



Appeal Decision

Site visit made on 4 March 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/G5180/C/23/3326089

15 Queens Road, Beckenham BR3 4JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Satish Lakhani against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 20 June 2023.
 - The breach of planning control as alleged in the notice is without the required planning permission, the installation of brick slip tile cladding of part of the front elevation of a semi-detached dwellinghouse located within a Conservation Area.
 - The requirements of the notice are:
 - (a) Permanently remove the brick tile slip cladding from the land;
 - (b) Remove from the land, the resultant debris and waste materials from the removal of the brick slip cladding, and
 - (c) Restore the land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (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.
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Decision

1. It is directed that the enforcement notice be:
 - Varied by deleting the words "1 month" within section 6 (time for compliance) and its replacement with "6 months".
2. Subject to this variation, the appeal is dismissed, and 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.

The appeal on Ground (c)

3. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
4. Under s55(1) of the 1990 Act, 'development' comprises 'two limbs':
 - 1) The carrying out of building, engineering, mining, or other operations in, on, over or under land (operational development);
 - 2) The making of any material change in the use of any buildings or other land.

5. It is clear that the allegation is referring to 'operational development,' and that the installation of brick slip tile cladding of part of the front elevation relates to a 'building operation.' Operational development' comprises activities which result in some physical alteration to land which has some degree of permanence. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including:
 - (a) demolition,
 - (b) rebuilding,
 - (c) structural alterations of or additions to buildings, and
 - (d) other operations normally carried on by a person in business as a builder. The list is not exhaustive.
6. S55(2)(a) of the 1990 Act excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which:
 - (i) affect only the interior; or
 - (ii) do not materially affect the external appearance of the building. (Materially affecting the external appearance means an impact capable of having some effect in planning terms.)
7. With regard to s55(2)(a)(i), the installation of brick slip tile cladding to the front elevation does not affect only the interior of the building.
8. Turning to s55(2)(a)(ii), it was held in *Burroughs Day v Bristol CC* [1996] EGCS 126 that, for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole. Materially affecting the external appearance means an impact capable of having some effect in planning terms.
9. The multi-stock brick slips installed on the front elevation of the building has a different appearance to the original traditional red brick in terms of size, colour and texture. In addition, the bricks slips have a 'slimmer' brick profile than the traditional sized bricks which can be seen elsewhere on this building, and on other buildings along the street. Furthermore, the brick slips which have been 'clad' to the front elevation of this building have a different appearance than the original traditional brickwork and bonding. Whilst the brick slips are only visible from the front of the property, this is the most prominent part of the building, where they are highly visible from public vantage points from the street as well as a number of neighbouring properties.
10. Therefore, as a matter of fact and degree, these works materially affect the external appearance of the building as a whole, and therefore are not exempt from the definition of 'development' under s55(2)(a).
11. I therefore find that as a matter of fact and degree, and on the balance of probabilities, the matters stated in the notice amounts to a building operation for the purposes of s55 of the 1990 Act. Planning permission is required for this development. There is none in place, and the works are not permitted development. Therefore, based on all the evidence before me, there has been a breach of planning control, and the appellant has not discharged the onus to demonstrate otherwise.

12. Accordingly, the appeal fails on ground (c).

Appeal on ground (a), the deemed planning application (DPA)

Main Issue

13. The main issue is whether the development preserves or enhances the character or appearance of the building and the Elm Road Conservation Area ('CA').

