
Appeal Decision

Site visit made on 5 March 2014

by Wendy McKay LLB (Hons) Solicitor (Non-practising)

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

Decision date: 27 March 2014

Appeal Ref: APP/X5210/C/13/2201362

The Castle, 147 Kentish Town Road, London, NW1 8PB

- 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 147 Kentish Town Road Freehold against an enforcement notice issued by the London Borough Council of Camden.
- The Council's reference is EN13/0593.
- The notice was issued on 4 June 2013.
- The breach of planning control as alleged in the notice is without planning permission the removal of the roof, timber sash windows, rusticated quoins, window architraves with projecting cornices at first floor, bracketed sills and cornice at second floor and cornice at roof level.
- The requirements of the notice are to: completely reinstate the roof, timber sash windows, rusticated quoins, window architraves with projecting cornices at first floor, bracketed sills and cornice at second floor and cornice at roof level.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural matters

1. The appellant disputes that the windows and roof have been removed from the building as alleged by the notice. The Council has provided photographic evidence to support its position in relation to the removal of the roof including the tiles and covering. The Council also carried out site visits and the condition of the building was observed on 29 May 2013 and 3 June 2013. Following the removal of the roof, the Council was in e-mail contact with the appellant to seek the reinstatement of a temporary roof covering to protect the building from water damage. Indeed, the appellant in its 'final comments' confirms that a temporary roof has been applied to the building so that it remains wind and watertight. Taking all the available evidence into account, it is clear that the removal of the roof has been correctly included within the allegation.
2. The Council accepts that not all the windows may have been removed and it was suggested that this could be confirmed at the site visit. The scaffolding screening erected around the building was removed at the time of my site visit so that the position of the windows could be seen. My observations confirmed the appellant's evidence that all the windows appeared to be in place. The Council's officer was unable to draw my attention to any physical features that might have led me to a different conclusion. I find, on the balance of

probabilities, that the windows have not been removed and that the notice is incorrect in this respect. However, I am satisfied that the notice can be corrected pursuant to my delegated powers under s176(1) of the 1990 Act without any injustice being caused. To do so would only serve to reduce the scope of the notice and would not therefore prejudice the position of the appellant.

The appeal site

3. The appeal property comprises a three-storey building on the corner of Kentish Town Road and Castle Road located within the secondary shopping frontage of Kentish Town shopping centre. The building was last in use as a public house but is vacant at present. It had a rendered facade with detailing including rusticated quoins, window architraves with projecting cornices at first floor, bracketed sills at second floor and a cornice.

The planning history

4. An application for prior approval for demolition of the pub¹ was refused on 20 May 2013.
5. An Article 4 Direction was served on the property on 3 June 2013. This removed permitted development rights for any building operation consisting of the demolition of a building being development within Class A, Part 31, Schedule 2 of the Town and Country Planning Act (General Permitted Development) Order 1995 (GPDO).
6. An application for prior approval for demolition of the building² was refused on 18 June 2013.

The appeal on ground (c)

7. On ground (c), the burden of proof is on the appellant and the relevant test is the 'balance of probabilities'. The appellant asserts that the brick detailing on the face of the building was in very poor condition with some elements already missing and others with greenery growing in cracks and missing pointing. The appellant admits that these elements were removed for health and safety reasons but submits that the works do not constitute partial demolition such that planning permission would have been required for their removal.
8. The Council recognises that the building was empty and may have required renovation but disputes that the condition of the building warranted the removal of these features. It has provided photographs showing the state of the building prior to the works taking place which indicate that the structure was not in such a poor state of repair that the removal of these elements would have been required.
9. The appellant claims that the Council's photographs are not representative of the condition of the building before it purchased the site. However, the Council's photographs date from fairly recent times, namely, December 2010 and May 2012. There is no substantial evidence before me to support the appellant's assertions regarding the condition of the building or the view that this would have justified the unauthorised works. I am unable to find that such steps were urgently necessary in the interests of safety and health.

