



Appeal Decisions

Site visit made on 24 February 2025

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 April 2025

Appeal A Ref: APP/B4215/C/24/3338017

Land at 68 - 70 Market Street, Manchester M1 1PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by H&M Hennes & Mauritz UK Limited against an enforcement notice issued by Manchester City Council.
- The notice was issued on 2 January 2024.
- The breach of planning control as alleged in the notice is, without planning permission, alterations to the Market Street elevation by the installation of a fascia panel.
- The requirements of the notice are to:
 1. Remove the fascia panel highlighted in red on ENF01.
 2. Replace the stone cladding panels above the two main windows of the shopfront (areas highlighted in blue on ENF02), so that the replacement cladding panels sit neatly and uniformly to the underside of the exposed RSJ Beam; the replacement stone cladding should be of similar texture and colour to that used on the remainder of the shopfront.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/B4215/W/24/3338019

68 - 70 Market Street, Manchester M1 1PW

- 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 H&M Hennes & Mauritz UK Limited against the decision of Manchester City Council.
- The application Ref is 138331/FO/2023.
- The development proposed is the installation of fascia panel.

Appeal C Ref: APP/B4215/Z/24/3338033

68 - 70 Market Street, Manchester M1 1PW

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
- The appeal is made by H&M Hennes & Mauritz UK Limited against the decision of Manchester City Council.
- The application Ref is 138328/AO/2023.
- The advertisement proposed is the installation and display of 1 x internally illuminated fascia sign and 3 x internally illuminated projecting signs.

Decisions

1. Appeal A - The appeal is dismissed, and the enforcement notice is upheld.
2. Appeal B - The appeal is allowed, and planning permission is granted for the installation of a fascia panel at 68 - 70 Market Street, Manchester M1 1PW in accordance with the terms of the application reference 138331/FO/2023 and the following plans/drawings: Site Plan and Location Map (Drawing No. J001821_A0_01 Rev A), dated 25 October 2023, and Proposed Shopfront Market Street (Drawing No. J001821_A4_02 Rev A), dated 1 October 2023.

3. Appeal C - The appeal is allowed, and express consent is granted for the display of 3 no. internally illuminated projecting signs at 68 - 70 Market Street, Manchester M1 1PW in accordance with the terms of the application, Ref 138328/AO/2023, dated 15 January 2023. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in Schedule 2 of the 2007 Regulations and the following additional condition:
 - 1) The intensity of the illumination of the advertisement permitted by this consent shall be no greater than 300cd/m².

Applications for costs

4. An application for costs was made by Manchester City Council against H&M Hennes & Mauritz UK Limited. This application is the subject of a separate decision.

Preliminary Matters

5. Whilst the appeals relate to an enforcement notice, a refusal of planning permission, and a refusal of advertisement consent, they all concern the same appellant, building and land. Therefore, to minimise duplication and repetition, I have dealt with them together in one decision letter.

Appeal A: Ref: APP/B4215/C/24/3338017

The appeal on ground (f)

6. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose.
7. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990, as amended (the 1990 Act) sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by making the development comply with the terms of any planning permission, by discontinuing any use of the land, or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
8. In this case, the requirements of the notice are to remove the fascia panel and to replace the stone cladding panels above the two main windows of the shopfront. Accordingly, the LPA has confirmed that the purpose of the notice is to remedy the injury to amenity which has allegedly been caused as a result of the breach of planning control.
9. The appellant is of the view that a lesser step, that would achieve the purpose of the notice, would be to revert to a form of development permitted by the last lawful grant of planning permission¹. It is therefore necessary to consider the status of this previous planning permission, and whether it can be relied upon as a lesser step that would remedy the alleged injury to amenity.
10. Under application reference 097769/FO/2011/C1, permission was granted in March 2012 for elevational alterations to the shopfront including the renewal of two stone columns either side of the entrance, along with the installation of new spandrel glazing and a new fascia (the 2012 permission). This consent was implemented and

¹ Planning Permission Ref. 097769/FO/2011/C1

resulted in the introduction of a narrow fascia panel over the shopfront, and incorporating the H&M branding.

