



Appeal Decision

Site visit made on 22 October 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Appeal Ref: APP/E2734/C/19/3229674

The Land situate and known as 55 Kings Road, Harrogate, HG1 5HJ

- 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 Richard Brown against an enforcement notice issued by Harrogate Borough Council.
 - The enforcement notice was issued on 26 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a garage, raised platform/balcony and railings on top of the garage.
 - The requirements of the notice are: demolish the garage, balcony/platform, railings and permanently remove all resulting materials from the site.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by Mr Richard Brown against Harrogate Borough Council. This application is the subject of a separate Decision.

The appeal on ground (a) and the deemed planning application

Main Issues

3. The main issues are:
 - Whether the development preserves or enhances the character or appearance of the Harrogate Conservation Area (HCA); and
 - The effect of the development on the living conditions of the occupiers of 57 Kings Road with particular regard to loss of privacy.

Reasons

Conservation Area

4. The appeal site is located within the North East Residential Area of the HCA. This part of the HCA, as its name suggests, is predominantly residential and Kings Road is a main road in the area. Along Kings Road are imposing Victorian 3 storey terraces, semi-detached and detached houses, a number of which are

- in use as flats and guesthouses. Buildings are predominantly constructed of sandstone with welsh slate roofs and many feature attractive details such as large bays and decorative eaves and cornice details. Consequently, the area has a strong and attractive, well maintained historic character and appearance.
5. 55 Kings Road is a Victorian 3 storey semi-detached house which makes a positive contribution to the significance of the HCA. The neighbouring 53 Kings Road is in use as a hotel and 57 Kings Road has been sub-divided into flats.
 6. At the rear the properties along this section of Kings Road back onto St Luke's Mount, overlooking the Council offices. The rear elevation of the properties are more straightforward, in comparison to the grand and imposing frontages however, their appearance is nevertheless attractive and at my site visit I observed that there has been little in the way of additions and alterations to the rear of the properties such that they retain a largely traditional and historic appearance.
 7. The appeal development has been erected to the rear of no.55 adjacent to a traditional 2 storey building at the rear of no.53. Due to its scale, occupying almost the entire rear amenity space, its flat roof form and overhanging roof, the building appears as a dominant feature which lacks architectural subtlety and unacceptably diminishes the character of no.55. Viewed in its largely traditional context, the building appears significantly at odds with and thereby detracts from the traditional character and appearance of the HCA. Consequently, the building adversely affects and therefore does not preserve or enhance the character or appearance of the HCA.
 8. Whilst the development is located to the rear of the property, I note that St Luke's Mount is used by members of the public visiting the Council offices and this harmful effect will be experienced by many people.
 9. I have had regard to the findings in the appellant's submitted Heritage Appeal Statement and note that the Council did not specifically refer to the HCA appraisal in their evidence. However, I have reached my own conclusions on the merits of the development based upon my site observations and the evidence before me.
 10. I note that the development occupies a considerably larger area of land than the flat roof double garage it replaces. Some limited images of the former garage have been provided and whilst that garage was not of any particular design merit, it was straightforward in appearance and well-proportioned relative to the house. Moreover, given that garage has been demolished, any affects that it previously had on the character and appearance of the HCA no longer exist. Its former presence therefore carries limited weight.
 11. The appellant states that the garage is not yet finished. Although no plans are before me to illustrate how the completed garage would look, a description of works yet to be carried out are included in the appellant's Heritage Appeal Statement. Whilst I consider these works could be secured by the imposition of a condition, they would not overcome the identified harm in respect of the scale and form of the development.
 12. The appellant states that the appeal development is similar to other garages in the HCA. I have not been provided with the details of these developments thus, I cannot be sure that they are directly comparable to the appeal development.

In any event, the existence of other garages in the area does not justify the harm I have identified above.

13. At my site visit I had regard to the contemporary Council buildings on the opposite side of St Luke's Mount however, I do not know the circumstances of that development being permitted. I observed that this development stands alone in substantial grounds clearly designed to be different from the surrounding vernacular buildings. It is not comparable to the appeal development in terms of its siting, scale or function and in any event, I have determined the appeal on its own merits.
14. In their appeal statement the Council states that no.55 together with other buildings on Kings Road between West Grove Road and St Luke's Avenue can be considered to be non-designated heritage assets. However, this was not identified in the reasons for issuing the enforcement notice and it is not clear whether these buildings have been identified as such by the Council. In the absence of explanation this carries limited weight.

