
Appeal Decision

Site visit made on 17 January 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 09 February 2017

Appeal Ref: APP/Q3060/W/16/3159854
58-59 Long Row, Nottingham NG1 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mostafa Tarabadi against the decision of City of Nottingham Council.
 - The application Ref 16/01297/PVAR3, dated 1 June 2016, was refused by notice dated 27 July 2016.
 - The application sought planning permission for conversion of first, second and third floors to 3 student flats, new entrance door to ground floor, dormer window and relocation of flue without complying with a condition attached to planning permission Ref 14/02380/PFUL3, dated 16 January 2015.
 - The condition in dispute is No S1 which states that: *Except as may be modified by the conditions listed above, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the Council on 21 November 2014.*
 - The reason given for the condition is: *To determine the scope of this permission.*
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Decision

1. The appeal is allowed and planning permission is granted for conversion of first, second and third floors to 3 student flats, new entrance door to ground floor, dormer window and relocation of flue at 58-59 Long Row, Nottingham NG1 6JE without complying with condition No. S1 set out in planning permission Ref 14/02380/PFUL3 granted on 16 January 2015 by Nottingham City Council, but otherwise subject to the following conditions:
 - 1) With the exception of white uPVC replacement windows to the side and rear elevations, carried out in accordance with approved plans: Proposed Elevations LRW-16-06 and Location Plan LRW-14-03 and the rendering of the front of the building painted in a colour which shall be submitted to and approved in writing by the Local Planning Authority, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the Council on 21 November 2014.
 - 2) Prior to the first occupation of the apartments the approved sound-insulation scheme shall have been implemented.
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Procedural Matter

2. The elements of the development in dispute are (i) the uPVC windows in the front elevation, (ii) the uPVC windows in the side and rear elevations and (iii) the render on the front elevation. I am satisfied that the elements are physically and functionally severable. I shall determine the appeal on this basis accordingly.

Background and Main Issue

3. Planning permission was granted for the conversion of the three upper floors of 58-59 Long Row to three self-contained student flats, a new entrance to ground floor, a dormer window and relocation of flue in January 2015. It was proposed to refurbish the existing windows and install secondary glazing to provide the required noise attenuation. Work has commenced on the conversion and in the course of the development all of the windows have been removed and replaced with grey uPVC windows in the front elevation and white uPVC windows in the side and rear elevations. In addition the front elevation above the ground floor shop fronts has been rendered. The appellant seeks to vary condition No. S1 of the previous permission relating to the approved details in order to retain the uPVC windows and rendering.
4. Taking into account the above background the main issue is whether condition No S1 is reasonable and necessary to preserve or enhance the character or appearance of the Old Market Square Conservation Area and the setting of the adjacent listed building.

Reasons

5. The appeal site comprises an early nineteenth century four storey commercial building with two hot food takeaways at ground floor level, which are located either side of an undercroft pedestrian access route to Hurts Yard at the rear of the property. It is situated on the north side of Long Row, a primary shopping street located in the City Centre and within the Old Market Square Conservation Area (CA). This part of the CA is characterised by the dense mix of generally three and four-storey commercial properties of varying ages and architectural styles. Individually and cumulatively they make a significant contribution to the CA and add to the considerable townscape character.
6. The appeal property is not a listed building but nevertheless makes an individual contribution to the character and appearance of Long Row and the CA as a whole due to its prominent position, its closeness to the wide paved area and the style of the windows and decorative surrounds. The front elevation of the appeal building has angled bay windows at first and second floor level with decorative panelling between storeys and concrete lintels above. At third floor level it has small casement windows. The original windows were a mixture of timber framed and metal framed windows, predominantly casement in style with leaded lights. It had a red brick facade that has now been rendered and rendered elevations at the rear.
7. The appeal scheme replaces all of the old metal and timber windows with uPVC windows designed in a similar style to the original windows with casements and leaded panes. The appellant considers that the replacement windows would match those of the originals including the thickness of the windows. The appellant contends that the original windows also had heavy frames to the

main mullions and transoms and were not typical slender metal framed windows.

