised, existed prior to the CA designation or are immune from enforcement. Each development has to be considered on its own merits. The presence of other shutters emphasises the need for such development to be controlled within the CA. The existence of similar shutters in the vicinity does not justify the development.

15. The appellant has referred to seeing roller shutters on shops in town centres where there are valuable goods such as jewellers and electronic related items. Whilst security is an issue for all shops, the way in which that security is provided is likely to vary depending on the nature of the business and the goods sold. The Shop Design Guide refers to other forms of security that may be acceptable such as toughened glass. There is no evidence to show that other security options have been explored for the existing use and there are a number of retail premises along North Station Road that operate without shutters. The development does have a visually harmful effect upon the streetscene and the CA as a whole.

16. However, the harm that the development causes to the designated heritage asset is less than substantial harm. In accordance with Paragraph 215[4] of the Framework, this harm should be weighed against any public benefits of the development. A public benefit should be of a nature or scale to be of benefit to the public at large and not just a private benefit.[5] I am not aware of any public benefits of the development.

17. The development is in conflict with Policy SP7 of the Colchester Local Plan (the Local Plan) which refers to meeting high standards of design. It is in conflict with Policy DM15 which refers to development enhancing the character of the site and

[2] Previously Paragraph 199
[3] Previously Paragraph 200
[4] Previously paragraph 202
[5] Paragraph :020 Reference ID:18a-020-20190723

its context. It is contrary to Policy DM16 of the Local Plan refer to enhancing the significance of the heritage asset. The development is also contrary to the adopted Shopfront Design Guide (June 2011) which provides that alterations to shopfronts should avoid harmful effects on the character of the street scene. It is also contrary to the principles of the Framework which include good design. Policy DM6 of the Local Plan relates to rural development and is not relevant to the appeal.

Fear of Crime

18. The Council's reasons for issuing the notice include aggravating a perception of danger within the public realm. In the appeal decision[6] relied upon by the Council, the appellant was relying upon concerns over potential for anti-social behaviour as well as thefts and damage as justification for installing the shutter. There is a distinction to be drawn between whether there is justification for the development for security reasons and development aggravating a perception of danger. As stated by the appellant, erecting a shutter does not automatically give rise to a perception of danger and crime.

19. The appeal site is located in a busy vibrant part of Northern Station Road with businesses that operate over varied hours with natural surveillance, some of which have shutters. In the absence of any site specific reasoning from the Council, there is no evidence before me to support the view that the development does unacceptably aggravate a perception of danger. The development is therefore not in conflict with Paragraph 96(b) of the Framework which refers to achieving safe places not undermined by fear of crime.

Conclusion on ground (a)

20. I have not found that the development does give rise to a perception of crime. I have, however, found that the development does not preserve or enhance the character or appearance of the CA. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. The appeal under ground (a) is dismissed.

The appeal under ground (g)

21. An appeal under ground (g) relates to the period of compliance with the notice. The period of compliance is one month. The appellant has asked for six months to enable the works to be carried out in an appropriate manner and to obtain appropriate insurance and to seek alternative methods to secure the premises. However, 6 months appears an excessive amount of time to carry out those tasks even allowing for a suitably qualified person to remove the shutter. I will however extend the period of compliance to 3 months to allow slightly longer for the removal of the shutter as well as arranging insurance and any additional security measures. The appeal under ground (g) succeeds to that extent.

Conclusion on Appeal A

22. I shall vary and uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

[6] APP/D0515/Z/18/3199682

Appeal B (the planning appeal)

Main Issue

23. The main issue is whether the recessed shop front preserves or enhances the character or appearance of the CA.

Reasons

24. I have previously addressed the significance of the CA and the relevance of Section 72(1) of the Act in assessing development within the CA. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 212 of the Framework states 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 (and the more important the asset, the greater the weight should be).

25. The submitted plans show a recessed shop front with a void between the pavement with an aluminium frame with glass and a sliding door in the same style which now provides the entrance to the inside of the shop. The set back has been created to allow for the display with racking for fruit and vegetables outside of the shop when it is open for business. The development is modern in style and plain.

26. There are shops that do retain traditional shop fronts in terms of materials and design notably No 33 which is next door to the appeal site. There are also some more modern shop fronts in the vicinity of the development including No 37 which is a convenience store. However, the character of the shop fronts in the vicinity is largely of frontages in line with the pavement not a frontage with the open display of produce on racks. The recessed effect does disrupt the rhythm of the street frontage. The use of a sliding door and aluminium frames where glass is the dominant material is more modern and plain in contrast to more traditional shop fronts. The CA designation is intended to encourage the restoration of sensitive shopfronts following years where less sensitive replacements have taken place.

27. The Shop Design Guide SPD (June 2011) also refers to a well-designed shopfront enhancing the quality of a street. The complete replacement with a recessed design with floor to ceiling glazing with aluminium frames and a sliding door is at odds with the prevailing character of the streetscene and the CA as a whole.

28. At my site visit, I observed that the design of the shop front has enabled the appellant to construct outside storage space for produce at the sides together with vertical plywood boards which is not a material associated with CA status. There is also a curtain rail with curtains above the displayed produce. Whilst the curtain rail and the storage areas to the side are not part of the planning application, a design which exposes gaps which can be filled can be unsightly and difficult to control.

29. The appellant has referred to fascias of retail units not being consistent. He refers to plastic signage, some of which is internally illuminated, projecting signage, plastic canopies and automatic canopies as well as tables and chairs on the pavement in one instance encroaching on the pavement. However, the matters

referred are likely to be temporary features which are not comparable to the replacement of a shop front which would have permanent planning permission if the appeal was allowed.

30. The design, form and prominent location of the development does not preserve or enhance the character and appearance of the CA. I do however consider that the harm that the development causes to the designated heritage asset is less than substantial harm. In accordance with Paragraph 215[7] of the Framework, this harm should be weighed against any public benefits of the development. A public benefit should be of a nature or scale to be of benefit to the public at large and not just a private benefit.[8]

31. Whilst economic growth is encouraged in the Framework, there is no evidence before me that in the absence of an open recessed shopfront, the retail unit would not be put to a viable use. The shop front design does make the produce more visible to potential customers. However, this is a commercial consideration rather than a public benefit and there is no indication that the business would close in the absence of an open display area at the front of the shop. I have not been presented with any public benefits that would outweigh the harm that I have found.

32. The development is in conflict with policies SP7 of the Colchester Local Plan (the Local Plan) which refers to meeting high standards of design. It is in conflict with Policy DM15 of the Local Plan which refers to development enhancing the character of the site and its context. It is contrary to Policy DM16 of the Local Plan refer to enhancing the significance of the heritage asset. The development is also contrary to the adopted Shopfront Design Guide (June 2011) which provides that alterations to shopfronts should avoid harmful effects on the character of the street scene. It is also contrary to the principles of the Framework which include good design. Policy DM6 of the Local Plan relates to rural development and is not relevant to the appeal.

Conclusion on Appeal B

33. I have found that the recessed shop front does not preserve or enhance the character or appearance of the CA. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above, Appeal B should be dismissed.

E Griffin

INSPECTOR

[7] Previously paragraph 202
[8] Paragraph :020 Reference ID:18a-020-20190723