¹ Ref: 2013/2482/P

² Ref: 2013/3096/P

10. The appellant disputes that “demolition” has taken place. However, the alleged breach of planning control does not include reference to that term. It merely sets out various features which are claimed to have been removed. S55(1) of the 1990 Act defines “development” as including building operations. S55(1A) defines “building operations” as including (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.
11. The changes which have been made would, in the main, be visible from a number of public vantage points. I find, as a matter of fact and degree, that the alterations which have taken place materially affect the external appearance of the building as a whole and do not therefore fall within the exclusion from the definition of development set out in s55(2)(a)(ii) of the 1990 Act. Given their nature and extent, I am satisfied that they constitute “building operations” under s55(1A)(d) and therefore require planning permission. Since no planning permission has been granted for these works, the appeal must fail on ground (c).

The appeal on ground (a) and the deemed application for planning permission

The development plan and other policies

12. The development plan for the area comprises the London Plan 2011 and the Camden Core Strategy and Development Policies Documents of the Local Development Framework (LDF). The relevant London Plan policies include Policy 7.4 Local Character and Policy 7.8 Heritage assets and archaeology. The relevant Core Strategy and Development Policies include CS5 – Managing the impact of growth and development and CS14 – Promoting high quality places and conserving our heritage, DP24 – Securing high quality design and DP26 – Managing the impact of development on occupiers and neighbours. The Council has also published the Camden Planning Guidance 2011 (SPG).
13. Turning to national policy, the Government issued the National Planning Policy Framework, “*the Framework*”, in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.³ Paragraph 135, states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. It defines a “heritage asset” as including assets identified by the local planning authority (including local listing). I find the relevant development plan policies in this case to be consistent with the Framework and full weight in accordance with their statutory status should therefore be attached to them. So far as other national policy is concerned, the Planning Practice Guidance was issued on 6 March 2014. However, in the light of the particular facts of this case, I am satisfied that the issue of this policy guidance has no bearing upon my decision.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

The Main Issue

14. The main issue is the effect that the development would have on the character and appearance of the host building and the surrounding area.

Reasons

15. The deemed application derives from the alleged breach of planning control set out in the notice. It is for the operational development which has been carried out, namely, the removal of the relevant features from the building and not for some prospective redevelopment scheme.
16. The appellant points out that the building is not located within a conservation area or any other designated area of value. Whilst it has been included on the draft local list, that process is at an early stage and it is not yet an 'undesigned heritage asset'. It submits that it is the site and not the building that is important. It points to the fact that English Heritage has declined to list the building and that the interior has been significantly altered beyond its original layout so that it lacks any "fittings of interest". Whilst it was accepted that the exterior of the property was "of interest", it was described as a "typical example of mid-C19 pub architecture".
17. The Council has nominated the building for inclusion on a local list of heritage assets for reasons of architectural significance, townscape significance and social significance. It submits that the loss of distinctive features which contribute to the special character of the building is detrimental to its character and the wider area.
18. The appellant disputes that the existing building is some 160 years old and submits that the height of the ground floor and hierarchy of the building reflect its Victorian age and nothing more. The appellant claims that neither the building nor the wider area has any significant value. As indicated above, the Council's photographic evidence shows the condition of the building before the development took place. Even though the building is not statutorily listed and has only been nominated for inclusion on the draft local list, I consider that the distinctive features which have been removed had considerable merit and made a material and positive contribution to the character and appearance of the host building and the streetscene. The loss of these architectural elements of the building has resulted in a plain facade that does not exhibit such character or make such a positive contribution.
19. The appellant refers to its redevelopment proposals for the building and contends that there are no policies to protect public houses. In response, the Council refers to Policy DP15 (Community and leisure uses) which seeks to resist the loss of local pubs that serve a community role. However, the question of whether or not this policy is applicable, or whether the building should or should not be granted planning permission for redevelopment, does not bear directly upon my consideration of the deemed application. The future of the building and whether the site will ultimately be redeveloped remains a matter for speculation. It does not justify the retention of the structure without these features at the present time. Whilst I have had regard to the available information concerning the age and condition of the building prior to the works taking place such considerations do not dissuade me from that view.