11. By November 2016 this fascia had been replaced with unauthorised alterations to the shopfront which introduced a larger fascia panel. During 2023 further unauthorised alterations to the shopfront occurred. Initially introducing a smaller fascia panel (circa Spring 2023), which was then replaced by a larger fascia panel (circa November / December 2023). The appellant asserts that because the fascia panels that were installed after the 2012 permission were unlawful, they can revert to the 2012 permission as the last lawful form of development.
12. However, a grant of planning permission for operational development is spent when what is permitted has been implemented and completed; the operations may only be carried out once. Therefore, it cannot be resurrected or relied upon at a later date, especially where intervening differing forms of development, authorised or not, have been introduced. This principle is consistent with the Court of Appeal judgement in *Cynon Valley BC v SSW [1986] JPL 760* which found that a grant of planning permission authorises that development only and not further changes. Thus, once the development has been carried out the planning permission is spent.
13. In other words, it is not possible to revert to the shopfront approved by the 2012 permission because that consent has been spent, and intervening unauthorised forms of development have occurred. Essentially, the unauthorised alterations to the shopfront have supplanted the development authorised by the 2012 permission, which cannot be revived without a further grant of planning permission. In essence, the 2012 consent has been extinguished and so there is no consent for the appellant to fallback on. Reverting to the shopfront approved by the 2012 permission would involve an act of development that would require planning permission.
14. An appeal against the enforcement notice on ground (a) was legally barred pursuant to the provisions of s174(2A)(b) of the 1990 Act. Therefore, in the absence of an appeal on ground (a), which would have enabled me to consider whether to grant planning permission for the whole or any part of the development, an appeal on ground (f) is limited.
15. I have found that the appellant's suggested lesser step, to revert to a previous grant of planning permission, would not be lawful because that permission has been spent, and so it would involve development requiring planning permission. Therefore, this suggested lesser step cannot be accepted through ground (f). Beyond this, no other lesser steps have been put forward by the appellant, and there are no alternative lesser steps that are obvious to me.
16. For these reasons, I conclude that the requirements of the notice are not excessive, and so the appeal on ground (f) fails.

Appeal B Ref: APP/B4215/W/24/3338019

Procedural matters

17. The fascia panel has already been installed. I have therefore dealt with the appeal on the basis that the development has already occurred, and with regard to the plans submitted with the application.

Main issue and reasons

18. The main issue in this case is the effect of the development on the appearance of the host building, and whether it preserves or enhances the character or appearance of the Upper King Street (Extension) Conservation Area.
19. The appeal relates to the ground floor of 68-70 Market Street, a four-storey property in Manchester's primary shopping area, occupied by a national clothing retailer. The property was redeveloped following a grant of planning permission in 1999 that resulted in partial demolition of the building and the erection of a new wrap-around contemporary building. This created a modern shopfront at the ground floor level, with two historic columns and decorative brackets, flanking the main entrance, being the only historic remnants of a previous ground floor shop frontage.
20. Above this, the building's classical Georgian stone frontage has been retained and comprises a set of four engaged Ionic columns over two storeys with attic above. These architectural features are the only surviving elements of a much larger historic commercial building. The building therefore has both architectural and historic interest of at least local significance, and so, for planning purposes, it is considered to be a non-designated heritage asset.
21. The building is also located within the Upper King Street (Extension) Conservation Area (the CA). The CA is characterised by an abundance of commercial buildings of varying style and design, reflecting their historical context. While the area has been extensively redeveloped with modern retail developments, including the Arndale Shopping Centre which dominates the wider area, a number of Georgian and Victorian properties or partial façades have been successfully conserved and add to the special interest of the area. Accordingly, as a non-designated heritage asset with Georgian architectural features, the appeal property makes an important contribution to the overall character and appearance of the CA.
22. The proposed development would introduce a large fascia panel spanning the width of the shopfront. The fascia panel consists of a powder coated aluminium panel finished in 'grey white'. It would measure approximately 11 metres by 0.9 metres over the elevation, and in doing so would obscure an area of lead flashing and a previously exposed rolled steel joist (RSJ beam). The LPA consider the RSJ beam to be an important architectural element of the building's redevelopment, providing an attractive border, and important architectural component, between the contemporary ground floor shopfront and the historic Georgian façade above. However, I disagree.
23. The RSJ beam, while visually exposed on other parts of the wider building, is a modern intervention with a largely utilitarian appearance that is of limited architectural merit. While it may have been part of the original design intention of the redeveloped building, obscuring the RSJ beam with the proposed fascia panel does not alter how the building is understood or 'read', that being a large commercial building with contemporary shopfront and ornate historic Georgian façade above. Furthermore, no historic elements of any significance would be obscured, lost or damaged by the development, and its design is typical of that found in other shopfronts in the surrounding area.
24. As a result, the proposed fascia panel does not result in a discordant feature, and it does not detract from the architectural quality of the building's façade. Overall, the fascia panel has a neutral effect on the appearance of the host building, and therefore, by extension, the character and appearance of the CA is preserved.

25. For these reasons, I conclude that the development does not harm the appearance of the host building, and it preserves the character and appearance of the CA. It would therefore satisfy the relevant statutory duty in this regard.
26. Consequently, the development complies with policies SP1, EN1, EN3, CC9 and DM1 of Manchester's Local Development Framework Core Strategy Development Plan Document, 2012 (the Core Strategy), saved policies DC14 and DC18 of the Unitary Development Plan for the City of Manchester, 1995 (the UDP), policy JP-P2 of the Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan, 2024 (the Joint DPD). In summary, these policies seek to achieve development that creates well designed places having regard to the character of the area, ensuring heritage assets are preserved, and where possible enhanced, and seek to ensure that proposals for shopfronts are in keeping with the character of the building and adjoining buildings.
27. The development also accords with the relevant provisions of the National Planning Policy Framework (the Framework) which seeks the creation of high quality, beautiful and sustainable buildings and places, along with the conservation and enhancement of heritage assets in a manner appropriate to their significance.

