

Appeal Decisions

Site visit made on 21 February 2017

by **Nicholas Taylor BA(Hons) MRTPI**

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

Decision date: 5th May 2017

Appeal A - Ref: APP/E0915/Y/16/3159251

South View, Thurstonfield, Carlisle, Cumbria CA5 6HE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the grant of listed building consent subject to conditions.
 - The appeal is made by Mr James Fell against the decision of Carlisle City Council.
 - Listed building consent Ref 15/0833 was granted on 23 March 2016 subject to conditions.
 - The works proposed are *Installation of new windows and doors, removal of defective clay dab internal wall (LBC) (part retention)*.
 - The condition in dispute is No. 1 which states that:
The approved documents for this Listed Building Consent comprise:
 1. *The Listed Building Application Form received 8th September 2015;*
 2. *The Location Plan, Site Block Plan received 6th November 2016 (Drawing no. HJF 03d PL);*
 3. *The Proposed Plans and Elevations received 17th March 2016 (Drawing no. HJF 02n PL);*
 4. *The Typical Eaves Detail received 1st March 2016 (Drawing no. HJF Eaves);*
 5. *The Tilt & Turn Jamb received 15th March 2016 (Drawing no. T&T – Horizontal PDF);*
 6. *The Tilt & Turn – Head & Cill with Glazing Bar received 15th March 2016 (Drawing no. T&T – Vertical PDF (GB));*
 7. *The Design, Access and Heritage Statement received 11th September 2015;*
 8. *The Notice of Decision.*
 - The reason for the condition is: *To define the consent.*
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Appeal B - Ref: APP/E0915/W/16/3161329

South View, Thurstonfield, Carlisle, Cumbria CA5 6HE

- 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 Mr James Fell against the decision of Carlisle City Council.
 - The application Ref 15/0908, dated 2 October 2015, was approved on 23 March 2016 and planning permission was granted subject to conditions.
 - The development permitted is *Installation of domestic oil storage tank with timber fence enclosure; alteration to extend rear pitched roof over proposed flat roof; installation of Velux roof window (part retrospective)*.
 - The condition in dispute is No. 1 which states that:
The approved documents for this Planning Permission comprise:
 1. *The Planning Application Form received 2nd October 2015;*
 2. *The Location Plan, Site Block Plan received 6th November 2016 (Drawing no. HJF 03d PL);*
 3. *The Proposed Plans and Elevations received 17th March 2016 (Drawing no. HJF 02n PL);*
 4. *The Typical Eaves Detail received 1st March 2016 (Drawing no. HJF Eaves);*
 5. *The Tilt & Turn Jamb received 15th March 2016 (Drawing no. T&T – Horizontal PDF);*
 6. *The Tilt & Turn – Head & Cill with Glazing Bar received 15th March 2016 (Drawing no. T&T – Vertical PDF (GB));*
 7. *The Notice of Decision;*
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8. *Any such variation as may subsequently be approved in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To define the permission.*
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Decision – Appeal A

1. The appeal is allowed and the listed building consent Ref 15/0833 for installation of new windows and doors, removal of defective clay dab internal wall granted on 23 March 2016 by the Carlisle City Council is varied by deleting conditions Nos. 1 and 2 and substituting for them the following condition:
 - 1) The works hereby consented shall be carried out in accordance with the application and plans as submitted, including drawings numbered HJF 03d PL, HJF 02n PL, HJF Eaves, T&T – Horizontal PDF and T&T – Vertical PDF (GB), except in respect of the two first floor windows on the rear elevation and the small window to ‘proposed kitchen/dining/living’ all shown on drawing No. HJF 02n PL.

Decision – Appeal B

2. The appeal is allowed and the planning permission Ref 15/0908 for installation of domestic oil storage tank with timber fence enclosure; alteration to extend rear pitched roof over proposed flat roof; installation of Velux roof window at South View, Thurstonfield, Carlisle, Cumbria CA5 6HE granted on 23 March 2016 by Carlisle City Council, is varied by deleting conditions Nos. 1 and 2 and substituting for them the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered HJF 03d PL, HJF 02n PL, HJF Eaves, T&T – Horizontal PDF and T&T – Vertical PDF (GB), except in respect of the two first floor windows on the rear elevation and the small window to ‘proposed kitchen/dining/living’ all shown on drawing No. HJF 02n PL.