Public benefits

15. Given the scale of the appeal development within the context of the HCA as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
16. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the proposal. In this case reference has been made by the appellant to the benefits of a covered walkway to the house during inclement weather, the ability to park an additional car off street and the removal of the former garage.
17. It seems to me that the benefit of a covered walkway is a private benefit and whilst there may be some benefit in being able to park an additional car off road, I have no substantive evidence about parking stress in the area, so this is a matter of little weight. Finally, as already stated above, any benefits associated with the removal of the previous garage are of limited weight given that it has already been demolished.
18. Consequently, the public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation. Overall, I conclude that the development does not accord with the design and heritage protection aims of Policies EQ2 and SG4 of the Harrogate District Local Development Framework Core Strategy which together require development to incorporate high quality locally distinctive design and that visual and general amenity is protected or where possible enhanced. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Living conditions

19. The building has a large platform which adjoins the existing steps at the rear of no.55, accessed from the back door. Although the appellant contends that this

area is not intended to be used for recreational purposes, his submissions indicate that "artificial turf will be laid", and "any seating area would occupy a small part of the surface". Whether or not it is the appellant's intention to use this area for recreational purposes, it seems to me that the platform has been designed in such a way, including pedestrian access from the back door and railings provided at the end with St Luke's Mount, to enable its use as an outside amenity space.

20. At my site visit I observed that the courtyard to the rear of no.57 is fenced off from a parking area and St Luke's Mount which provides a degree of privacy to this area. Albeit the appellant submits that he has never seen the courtyard being used, despite its modest size, the courtyard is a pleasant outdoor amenity space. I accept that a degree of mutual overlooking from properties either side of the appeal property would have existed prior to the appeal development being built and note that the appellant considers that a degree of overlooking already existed from the platform at the top of the stairs which give access to the appellant's back door. However, due to its size, the development enables and encourages occupiers to sit and spend a length of time on the balcony when compared to the transient nature of the platform outside the appellant's back door.
21. Notwithstanding what existed previously, due to its height and proximity to the boundary with no.57, the development provides a direct line of sight into the courtyard. Consequently, this results in a significant increase in the actual and perceived level of overlooking and loss of privacy, making this area less pleasant to use by the occupiers of no.57 which is materially harmful to the living conditions of the occupiers of this property.
22. I note the comments that this area may not currently be used on a regular basis and that the property is let through Airbnb. However, these matters carry little weight in my assessment given that this situation could change.
23. I note the appellant's comments regarding the perceived nature of the objections from a number of residents and the appellant's communication with neighbours, but these matters are not determinative to the appeal.
24. The appellant has suggested that the neighbour's privacy could be protected by a condition(s) requiring screening. Whilst I have been provided with no specific details of any screening, it is likely that in order to be effective any such screening would result in the presence of what would be an imposing structure for the occupants of no.57, creating its own visual harm for the occupiers of that property and to the appearance of the HCA.
25. I conclude that the development harms the living conditions of the occupants of no.57 with regard to overlooking and loss of privacy. It is therefore contrary to Policies H15 and HD20 of the Harrogate District Local Plan which require new development to have no adverse effect on neighbouring residential amenity and to respect the privacy and amenity of nearby residents and occupiers of adjacent buildings. It also conflicts with the Framework, which seeks to secure a high standard of amenity for existing and future users.

Other Matters

26. Permitted development rights cannot be exercised retrospectively so the building cannot be altered in such a way that would make it lawful by virtue of

permitted development rights. However, where permitted development rights would allow partial re-instatement of works prohibited by the enforcement notice it is a consideration that I must assess however, I must also have regard as to whether the fall-back position is a realistic possibility.

27. The appellant draws attention to a potential fall-back – that is:- what might be erected as permitted development and suggests that the building could be lowered in height by 24.5cm to correspond with what might have been erected as permitted development by virtue of Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). Development permitted by Class E is subject to limitations and conditions. Part E.1 (h) of Class E of Schedule 2 of the GPDO states that development is not permitted by Class E if it would include the construction or provision of a verandah, balcony or raised platform. Thus, the suggested scheme would not meet the requirements of Class E.
28. Consequently, in the absence of details and on the basis of the evidence before me, I am not certain that such a fallback position is a realistic possibility. Thus, I afford the fall-back position limited weight.
29. I have considered the appellant's comments regarding the actions of the Council and the advice given. Dissatisfaction with the Council's procedures should appropriately be made in the first instance through the Council's own complaints procedure.

Conclusion

30. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

31. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the building and all resulting materials to be removed from the Land, the purpose is clearly to remedy the breach of planning control. No lesser steps would achieve that purpose.
32. The appellant suggests that lowering the height of the building would suffice to render the building lawful. I have considered this matter under ground (a) and come to the opposite conclusion.
33. The lesser steps advanced by the appellant, which include cladding the front pillars and fascia in matching and/or complementary materials, would not remedy the breach of planning control.
34. In order to remedy the breach of planning control, it is not excessive to require the demolition of the garage, balcony/platform, railings and to permanently remove all resulting materials from the site. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Conclusion

35. For the reasons given above, and having regard to all the other matters raised, I consider that the appeal should not succeed.

Felicity Thompson

INSPECTOR