Reasons

14. The appeal relates to a late Victorian two and a half storey semi-detached property situated within the CA. With regard to the effect on designated heritage assets, 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.
15. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. 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. The Framework also 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.
16. The Elm Road Conservation Supplementary Planning Guidance (SPG) states that the CA is characterised by predominantly by formal rows of traditional detached and semi-detached late Victorian houses in conventional tree lined streets. Queens Road was incorporated within the Elm Road CA in 2005. The properties generally benefit from modest front gardens with low front boundary walls, and soft landscaping, which in addition to the tree lined streets provides a verdant suburban character to the CA. Front gardens being semi-public provide an important landscaped setting for the houses.
17. The appeal property forms part of a group of similar semi-detached properties on the Eastern side of Queens Road, characterised by full height two storey front bay windows, tall timber framed sash windows, dormer windows in the attic featuring a prominent front gable, timber framed open front porches with steps leading to the main front door and prominent chimney stacks. The materials used in this group largely comprise natural slate and tile roofs, yellow stock bricks and red bricks, together with the use of decorative red brickwork and quoins. It is these traditional qualities that principally define the architectural quality of the CA.
18. I appreciate that some properties on this side of Queens Road have painted brickwork. Nevertheless, the majority of properties along the street have retained their traditional yellow stock and red stock bricks, and decorative brick features and quoins, a characteristic feature of these late Victorian properties. Indeed, the traditional qualities of the building including its materials are fundamental to preserving the special character and appearance of the CA. Therefore, the proposed loss of traditional materials on this traditional building

should be resisted to preserve the character and appearance of the building and the special character of the CA.

19. This view is supported by the SPG which states that original architectural features and detailing characteristics of the Conservation Area should be retained and kept in good repair. Ideally, they should only be replaced when they are beyond repair and care should be taken to ensure the replacement is as close a match as possible. Where features have been lost, careful restoration based on historic details is welcomed. The SPG also states that "Painting or cladding of historic brickwork is unacceptable in aesthetic terms and can cause problems of water retention and damp and should be avoided."
20. Contrary to the above guidance, part of the front elevation of the appeal property has been clad with brick slips. The variation in the size, colour bonding, and contemporary appearance of the bricks slips contrast unfavourably with the simple traditional brickwork seen elsewhere in the CA. Indeed, the bricks slip have a much 'slimmer' profile than the traditional sized bricks and stand out as incongruous. Furthermore, given its prominent position at the front of the property, and visible from public vantage points on Queens Road, the brick slips materially detract from the original façade, its contribution to the quality of the host building, and add further detrimental variation to the character and appearance of the CA as a whole.
21. In the terms of the Framework, the harm that the development causes to the significance of the designated heritage asset, which is the CA, amounts to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. I appreciate that the installation of the brick slips were part of the overall upgrade and renovation of this property which included a new roof. However, the harm to the character and appearance of the CA, to which I afford considerable importance and weight, would not be outweighed by these benefits. Furthermore, I also consider that there would be alternative measures, as outlined in the Council's SPG, which could be explored to provide these benefits without causing harm to the CA.
22. I therefore conclude that the development has a harmful effect on the character and appearance of the host building and fails to preserve or enhance the character or appearance of the CA, as a whole, contrary to Policies 37 and 41 of the London Borough of Bromley Local Plan (2019). Amongst other things, these require that all development proposals, including extensions to existing buildings, will be expected to be of a high standard of design and layout and that proposals for alteration or extension to a building within a conservation area will need to preserve and enhance its characteristics and appearance by respecting or complementing the layout, scale, form and materials of existing buildings; and using high quality materials.
23. The development also conflicts with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, the development fails to preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Conclusion on Ground (a) and the DPA

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless

material considerations indicate otherwise. The development has a harmful effect on the character and appearance of the host building and fails to preserve or enhance the character or appearance of the CA, as a whole in conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits of renovating this property outweighs the harm identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

25. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the DPA should be refused.

The Appeal on Ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 1 to 6 months in order to appoint a contractor, undertake the necessary remedial works, and to ensure that brick work is suitably restored. It is further stated that the Notice requires the front elevation to be put back to the condition it was in prior to the installation of the brick slips, and that the previous brickwork was in a poor condition. Therefore, the appellant considers that the notice is imprecise and requires a correction.
27. However, the scope of the Notice is limited by s173(4)(a) and (b). The recipient on the notice cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with a planning permission or restoration of the land to its previous condition. On this occasion, there is currently no planning permission granted for an alternative scheme and therefore the power is simply to restore the land to its previous condition.
28. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 6 months would strike a more reasonable and proportionate balance to carry out the remedial works. This will also allow additional time to explore other options for improving the brickwork if they so wish. I shall therefore extend the period from 1 to 6 months for compliance with the notice.
29. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

30. For the reasons given above I conclude that the appeal 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.

R Satheesan

INSPECTOR