Procedural Matters and Main Issue – both appeals

3. The two concurrent appeals, which I have termed A and B, concern a planning permission and a listed building consent, regarding a Grade II listed building. Although the two schemes are described differently in the heading, above, this reflects the differing scope of planning permission and listed building consent. Essentially, they each relate to aspects of the same scheme. Where appropriate, therefore, in the interests of brevity and clarity, I have dealt with both appeals together in my reasoning. The Council granted both approvals on 23 March 2016.
4. The Council’s description of the current scheme includes the term “retrospective” and at my site visit it was clear that the development and works were substantially complete. The permission and consent were each subject to two very similar conditions, which seek to define the approved plans and documents. The appellant has chosen to appeal against the imposition of condition No. 1 in each case, referring especially to one particular part, clause 6. For clarity, I have set out above the full wording of the relevant condition from each appeal.

5. In the circumstances, in which both appeals have been made directly following approval subject to conditions, I consider that the most appropriate approach is to deal with the appeals under, in effect, the analogous provisions of Section 22 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 79 of the Town and Country Planning Act 1990. This means that the whole consent/permission is before me and, if the appeals are allowed, the consent/permission is modified rather than a new consent/permission being issued. The main parties have agreed to this approach.
6. I have also consulted the main parties regarding the applicability of the submitted drawings, including that referred to in clause 6 of condition No. 1, but without complete resolution or agreement between them. I shall describe in my reasoning how I have dealt with this matter. It is clear from all the evidence before me that the principal issue in contention relates to the design of three windows on the rear elevation, which, as built, have horizontal glazing bars and which the appellant wishes to retain.
7. Consequently, I consider that the main issue common to both appeals is whether the disputed conditions are reasonable and necessary, having regard to relevant legislation and national and local policies, and whether removing or varying the conditions, so as to allow retention of the extant windows, would preserve the listed building and its setting.

Reasons – both appeals

8. The appeal property is a detached house, located within a small village. It occupies a corner site, so that the front and west sides of the house are prominent in the street scene. The rear of the property is enclosed by a garden and other dwellings, whilst the east side is close to the adjacent property. The immediate surroundings comprise mainly relatively modern dwellings.
9. The applications were determined in the light of the *Carlisle District Local Plan 2001-2016*. Since then, from November 2016, those policies have been replaced by the adoption of the *Carlisle District Local Plan 2015-2030* (LP). The Council has referred me to a number of relevant LP policies, to which I have had regard in this decision. Policy HE3 sets out criteria aimed at the protection of listed buildings, including physical features such as windows. Policy SP6 sets out design principles, including consideration of the historic environment. Policy HO8 addresses extensions and alterations to dwellings, including the criterion that they should relate to and complement the existing building in scale, design, form and materials.
10. Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires the decision maker to pay special regard to preserving a listed building or its setting. The *National Planning Policy Framework* (the Framework), at paragraph 132, requires great weight to be given to the conservation of heritage assets. The achievement of good design and conservation of the historic environment, including achievement of positive improvements, are also important Framework policies which contribute to the achievement of sustainable development.
11. It is necessary to firstly assess the significance of the building as a heritage asset. The listing description identifies the house as dating from the early 19th Century, with numerous circa 20th Century alterations and additions. The

Design, Access and Heritage Statement, submitted with the applications, describes most likely earlier origins, with the existing house originally being in the centre of a terrace of three. By the 1980s, only the central property remained and that had undergone considerable alteration including the addition of extensions to the rear and side under a rendered finish. I see no reason to disagree with the statement's conclusion that the main contributors to the significance of the building as a heritage asset comprise the handsome, traditional red sandstone front elevation and, to a lesser extent, certain internal materials and features.