Conditions

28. The LPA has not suggested any conditions in the event that the appeal is allowed. However, in the interests of certainty, I have included a list of the approved plans and drawings within my formal decision.

Appeal C Ref: APP/B4215/Z/24/3338033

Procedural matters

29. The LPA has drawn my attention to the development plan policies it considers to be relevant to this appeal and I have taken them into account as a material consideration. However, powers under the Regulations² to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors. In my determination of this appeal the LPA's policies have not therefore, by themselves, been decisive.
30. The LPA issued a split decision, granting advertisement consent for 1 no. internally illuminated individual letter sign and refused the application in respect of the 3 no. internally illuminated projecting signs. My assessment and determination are therefore focused solely on the 3 no. internally illuminated projecting signs.

Main issue and reasons

31. The main issue is the effect of the proposed advertisements on the amenity of the area, including the character and appearance of the Upper King Street (Extension) Conservation Area (the CA).
32. As part of my consideration of Appeal B, I have already set out the appeal site's context and its contribution to the character and appearance of the CA. In addition, for this appeal it is of note that a variety of differing types, styles and designs of

² The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

modern advertisements exist in the surrounding area, including projecting signs of varying sizes, as is to be expected within a diverse primary shopping area.

33. The proposal consists of three internally illuminated projecting signs, each measuring 500mm by 500mm with a depth of 70mm and an overall projection of 600mm from the elevation of the shopfront. Two of the three signs would be located along the Market Street elevation, while the third would be located on the Brown Street elevation. The signage would replace three existing unauthorised projecting signs.
34. The LPA is concerned with the depth of the signage and suggests that a 30mm depth would be more appropriate to achieve a higher standard of design, and to avoid a bulky harmful appearance. Nevertheless, despite the LPA's aspirations in this regard, I have not been directed towards any adopted supplementary planning or design guidance that specifically requires projecting signs to have a maximum depth of 30mm. I also note that projecting signs which appear to have a depth in excess of 30mm exist along the street and there is some evidence that in recent years the LPA has accepted projecting signs with depths greater than 30mm.
35. A shallower profile of projecting sign is likely to result in a more refined and lightweight appearance. However, in the context of the existing streetscene, I do not find the proposed 70mm profile to be excessive and so it is unlikely to be a visually discernible deviation from the prevailing character and appearance of the area.
36. The three advertisements would be viewed in the context of the building's existing retail shopfront, and alongside the historic Georgian façade above. However, despite being contemporary additions the projecting signs would not result in a discordant contrast with the host building, particularly as they would be contained within the existing modern shopfront.
37. I appreciate that the LPA is striving to improve the appearance of the city centre, and in doing so it seeks higher standards in this regard. However, I have not found the design and scale of the proposal to be harmful to the surrounding area. Furthermore, in relation to detailed design considerations, there is no adopted policy or guidance that the proposal fails to satisfy.
38. For these reasons, I consider that the proposed advertisements would not harm the amenity of the area. Consequently, the proposed advertisements would preserve the character and appearance of the CA, in accordance with the relevant statutory duty.
39. I have taken into account the requirements of policies SP1, CC9, EN1, and DM1 of the Core Strategy, and saved policies DC14, DC15 and DC18 of the UDP, in so far as they relate to amenity, design and the historic environment. I have also had regard to the relevant provisions of the Framework and the Planning Practice Guidance in relation to achieving well-designed places, conservation and enhancement of the historic environment, and the control of the display of advertisements. Given my assessment of the proposal, there would be no conflict with these local and national policy objectives.

Conditions

40. Advertisement consent is granted subject to the five standard conditions set out in the Regulations³. As these conditions are set out in the Regulations it is not necessary for me to list them in my formal decision, even though they apply to the consent granted.
41. In addition, I have applied a condition to limit the intensity of the illumination, in the interests of both amenity and public safety .

Overall Conclusions

42. Appeal A - for the reasons given above, I conclude that the appeal should not succeed. Therefore, I shall dismiss the appeal and uphold the enforcement notice.
43. Appeal B - I have found the development to accord with the policies of the development plan. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that Appeal B should be allowed.
44. Appeal C - for the reasons given above, and taking into account all other matters raised, I conclude that the proposed advertisements would not harm the amenity of the surrounding area and so should be allowed, subject to conditions.
45. While I have dismissed Appeal A and upheld the enforcement notice, in allowing appeals B and C, the appellant can rely on the provisions set out in section 180 of the 1990 Act. Therefore, the requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission.

J M Tweddle

INSPECTOR

³ Town and Country Planning (Control of Advertisements) (England) Regulations 2007