

Appeal Decision

Site visit made on 30 August 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 20th September 2016

Appeal Ref: APP/M0933/D/16/3154328
28 Kendal Green, Kendal, Cumbria, LA9 5PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Dewhirst and Hoe against the decision of South Lakeland District Council.
 - The application Ref SL/2016/0176, dated 25 February 2016, was refused by notice dated 25 April 2016.
 - The development proposed is application of render to side elevation in Kendal Conservation Area.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposal would preserve or enhance the character or appearance of the Kendal Conservation Area and the surrounding area.

Reasons

3. The appeal property is a 2.5 storey end of terrace situated in an elevated position on the western side of Kendal Green within the Kendal Conservation Area (CA). Kendal Green is an informal grassed area surrounded by distinctive rows of traditional terraced and semi-detached dwellings of largely high architectural quality. The property is identified on the Kendal CA architectural quality map as an unlisted building which makes a particular positive contribution to the special architectural or historic character of the area.
 4. The historical form and architectural features of the property remain largely unaltered including bay windows to ground and first floors, rusticated quoin stones and decorative gable features. The front elevation of the property is finished in painted stucco in contrast to the exposed random rubble side and rear elevations. Whilst the stucco finish is not representative of the buildings in the area which are predominantly stone, the visual contrast between the front and side elevations are, nevertheless, a feature of the buildings interest. Consequently, I consider that the appeal property makes a positive contribution to the CA.
 5. The application of render to the southern elevation of the property is to address issues with water ingress during periods of prolonged driving rain. The lime
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- render will form a breathable coating and provide weather protection for the exposed stone work and will be painted a light beige colour.
6. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
 7. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Paragraph 134 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
 8. The application of render to the southern elevation of the property would significantly alter the appearance of the dwelling and introduce a material which is not traditional in the local area. Furthermore, the proposal would conceal the original stonework and remove the visual contrast, in terms of colour, materials and texture, between the front and side elevations which are a particular feature of this building and group of terraces.
 9. The appellant has offered to paint the elevation in a different colour, thus retaining the visual contrast. A smooth sponge finish is proposed; however, this would not achieve the same texture as the existing masonry or provide sufficient contrast with the front elevation. Neither would it compensate for the concealment of the stone work which provides the visual link between this terrace and adjacent properties surrounding the Green which are predominately stone.
 10. The appeal property sits in an elevated position on the western side of Kendal Green and the adjacent property (no 27 Kendal Green) is lower in height than the appeal property. Consequently, the southern gable of the property is visible and prominent in the CA. I, therefore, consider that the proposal would cause material harm to the character and appearance of the CA and surrounding area.
 11. I inspected the property internally and there is clearly an issue of damp on the south internal wall which was evident in most of the rooms inspected. It is suggested that the damp is a consequence of water ingress arising from episodes of driving wind and rain. This has caused issues of harmful mould growth and has at least on one occasion also compromised the electrical supply/fuse board.
 12. The Design and Access Statement states that these issues appear to be caused by a mixture of driving rain through gaps/fissures in the external face of the building, water passing down flues from defects in the chimney stack and the previous use of non-breathable materials.
 13. I would agree from reviewing the submissions and my inspection of the property that the flues and poor pointing are likely to be a significant source of the damp. I note that it is proposed to re-point the wall in lime and also re-

render the chimney stack and repair and replace lead tabling, flashings and flaunching and ventilate flues in order to address these issues. I also note that breathable hemp plaster has been applied to the internal wall which has only partially addressed the issue of damp.

14. It is suggested that the solution to the damp is likely to be a combination of the above remedies together with the application of external lime render. It is suggested that it would be more cost effective for these solutions to be undertaken at the same time in order to avoid protracted phases of harm over a long period of time.
15. However, whilst a number of causes of damp are suggested, a detailed survey has not been carried out in order to identify and eliminate the causes of damp. Furthermore, there is no empirical evidence before me to suggest that the proposed alternative solutions such as re-pointing and repairs to the chimney and flues would not satisfactorily address the issue of damp. Whilst it is suggested that simply re-pointing the walls would not be sufficient given the depth of the wall, there is no evidence to support this assertion. Furthermore, I noted a number of similar south facing gable elevations on properties around the Green which have not been rendered. Consequently, I cannot be certain that the application of the external lime render is absolutely necessary.
16. Attention is drawn to some properties around Kendal Green which are rendered. However, I noted that some of those properties are of a more modern design and appearance and are not, therefore, directly comparable to the appeal proposal. I noted that number 53 has render on the upper half of the front elevation. Attention is also drawn to numbers 19 and 63 Kendal Green which have render on the side elevation. However, the render appears to have been on those properties for some time and I am not aware of the full details of those cases which limits the weight which I can attach to them in my decision. In any event, their presence does not justify the harm which I have identified. Furthermore, as the majority of properties are not rendered on their gable elevations I am unable to conclude that this is a feature of the area.
17. The appellant contends that without the proposed works the property would become empty and fall into disrepair and that the proposal is necessary to maintain the fabric of the building and enable the building to be used as originally intended. He considers that the public benefit of maintaining the property in use has not been properly considered. However, there is insufficient evidence before me to demonstrate that alternative solutions would not achieve the same outcome and that the external render is absolutely necessary. The assessment of the appropriate balance between the harm to the character and appearance of the CA and the public benefit arising from the proposal is a matter of planning judgement for the decision maker.
18. Consequently, whilst the harm arising from the proposal may be less than substantial I am unable to conclude that the public benefits of the proposal would outweigh the harm which I have identified.
19. Submissions were made in relation to the appellant's human rights, with specific reference to Article 1 of the First Protocol of the Human Rights Act 1998 (the Act) which concerns enjoyment and deprivation of possessions. In addition Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. These are qualified rights, whereby interference may be justified in the public interest. The appellant considers

that dismissal of the appeal would restrict their ability to take action to address severe water ingress into their dwelling in a manner which would breach the appellant's rights under the Act and interfere with peaceful enjoyment of the applicant's property.

20. However, I have concluded that there is insufficient evidence before me to demonstrate the other solutions proposed would not satisfactorily address the issue of damp at the appeal property. Those solutions are still open to the appellant to implement and consequently, there is insufficient evidence before me that the refusal of the proposal would restrict the ability of the appellant to take action to address water ingress at the property and interfere with the Appellant's rights under Article 1 or Article 8 of the Act.
21. I, therefore, conclude for the reasons stated that the proposal would fail to preserve or enhance the character and appearance of the CA and the surrounding area to which I am required to have special regard and attention and to which the courts judge I am required to give considerable importance and weight.
22. The proposal would, therefore, be contrary to saved policy C16 of the South Lakeland Local Plan (LP) 2006 and Alterations 2007 which states that development proposals will be required to indicate clearly how they will preserve or enhance the character or appearance of the area. The proposal also conflicts with Policy S2 of the LP which expects new development to take account of the South Lakeland Design Code and take account of existing distinctive local character.
23. Furthermore, the proposal is contrary to Policy CS8.6 of the South Lakeland Core Strategy (CS) 2010 which supports the safeguarding and where possible enhancing of historic environment assets. Conflict also arises with Policy CS8.10 of the CS which states that the siting, design, scale and materials of all development should of a character which maintains or enhances the quality of the landscape or townscape and, where appropriate, should be in keeping with local vernacular tradition. Moreover, conflict arises with Paragraphs 131, 132 and 134 of the Framework.

Conclusion

24. For the reasons stated above, I conclude that the appeal should be dismissed.

Caroline Mulloy

INSPECTOR