

Appeal Decision

Site visit made on 26 September 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 28 October 2016

Appeal Ref: APP/V5570/W/16/3152219

52-54 St John Street, Islington, London EC1M 4HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Zurich Assurance Ltd c/o Threadneedle Property Investments Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2015/1947/FUL, dated 3 April 2015, was approved on 13 April 2016 and planning permission was granted subject to conditions.
 - The development permitted is refurbishment works comprising of installation of replacement windows, doors and new canopies to front façade, lift overrun and plant enclosure at roof level of front building and glazed infill between front and back building at ground floor level.
 - The condition in dispute is No 4 which states that: *"Notwithstanding the approved drawings, no exterior brickwork may be painted. The unpainted brickwork shall remain in situ."*
 - The reason given for the condition is: *"To ensure that the appearance of the building is acceptable."*
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Decision

1. The appeal is allowed and the planning permission, Ref P2015/1947/FUL, for refurbishment works comprising of installation of replacement windows, doors and new canopies to front façade, lift overrun and plant enclosure at roof level of front building and glazed infill between front and back building at ground floor level at 52-54 St John Street, Islington, London ED1M 4HF granted on 13 April 2016 by the Council of the London Borough of Islington, is varied by deleting Condition 4.

Background and Main Issue

2. The original planning permission for refurbishment works at the property included the painting of the exterior brickwork on the front elevation. Nevertheless, the permission included a condition which prevented the painting of the exterior brickwork. The appellant asserts that the condition is not reasonable or necessary and that the painting of the building would not harm the Clerkenwell Green Conservation Area within which the appeal site is located.
 3. The main issue is, therefore, whether the removal of the condition would preserve or enhance the character or appearance of the Clerkenwell Green Conservation Area.
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Reasons

4. The Clerkenwell Green Conservation Area is characterised by both the variety and juxtaposition of different activities within the area including commercial, residential and leisure uses. Its significance largely derives from the historical interest of the buildings and that of the street layouts, some of which remain from medieval times.
5. The appeal site is a vacant office block located on the eastern side of St John Street which is characterised by a mix of commercial and residential uses. The buildings range from three to seven storeys in height and there are varying architectural styles from Victorian to contemporary designs. Facades also vary in style. Some properties are rendered and others have painted elevations in varying colours. Indeed, the appeal property sits in distinct contrast to the contemporary cladding and glazing of the adjacent building 56 – 60 St John Street. Nevertheless, above ground level, the predominant material along this part of St John Street is unpainted brickwork, the colour and texture of which is largely replicated throughout the street scene. This makes an important contribution to the preservation of the character and significance of this part of the Clerkenwell Green Conservation Area.
6. The painting would largely conceal the colour and texture of the brickwork on the front elevation of the building. Moreover, the provision of painted brickwork would appear in stark contrast to the prevailing character of surrounding building facades. As a result, I consider the proposed painting would diminish the contribution of the brickwork to the intrinsic value of the street scene and the wider significance of the conservation area.
7. The appellant indicates that the painted brickwork would increase the letting potential of the property and assist in bringing it back into use. However I have been provided with no substantive evidence to support such a view. Furthermore, I also note that the property opposite, 47-53 St John Street has been painted in a similar colour to that proposed here. However, the treatment of the façade at 47-53 St John Street does not necessarily establish a desirable precedent and would not, in itself, justify the harm arising from the proposal.
8. I conclude, therefore, that the removal of the condition would fail to preserve or enhance the character and appearance of the Clerkenwell Green Conservation Area. Consequently, it would conflict with the high quality design and historic environment aims of Policy CS9 of the Islington Core Strategy 2011, Policies DM2.1, DM2.2 and DM2.3 of the Islington Local Plan: Development Management Policies 2013, and the National Planning Policy Framework (the Framework).
9. In finding harm in respect of the significance of heritage assets, paragraph 134 of the Framework sets out that where a view is taken that the harm to the designated heritage asset would be less than substantial, this harm should be weighed against the public benefits of the proposal. In this instance, that harm would be less than substantial and in accordance with paragraph 134 of the National Planning Policy Framework, it should be weighed against any public benefits of the proposal. I have, however, no evidence to suggest that the proposal would result in any public benefit that would outweigh the harm identified.

10. Nevertheless, the consideration of a fallback position, including what could be undertaken under permitted development rights, is a well-established principle. Schedule 2, Part 2, Class C of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO) sets out that the painting of the exterior of any building or work is permitted development. Development is not permitted by Class C if the painting is for the purpose of advertisement, announcement or direction. That is not the case here.
11. Article 4 of the GPDO states that where the local planning authority is satisfied that it is expedient to do so, a direction may be made which effectively restricts permitted development rights. The Council has confirmed in this instance that there are no Article 4 directions which remove permitted development rights under Schedule 2, Part 2, Class C of the GPDO in respect of the appeal property. Moreover, I have not been made aware of any previous conditions attached to planning permissions which have removed permitted development rights under Class C from the property. To the end, it seems to me that there is a realistic fallback position available to the appellant.
12. Furthermore, if the appeal was to be dismissed and Condition 4 retained, I consider there would be a reasonable prospect that the painting of the entire façade of the building would be carried out under the permitted development right. As a result, the fallback position under the GPDO would serve a similar, if not identical purpose as the proposed removal of Condition 4 and the harm would, therefore, be equally similar. That is a consideration to which I afford substantial weight.

Conclusions

13. The removal of Condition 4 of P2015/1947/FUL would fail to preserve the character and appearance of the Clerkenwell Green Conservation Area. It would, as a result, conflict with the relevant development plan policies as set out above. However, I have found that the fallback position weighs substantially in its favour, to the extent that, in this instance, it would clearly outweigh the failure to preserve the character and appearance of the Clerkenwell Green Conservation Area and the subsequent conflict with the development plan.
14. On that basis, taking into account all matters raised, I consider that condition No 4 on planning permission P2015/1947/FUL is not necessary or reasonable. I conclude therefore that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Jason Whitfield

INSPECTOR