



Appeal Decision

Site visit made on 28 June 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal Ref: **APP/V2255/C/22/3307532**

106-110 Broadway, Sheerness, Kent, ME12 1TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Jagroup Cheema against an enforcement notice issued by Swale Borough Council.
 - The notice was issued on 23 August 2022.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, development in the form of the addition of security roller shutters to the front of the existing buildings on the Land.
 - The requirements of the notice are
 - (i) Dismantle and remove from the Land the security roller shutters from the front of the entire row of buildings.
 - (ii) Remove from the Land all resultant materials, debris and waste arising from the works undertaken in step (i) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
-

Decision

1. It is directed that the enforcement notice is corrected by deleting '108-110' in Paragraph 2 of the notice and replacing it with '106-110.'
2. Subject to the correction, the appeal is dismissed, 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 Notice

3. A retrospective planning application for roller shutters to the properties at 106-110 Broadway was refused in July 2021 and the enforcement notice was subsequently issued in August 2022. The description of the 'Land' at Paragraph 2 of the notice refers to "Land known as 108-110 Broadway Sheerness Kent ME12 1TS as shown edged red on the attached plan." The red line boundary of the enforcement plan does include Nos 106-110. The Council indicates that the reference to No 108 in the wording rather than 106 is a typographical error.
4. All relevant parties have been served with the notice as No 106 is in the same ownership as the rest of the Land. The shutters at No 106 are the same as those at No 108 and the two properties are part of a convenience store. The appellant's evidence for this appeal refers to the refusal of the planning application which did include No 106. I do therefore consider that the wording in Paragraph 2 of the Notice can be amended to match the red line plan without causing injustice to any party. I will amend the notice accordingly.

Appeal Decision APP/V2255/C/22/3307532

The appeal on Ground (a) and the Deemed Planning Application

Main Issue

5. The main issue is the effect on the character and appearance of the area having particular regard to the desirability of preserving the setting of the nearby Grade II Roman Catholic Church of Saint Henry and Saint Elizabeth (the Church).

Reasons

6. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that on determining applications which affect Listed Buildings, special regard must be had to the desirability of preserving the building or its setting. The Glossary to the National Planning Policy Framework (the Framework) defines the setting of a heritage asset which includes the surroundings in which a heritage asset is experienced.
7. The Church is a Grade II listed building with a presbytery and hall located on the opposite side of Broadway to the development. The Church was first listed on 30 June 1978. The listing entry refers to a construction date of 1863-4 with a design by Edward Welby Pugin. The significance of the Church is largely derived from its aesthetic and historical value and prominent location. The appeal site is located between the Sheerness Mile Town and Marine Conservation Area on a prominent corner location. Whilst not listed, the appeal buildings are at the end of a block of largely symmetrical two storey dwellings. The windows at first floor level of the appeal buildings at No 110 and No 108 which appear to be in residential use retain some attractive original features.
8. The development consists of black roller shutters with shutter boxes to the front of the ground floor convenience store and also the adjoining unit at No 110. Whilst there is signage for a pizza establishment at No 110, the unit was closed at the time of my afternoon visit with the shutters visible. I also visited in the late evening when the convenience store was closed and all of the rollers shutters covered the whole of the shop fronts other than the signage.
9. Passers-by would view the development in the context of the setting of the Church opposite. Even where they are open, elements of the shutter arrangements are visible below the shop signage. When lowered the shutters present an austere appearance which creates an unwelcoming presence to the street scene which detracts from the setting of the Church and the character of the area which is largely residential.
10. The development fails to preserve the setting of the Church. Given the localised extent of the development, the degree of harm to the significance of the Grade II listed building as a designated heritage asset is less than substantial in terms of the Framework but nevertheless of considerable importance and weight. In accordance with Paragraph 202 of the Framework, this harm should be weighed against any public benefits of the development.
11. The appellant has referred to the cost of providing the shutters and the need for security. However, these are commercial considerations rather than public benefits and there is no indication that the businesses would close in the absence of external shutters. A public benefit should be of a nature or scale to

Appeal Decision APP/V2255/C/22/3307532

be of benefit to the public at large and not just a private benefit.¹ The appellant indicates that the shutters are beneficial as they were installed to protect the appeal properties against vandalism and that other owners in the area have done the same. However, no further details are provided. There is also no evidence to show that other security options which are referred to in the Design of Shopfronts Signs & Advertisements (the PPG) which include internal grilles have been explored. The support of the Town Council for local businesses is noted but that support and the reasons for installing the shutters are not matters that outweigh the harm that I have found even if they were considered to be public benefits.

12. The development harms the character and appearance of the area and fails to preserve the setting of the listed Church. This is in conflict with Policies DM14 and DM32 of the Swale Borough Local Plan Bearing Fruits 2031 (the Local Plan) which collectively refer to preserving and enhancing the setting of a listed building. It is also in conflict with Policy DM16 of the Local Plan which refers to alterations to buildings maintaining the character of the streetscene and Policy DM15 which states that development involving shopfronts is required to be of a design which responds positively to the character of the building and its locality, it is also contrary to Policy CP4 of the Local Plan which refers to high quality design that is appropriate to its surroundings.

Other matters

13. The appellant has produced a plan dated March 2021 which includes photographs of shutters which he considers to be comparable to the development. I have no details of which of the shutters referred to were granted consent as opposed to being immune from enforcement action. As part of my site visit, I did observe shops in the town centre with shutters. However, the majority of the shops do not have shutters and where they did exist, they were of different designs and were largely attached to single shop fronts.
14. The development extends across Nos 106 -110 and Nos 106 and 108 are double fronted buildings. I do not therefore find the examples provided to be comparable in terms of scale, design or location to the development. It remains the case that each proposal or development has to be assessed on its own merits.

Planning Balance and conclusion

15. I conclude that the roller shutters are contrary to the stated policies in the development plan and there are no material considerations to indicate that the deemed planning application should be determined other than in accordance with it.
16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin INSPECTOR

¹ Paragraph :020 Reference ID:18a-020-20190723