
Appeal Decision

Site visit made on 22 May 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: 21 July 2015

Appeal Ref : APP/X5210/C/14/2221240

Land at Megaro Hotel, 23-27 Euston Road, London, NW1 2SD.

- 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 Megaro Hotels Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 20 May 2014.
- The breach of planning control as alleged in the notice is without planning permission painting of the facades of the Megaro hotel with an advertisement.
- The requirements of the notice are to remove the advertisement and make good any damage used (sic) to the building caused by the removal of the painted advertisement.
- The period for compliance with the requirements is three 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 allowed and the enforcement notice is quashed.

Application for costs

1. An application for costs has been made by Megaro Hotels Ltd against the Council of the London Borough of Camden. This application is the subject of a separate decision.

Preliminary Matter

2. The relevant date for the determination of whether work is in breach of planning control is the date of commencement of the work. I must apply the applicable permitted development rights in force at the date of commencement, namely the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) and not the new consolidating order that has subsequently come into force.

Ground (c)

3. Under this ground of appeal the onus of proof is on the Appellant to show that there has not been a breach of planning control.
4. The Town and Country Planning Act 1990 (as amended), section 55, sets out the meaning of development as including the making of any material change in the use of any buildings or other land. Section 55(5) provides that the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated as involving a material change

in the use of that part of the building. The GPDO grants planning permission for defined classes of development subject to specified conditions and limitations. Class C2 of Part 2 of Schedule 2 of the GPDO provides permitted development rights for the painting of the exterior of any building or work. But this does not apply where the painting is for the purpose of advertisement, announcement or direction.

5. In this case two elevations of a prominent building within the Kings Cross Conservation Area opposite St Pancras station in a busy thoroughfare have been painted with a large multi-coloured geometric design (the mural). The mural is without words, symbols or lettering. The issue in dispute between the parties is whether the mural constitutes an advertisement.
6. Advertisement is defined in section 336 of the 1990 Act and includes any representation in the nature of and employed wholly or partly for the purposes of advertisement, announcement or direction. I recognise that the absence of words or symbols does not of itself exclude the mural from the definition of advertisement.
7. The Council refers in its statement of case to the mural being a colour scheme part of the branding of the hotel and used in promotional material. But this is denied by the Appellant and is not supported by the evidence before me. There is no promotional material before me that uses the mural design as part of any advertising of the hotel. I have taken into account the objection on behalf of the Kings Cross Conservation Area Advisory Committee and the Friends of Argyle Square which suggests that the mural is an extension of the Appellant's corporate identity. My attention is drawn to the company logo, website and photographs of the hotel's interior. But the logo and photographs do not depict the same design as appears on the mural. On the evidence before me there is no instantly recognisable link between the mural and the hotel's corporate identity, although both make some use of 3-D hexagonal shapes. On the contrary some representations and press articles describe the mural as a piece of public street art. It is not in dispute that it was painted by an art collective and the design was organically produced by those artists over the course of its installation. There is no evidence that the commission related to any corporate branding initiative or had a purpose connected with advertisement, announcement or direction.
8. The Council provides me with Counsel's Opinion in support of its view that the mural is an advertisement. I have taken into account the case of Newport BC¹ where a beam of light projecting a floral pattern was held to be an advertisement. But, unlike that case where the beam of light served no purpose other than to promote the premises, in this case I am satisfied on the evidence before me that the design was commissioned as a contribution to public art in London and to contribute to revitalisation of the area. Its purpose is to add a kaleidoscopic artistic mural to the exterior of the building. Whilst the design draws attention to itself it does not follow that it draws attention to the hotel and thereby advertises the hotel. It does not create a recognisable link with the hotel that serves the purpose of advertisement, announcement or direction.
9. The Council refers to the Appellant's website which refers in the 'how to find us' section to the hotel being adorned with London's largest mural. But I am not

¹ Newport BC v Secretary of State for Wales [1997] EWHC 1079 (Admin)

persuaded that simply because the Appellant's website refers to the mural when describing how to find the hotel that its purpose is advertisement, announcement or direction. Reference is also made to a quotation attributed to the owner of the hotel in an online magazine. Again I am not persuaded that the reference to the visual impact of the mural in this quotation is indicative of its purpose as an advertisement.

10. I acknowledge that the judgements in the case of Winfield² and Butler³ confirm the broad meaning of 'advertisement' and the degree of circularity in its definition. But I do not consider that the mural in this case is plainly an advertisement in the sense described in the case of Butler.
11. Both parties draw to my attention appeal decisions which I have taken into account. I am not bound by the decisions of other Inspectors on appeal and do not find any of the cases drawn to my attention to be on all fours with the particular facts of this case.
12. I find as a matter of fact and degree that the mural is not in the nature of, or employed wholly or partly for the purposes of advertisement, announcement and direction. It is a mural painted for decorative purposes. It does not create a recognisable link with the hotel or its business. It does not serve the purpose of advertisement, direction or announcement. Accordingly, the mural does not come within the definition of advertisement in section 336 of the 1990 Act. It benefits from permitted development rights by virtue of Class C Part 2 of Schedule 2 to the GPDO. Therefore there has not been a breach of planning control.
13. The appeal on ground (c) therefore fails. In view of its success on legal grounds the appeals under grounds (a), (f) and (g) and the application deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Other matters

14. The Appellant argues that the Council did not consider the mural to be an advertisement until almost a year after it had been painted and complains that the Council's reasoning and actions have been inconsistent. This is not a ground of appeal and not a matter I have taken into account in determining this appeal.

Formal Decision

15. The appeal is allowed and the enforcement notice is quashed.

S. Prail

Inspector

² Winfield v Secretary of State [2012] EWCA Civ 1415

³ Butler v Derby City Council [2005] EWHC 2835 (Admin)