
Appeal Decision

Site visit made on 2 January 2015.

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 January 2015

Appeal Ref : APP/E5900/C/14/2217944

46 Brick Lane, London, E1 6RF.

- 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 Ray Mashuk against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
- The notice was issued on 31 March 2014.
- The breach of planning control as alleged in the notice is the installation of a shopfront without the benefit of planning permission.
- The requirements of the notice are to 1. Remove the unauthorised shop front as shown in appendix 1 attached to the notice and 2. Remove all resultant debris from the premises
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary Matter

1. Paragraph 5 of the notice sets out the steps for compliance. At paragraph 5.1 it states 'remove the unauthorised shop front as shown in appendix 1 attached to this notice'. Whilst there is a location plan attached to the notice there is no appendix 1 attached to the true copy of the notice provided to me in this appeal. This reference is therefore an error. But the parties are clear about the development attacked by the notice and would not suffer injustice by the exercise of my power to correct the notice. I will therefore, if appropriate, amend the notice to delete reference to appendix 1 in paragraph 5.1 of the notice.

Ground (a) appeal and deemed application

Main Issue

2. The main issue in determining this appeal is the effect of the development on the character and appearance of the host building and the Fournier Street and Brick Lane Conservation Area.

Character and Appearance

3. The appeal site lies within the Fournier Street and Brick Lane Conservation Area (the Conservation Area). The property was formerly a cinema and known as the Mayfair. The property sits in a long terraced section of Brick Lane which comprises a mixture of commercial and retail uses at ground floor level. Its façade is black painted tiles.
4. The ground floor of the property is currently is use as an estate agents. The shopfront attacked by the notice is fully glazed with metal frames. There is no vertical separation and no stallriser. The Appellant says that it follows the colours and requirements of its company image.
5. The development plan (including the London Plan, the Core Strategy and the Managing Development Document Development Plan Document (the Managing Development Document)) mirrors the National Planning Policy Framework (the Framework) in seeking high quality design and preserving and enhancing the character and appearance of Conservation Areas. Policy DM23 of the Managing Development Document says that shopfronts are to be of a high quality design taking into consideration factors including the relationship with surrounding shopfronts and buildings. Policy DM27 states that development will be required to protect and enhance heritage assets and their settings.
6. The Appellant argues that the immediate locality of the appeal site is characterised by diversity with a mix of old and new styles. He says that the modern shopfront attacked by the notice fits with this diversity and reflects the modern, bright interior of the premises and the style of the host property which he says is of no heritage significance. I disagree. The Conservation Area is recognised as one of the most importance historic area of London. Whilst I recognise that the appeal site is not typical of its surroundings and that there is a mix of traditional and more contemporary frontages in the vicinity of the appeal site the conservation area is characterised by the quality of its architecture and the visual relationships between buildings. In this case the modern design and floor to ceiling glazing is visually prominent in the streetscene and does not relate sympathetically to its neighbours or the wider area. It interrupts the underlying pattern of development and has an adverse impact on the character and appearance of the conservation area which does not accord with the development plan.
7. The Appellant argues that it is highly likely that the adjoining premises at no 48 will have a sign across the blackened string course such as that advertising Crestons on the appeal site. He says this will fill the gap in the streetscene and improve the visual effect. But I must determine this appeal based on its facts without taking into account speculation about future changes at adjoining premises.
8. The Appellant draws attention to other non-traditional shopfronts in the street and the permission for an automatic telling machine at the site. I have taken into account the photographs submitted but I do not have the detail of other properties before me. I have determined this appeal on its particular facts. I noted the existence of other non-traditional shopfronts at my site visit but they are not so widespread as to have become a prevailing characteristic of the Conservation Area and they do not justify further harm that results from the development on the appeal site.

9. In giving special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area I conclude that the development fails to preserve or enhance the character or appearance of the Conservation Area and does not accord with policies DM23 and DM27 of the Managing Development Document. I note that the development reflects the corporate image of the business at the property and the Appellant's arguments about financial hardship and harm to the business. I have balanced these business interests but they do not outweigh the identified harm to the character and appearance of the Conservation Area and do not lead me to alter my conclusions on the main issue. The development causes substantial harm to a designated heritage asset and no substantial public benefits outweigh that harm.
10. I conclude that the development causes harm to the character and appearance of the surrounding area and the host building. It fails to preserve the character and appearance of the Conservation Area and is contrary to relevant policies of the development plan (including policies DM23 and DM27 of the Managing Development Document).
11. For the reasons given above I conclude that the appeal under ground (a) should not succeed. Conditions could not overcome the identified harm and planning permission should not be granted on the deemed application.

Ground (g) appeal

12. This ground of appeal is that the period for compliance is unreasonably short. The notice has a period for compliance of three months. The Appellant argues that a longer period would be reasonable to enable negotiation of a replacement shopfront and to have this manufactured. He suggests a period of 9 months on the appeal form and 6 months in his submissions. The Council comments that it will use its powers to extend the timeframe provided if it can be satisfied that proactive action is being taken to resolve the breach of planning control.
13. I have balanced competing interests. The private interest of the Appellant in running his business and the public interest of bringing to an end the identified harm to the character and appearance of the host building and the Conservation Area without unnecessary delay. I consider that four months strikes an appropriate balance.
14. For the reasons given above, I conclude that four months is a reasonable period for compliance and I am varying the notice accordingly prior to upholding it.
15. Consequently, the appeal under ground (g) succeeds to that limited extent.

Formal Decision

16. It is directed that the enforcement notice be corrected by deletion of the words 'as shown in appendix 1 attached to this notice' in paragraph 5.1 of the notice. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by deletion of three months and the substitution of four months as the period for compliance. Subject to this correction and variation 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.

S. Prail

Inspector