20. My attention has also been drawn to other nearby development such as the works undertaken to the building at No 349 Royal College Street and the modern redevelopment of No 137 Kentish Town Road (Kent Café). I acknowledge that buildings such as the Kent Café obviously form part of the local context within which the appeal building sits. However, this appeal has been considered on its own merits and particular facts. I do not regard this other development which has been mentioned to be a strong argument in support of this appeal.
21. The appellant complains that the Council is seeking to use its planning powers to stall the planning process to buy it time to publish its draft local list and that this does not provide a reasoned justification for the use of Article 4 and enforcement powers. It asserts that the service of the Article 4 Direction was heavy-handed and unjustified. However, the expediency of the Council's decision to issue an enforcement notice in this case is a matter that falls outside my jurisdiction. Likewise, the question of whether the Council has provided appropriate justification for the Article 4 Direction.
22. The appellant explains that building has been vacant since 2011. The works carried out to it were a preparatory step towards demolition and the redevelopment of the site to bring it back into use and make it safe. It contends that works aimed at bringing the disused site back into use should be supported and that this would assist with the creation and protection of jobs. Whilst I recognise the appellant's good intentions in these respects, such considerations are strongly outweighed in this case by the harm which I have identified.
23. I conclude that the loss of the features identified by the corrected notice has a significant adverse visual impact and materially detracts from the character and appearance of the existing building and the wider area. The development would not be in accordance with Policies CS14 or DP24 which are consistent with the Framework. The appeal fails on ground (a) and I do not intend to grant permission to the deemed application for planning permission.

The appeal on ground (f)

24. On ground (f), it is clear from considering what is said in paragraphs 3, 4 and 5 of the notice, read as a whole, that the remedial requirements follow from paragraph (a) of S173(4) of the 1990 Act. The notice is directed at remedying the breach of planning control by restoring the land to its former condition and what must be considered is whether the requirements exceed what is necessary to achieve that objective. The parties' representations do not lead me to any different conclusion.
25. The appellant submits that it is excessive to require the reinstatement of the parts of the building that have been removed. Whilst it is claimed that some parts had already disintegrated or fallen off, they have not been specifically identified with the precision required for a variation of the notice requirements. In any event, the Council's photographic evidence supports the view that these features were largely intact prior to the unauthorised works being carried out. As indicated above in relation to the appeal on ground (c), there is no substantial evidence before me to show that the unauthorised works were warranted by the condition of the building or that the works required to be reinstated by the corrected notice had, in fact, already been removed prior to the appellant's actions. Although the parts of the building that have been

removed may not affect its structure or integrity, I have found on ground (a), that their removal has had a significant adverse visual impact upon its external appearance.

26. I conclude that the requirements do not exceed what is necessary to remedy the breach of planning control. In the light of the conflict with development plan policies, it would not be disproportionate to require the appellant to carry out the steps required by the corrected notice. The appeal fails on ground (f).

The appeal on ground (g)

27. On ground (g), the appellant submits that the compliance period is too short and seeks a period of 12 months. A planning application has been lodged for a redevelopment proposal which might have to run through the appeal process.
28. The Council acknowledges that replacing the detailed features would involve sourcing similar materials which could take some time. However, it is concerned that the retention of the building in its current state for as long as a year could result in a deterioration of its condition. The Council therefore suggests that the compliance period should be extended to 6 months to allow the required materials to be sourced.
29. Given the detrimental visual impact resulting from the unauthorised works, it seems to me that the building should not be kept in its current state for any longer than should reasonably be allowed. In the light of the continuing harm which I have identified, to extend the compliance period beyond 6 months to enable the appellant to pursue a redevelopment scheme would be excessive.
30. Furthermore, s173A of the 1990 Act gives power to the local planning authority to extend the compliance period after the notice has taken effect should further time genuinely be needed. The extension of the compliance period to 6 months represents a proportionate response between the competing interests in this case. I conclude that the compliance period specified in the notice falls short of what should reasonably be allowed and it will be extended to 6 months. The appeal succeeds on ground (g) to this limited extent.

Formal Conclusions

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decision

32. The enforcement notice is corrected by deleting from the alleged breach of planning control set out in paragraph 3, and the reasons for issuing the notice set out in 4 b), the words "timber sash windows" and varied by deleting from paragraph 5 the words "timber sash windows" and by deleting from paragraph 5 the figure "2" and substituting therefor the figure "6". Subject to these corrections and variations, 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.

Wendy McKay
INSPECTOR