
Appeal Decision

Site visit made on 2 August 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 24 August 2017

Appeal Ref: APP/Q3060/C/16/3162578

Land at 58-59 Long Row, Nottingham NG1 6JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mostafa Tarabadi against an enforcement notice issued by Nottingham City Council.
 - The notice was issued on 18 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission:-
 - (i) the installation of uPVC window frames inserted on the front elevation and
 - (ii) the application of render to the front elevation of the property.
 - The requirements of the notice are:
 - (i) Remove the unauthorised uPVC double glazed window frames on the front elevation and replace them with window frames matching the detail of the original metal frames which have been removed.
 - (ii) Paint the render applied to the front elevation in a colour approved by the local planning authority in writing.
 - The period for compliance with the requirements is:
 - (i) 6 months from the date on which the Enforcement Notice takes effect.
 - (ii) 6 months from the date on which the Enforcement Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Background and the requirements of the notice

2. Planning permission was granted in January 2015 to convert three upper floors of 58-59 Long Row to student flats and associated works. Contrary to the approved plans the windows were removed and replaced with grey uPVC windows in the front elevation and white uPVC windows in the side and rear elevations. The front elevation above the ground floor units has also been rendered. The appellant was refused permission to vary condition S1 of the permission to retain the uPVC windows and rendering.
3. His appeal against that refusal was allowed in relation to the side and rear elevations, but the Inspector decided¹ that the condition was 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. He also amended the condition to require that the render of the front elevation be painted in a colour to be agreed with the Council.

¹ APP/Q3060/W/16/3159854, 09 February 2017.

4. A requirement in the notice to paint the render on the front elevation in a colour to be approved by the local planning authority is an open-ended requirement. This would offend against the settled principle that it must be clear from the notice itself what the recipient is required to do.
5. However the parties have now agreed that a suitable paint to be applied to the render would be Sandtex textured masonry paint in the colour "Country Stone". It would therefore provide certainty to amend the notice to require the render to be painted with this finish. As this step would give effect to what the parties have agreed, it would cause no injustice. I shall exercise the power of correction in s176(a) of the 1990 Act accordingly.

Ground (a) and the deemed application for planning permission

6. The main issue is the effect of the development on the character and appearance of the host building and wider area, with reference to its location in the Old Market Square Conservation Area (CA) and the setting of the adjacent listed building.
7. I have had regard to the duty when considering the grant of planning permission in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. I am also mindful of the duty when considering applications that affect a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any of its features of special architectural or historic interest.
8. An appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. The breach of planning control here relates to the same installation of the uPVC windows in the front elevation of the appeal building and the application of render to the front elevation without a paint finish, that were the subject of the earlier appeal. Thus the planning merits of both elements of the unauthorised development have already been considered by the Inspector in the recent appeal decision.
9. In particular it was found in that decision that the original windows were a mixture of timber framed and metal framed windows, mainly casement in style with leaded lights. It was concluded that the positive contribution that the existing windows had to the CA and to the townscape along Long Row is seriously undermined by the bulk, design and appearance of the replacement windows which have bulky plastic frames and a distinct non-traditional appearance, especially in the opening sections.
10. It was also concluded that the non-traditional design and appearance of the windows on the appeal building in such close proximity to the Grade II* listed building (54-57 Long Row) is wholly out of keeping with and harms the setting of that listed building.
11. Having read the decision as a whole and seen the site and general area, I see no reason to disagree with its findings. Consistency in the planning process is important and like cases should be decided in a like manner. The previous decision is clearly so closely related to the issues that it carries considerable weight as a material consideration.

12. The appellant's statement refers to the poor state of the windows, the investment made in refurbishing the building, the alleged associated public benefit in its conversion to student accommodation, and examples of other development in the area said to be similar to the development, such as the windows at 4 Stanford Street. All of these matters were considered by the previous Inspector and having reviewed both parties' statements and seen the site for myself, I agree with his findings.
13. The reasons for the issue of the notice state that the building is three-storey rather than its actual four-storey height, but the Inspector picked this up in his description of the premises. The reasons also state the appeal building is "early nineteenth century" rather than early twentieth century, although the appellant notes that the actual date of construction is not known. The previous appeal decision did refer to "early nineteenth century" and I accept that the design and materials indicate that it is from the early part of the last century. However it is not suggested and it is certainly not my view that this error, if error it be, in any way undermines the decision, bearing in mind that it was also based on actual observation of the premises in their context.
14. I mention this last point in some detail as it is the only factor that could conceivably be argued to constitute a change in circumstances from the approach taken in the previous decision. There is nothing whatsoever in the appellant's statement that points to any planning circumstances said to be materially different from those that obtained at the time of the earlier decision.
15. Thus the appeal, which has been confined to an appeal on ground (a), follows a recent appeal decision in respect of the same, or a very similar, development on the same site where an Inspector decided that the development at issue was unacceptable and circumstances have not materially changed in the intervening period.
16. I conclude that the unauthorised windows conflict with the aims of Policies 10 and 11 of the Aligned Core Strategy 2014 and Policies BE10 and BE12 of the Nottingham Local Plan 2015. These include ensuring that development is of a high quality design that respects local context and preserves or enhances the character or appearance of the CA and listed buildings and their setting. The harm identified is less than substantial in terms of Paragraph 134 of the National Planning Policy Framework but Paragraph 132 advises that great weight should be given to conservation of a designated heritage asset such as the CA. The harm resulting from the fundamental conflict with the development plan is not outweighed by other considerations.

Overall Conclusion

17. 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 deemed application.

Formal Decision

18. It is directed that the enforcement notice be corrected as follows:
 - Delete requirement (ii) and replace with "(ii) Paint the render applied to the front elevation with Sandtex textured masonry paint in the colour Country Stone."

19. Subject to this correction the appeal is dismissed and 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.

Grahame Kean

INSPECTOR