8. It is clear from the evidence provided that the old windows were in a poor state of repair. However, compared to the slender framing of the original metal framed windows, the new uPVC windows have bulky plastic frames and a distinctly non-traditional appearance, particularly where opening sections are provided. I consider that the difference between the old and new windows is readily apparent in the townscape along Long Row. Although the pattern of the window openings would be the same, I consider that the positive contribution that the windows have to the CA and to the townscape along Long Row is seriously undermined by the bulk, design and appearance of the replacement windows. The replacement windows on the side and rear elevations are less visible and prominent in the public domain and as such would not significantly detract from the character or appearance of the CA and are acceptable as an amendment to the previously approved scheme.
9. The render on the front elevation of the building would be in keeping with the finishes on the surrounding building facades, although it has not subsequently been painted and therefore appears unfinished. However, this is a matter that could be dealt with by way of a requirement in an amended condition.
10. In accordance with the clear expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990 special regard should be paid to the desirability of preserving the setting of a listed building. The appeal building is immediately adjacent to a Grade II* listed building (54-57 Long Row). The early 18th century listed property to the east has a rendered painted facade, small panel timber sliding sash windows with decorative mouldings to the upper floors and an arcaded ground floor with columns and modern shopfronts. This makes a significant contribution to the character and appearance of the CA. In this context, the non-traditional design and appearance of the windows on the appeal property in such close proximity is wholly out of keeping and harms the setting of the listed building.
11. Given the modest scale of the development, the harm would be less than substantial but in accordance with paragraph 134 of the National Planning Policy Framework (the Framework), that harm to the significance of a designated heritage asset (such as a listed building or conservation area) should be weighed against any public benefits to the proposal. I note the appellant has made a considerable investment in repairing and refurbishing the upper floors of the building that had been vacant for many years and the conversion to student accommodation would make long term use of the property more viable. I find though insufficient public benefit to offset the identified harm to which I attach significant weight.
12. I have noted the other development in the area drawn to my attention by the appellant. Although dark grey uPVC sliding sash windows have been permitted and installed at 4 Stanford Street in the CA and adjacent to a listed building, in my opinion they have different design characteristics to the appeal scheme and do not create an acceptable context that justifies the replacement of the casement windows on the appeal building.
13. Consequently, I conclude that condition No. S1 is not reasonable and necessary in relation to the white uPVC windows in the side and rear elevations and the render on the front elevation of the building. However, I consider that

condition No. S1 is reasonable and necessary in relation to the replacement windows on the front elevation of the building in order to preserve the character and appearance of the CA and the setting of the adjacent listed building.

14. The replacement windows on the front elevation of the building would conflict with Policies 10 and 11 of the Aligned Core Strategy 2014 and Policies BE10 and BE12 of the Nottingham Local Plan 2015. These policies, amongst other things, seek to ensure that developments are of a high quality design that have regard to the local context and preserve or enhance the character or appearance of the Conservation Areas and listed buildings and their setting. It would also not accord with the Framework that development should seek to secure a high quality of design and conserve heritage assets in an appropriate manner (paragraph 17) and take into account the desirability of sustaining and enhancing the significance of heritage assets and the positive contribution that their conservation can make to sustainable communities (paragraph 131).

Conclusion

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed but that condition No. S1 should be varied only insofar as to approve the white uPVC windows in the side and rear elevations and the render on the front elevation of the building which are currently precluded under the existing wording.

Conditions

16. In allowing the appeal and granting the planning permission, I have considered both those conditions imposed on the original planning permission and those suggested by the Council but with some variations to the wording to reflect that the change of use has already commenced. A condition relating to the commencement of development and pre-commencement condition relating to details of the new entrance door, new dormer and relocated flue are not considered necessary as the conversion works have already commenced. I have specified the approved plans and the forms, drawings and other documents comprising the application as validated by the Council on 21 November 2014 as they provide certainty, with an addition to the condition relating to the painting of the render on the front elevation which is necessary in order to preserve the character and appearance of the CA. The Planning Practice Guidance advises that the original conditions should be re-imposed if not discharged and I agree that a condition relating to the approved sound insulation scheme for the apartments is warranted, as it would safeguard the amenities of nearby properties.

David Troy

INSPECTOR