12. A previous, recently approved scheme provided for enlargement and/or re-modelling of the rear and side extensions to the building, together with other alterations to internal and external features, including windows. The latest iteration of that scheme, to which this appeal relates, differs only in limited respects. The overall result is that the back of the house has been so considerably altered and extended that little of the form or historic fabric of the pre-1970s building is present. In view of this, and the very limited views from public or private land, the rear of the property plays a limited role within the significance or setting of the listed building.
13. The three windows primarily in dispute are two at first floor level and a smaller ground floor window, all on the rear elevation. Consistent with my findings above, they do not affect historic fabric and only in the broadest sense affect the appearance of the listed building. The position of the windows on a non-prominent elevation, which can only be glimpsed in very restricted views from the side street and a neighbour's garden, further lessens their impact, which carries some, albeit limited, weight. In this particular case, the existing design of the windows in dispute has a negligible effect on the integrity and historic significance of the listed building or its setting.
14. I understand the Council's preference for windows with a vertical glazing bar, so as to lend a more vertical emphasis to the modern windows, as this approach may often provide an appropriate means of integrating modern window types into traditional settings. However, the approved scheme for the appeal property demonstrates little consistency in fenestration, notwithstanding the carefully negotiated sash windows on the principal, front elevation.
15. On the approved, proposed elevation drawing, the two larger first floor windows at the rear appear to be square overall. As built, these windows have a single horizontal glazing bar which accentuates the horizontal emphasis of their overall proportions. However, the rear elevation has a non-traditional appearance and generally horizontal proportional emphasis, created by the individual features and their overall composition, including twin shallow-pitched gables, cat-slide roof, wide bi-fold doors, velux windows and variety of window types. Overall, in this context, the three windows in dispute are unobtrusive and cause negligible harm from a design perspective and, consequently, in terms of the aesthetic value of the listed building.
16. All in all, in this case harm, if any, to the significance of the listed building as a heritage asset as a consequence of the three extant windows is negligible, equating to a neutral impact on its special architectural or historic interest. Therefore, in the context of the overall scheme which has already been approved, the listed building and its setting are preserved, consistent with the considerable importance and weight which the relevant Act requires. Equally,

there is no conflict with the relevant LP policies or the development plan or Framework, taken as whole.

17. Sections 79 and 22 of the relevant Acts allow me wide scope to delete, amend or add conditions to the permission and consent, as if the whole applications were before me. *Planning Practice Guidance* states that, when granting planning permission, specifying the application drawings by means of a condition is good practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions. Consequently, with regard to Appeal B, condition 1 is not inherently unreasonable but it is overly inclusive and unnecessary in its current form. However, with regard to Appeal A, a condition specifying approved plans is not normally appropriate to a listed building consent. In both cases, the fact that the scheme is substantially complete brings into question whether such a condition has any practical use at this stage but, in the absence of any definitive evidence either way, I consider that tying the approvals to certain specific details remains worthwhile.
18. The appellant has specifically contested clause 6 of condition No. 1, which refers to Drawing No. T&T – Vertical PDF (GB), which is described as a vertical section. However, other drawings listed in the other parts of that condition are also relevant. Clause 5 of the condition refers to Drawing No. T&T – Horizontal PDF, described as “Tilt & Turn Jamb: Horizontal Section”. Both main parties seem to agree that both drawings apply to the windows in contention, though not necessarily exclusively, but the appellant also describes these drawings as options. Both are large scale cross-sections with limited contextual information. What is clear is that three windows with a single, vertical glazing bar are shown on the rear elevation on the “Proposed Plans and Elevations” (Drawing No. HJF 02n PL), referred to in clause 3 of condition No. 1 and as preferred by the Council.
19. In order to give effect to my conclusion that the three contested windows should be allowed to remain, I shall use the discretion available to me to amend the consent/permission by deleting condition No. 1 and substituting for it a new condition in each case.
20. In both appeals, condition No. 2, which states that, within 12 months of approval, all windows and doors shown on the proposed rear elevation (drawing No. HJF 02n PL) shall be installed in accordance with the approved details, is no longer necessary, as acceptable windows have been installed. Therefore, I have deleted the condition in each case.

Conclusions – both appeals

21. For the reasons given above, I conclude that both appeals should succeed. Consequently, the existing consent and permission are varied as described above.

Nicholas Taylor

INSPECTOR