



Appeal Decision

Site visit made on 3 February 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/E0345/C/19/3233919

Land and building at 4 Zinzan Street, Reading RG1 7UQ

- 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 Mrs Mollie White against an enforcement notice issued by Reading Borough Council.
- The enforcement notice was issued on 14 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the application of exterior cladding to the Northern (side) elevation of the building on the Land using materials which are unsympathetic to the Russell Street/Castle Hill Conservation Area as shown on the photograph marked 'B' attached hereto *[attached to the notice]*.
- The requirements of the notice are (a) Remove, in its entirety, the cladding as shown in the attached "Photograph B" from the Northern (side) elevation of the building and (b) Make good the external face of the Northern elevation using materials to match the pre-existing building and (c) Remove from the Land all building and other excess materials resulting from compliance with (a) and (b) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Procedural Matters

1. The appeal form originally indicated that the appellant wished to appeal only on ground (a). In later email correspondence from the appellant, it was stated that an appeal on ground (f) was also to be brought. It was also suggested within this email that the alleged development does not require planning permission. I therefore treat this as a hidden ground (c) appeal.
2. The Council's reasons for issuing the enforcement notice referred to policies contained within the Council's Core Strategy (2008). However, the Council confirmed during the course of the appeal that these policies have been replaced. The Policies now relied upon by the Council are Policies CC7, EN1 and EN3 of the Reading Borough Local Plan (2019) (LP).

The Enforcement Notice

3. The allegation refers to the unauthorised cladding as 'using materials which are unsympathetic to the Russell Street/Castle Hill Conservation Area'. As this description is a subjective statement and does not add anything to the

description of development in the allegation, I shall correct the notice to delete this wording. I do not consider that any injustice would result as this does not alter what is alleged in practice.

The Appeal on ground (c)

4. The appeal on this ground is that what is alleged in the notice does not represent a breach of planning control. The onus is on the appellant to demonstrate this on the balance of probabilities.
5. The appeal property is an end terrace red brick building with attractive arch detailing over its windows. It is currently in use as flats. The alleged cladding appears to be of a white plastic material and is of large scale, covering the end elevation of the building. It is highly visible on approach from the north.
6. Section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act) states that development (requiring planning permission) includes, amongst other things, building operations. The works to apply the cladding would normally be undertaken by a builder and so I find that they represent operational development under s55(1).
7. S55(2) specifically excludes from the definition of development works for the maintenance, improvement or other alteration of a building which only affect the interior or do not materially affect the external appearance of the building.
8. Whilst I do not have photographic evidence of the building prior to the installation of the cladding, the Council states that this was black painted brick/render and the appellant does not dispute this. In view of the modern, reflective material used in the cladding, the scale of the cladding, and its prominent location on the end elevation of the building, I consider that it has materially altered the external appearance of the building.
9. Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GDPO) grants planning permission for the enlargement, improvement or other alteration of a 'dwellinghouse' subject to the limitations and conditions contained in Class A. However, the definition of 'dwellinghouse' in Article 2 of the GDPO does not, for the purposes of this Class A permitted development right, include flats. As such, the application of the cladding was not permitted development.
10. Thus, the unauthorised cladding represents development requiring planning permission which has not been obtained and so is a breach of planning control. The appeal on ground (c) therefore fails.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issues

11. The main issues on the planning merits are the effect of the unauthorised cladding on the character and appearance of the host property and the Russell Street/Castle Hill Conservation Area (CA); and whether there are any material considerations that justify the grant of planning permission.

Character and appearance

12. The significance of a heritage asset may be archaeological, architectural, artistic or historic according to the National Planning Policy Framework 2019 (Framework). The CA is a primarily residential area, which is notable for the quality of its architecture, particularly the imposing buildings on Castle Hill. Rows of terraced housing are less grand but their subtly attractive external detailing also makes a valuable contribution to the significance of the CA.
13. The CA is characterised by the use of traditional materials, with the predominant material being red brick, creating a cohesive character. More modern materials, such as uPVC are generally limited to windows, fascias, soffits, guttering and downpipes.
14. The unauthorised cladding covers the end elevation of the appeal property and is very large in scale. The plastic used is an obviously modern material. It has a lustre and stark contemporary appearance which is out of character with the softer and traditional brick materials which are predominant in the CA, and characteristic of the host property.
15. In view of the size of the area covered by cladding and its position on the end elevation of the property, it is a visually intrusive feature in the CA which draws the eye in the street scene on approach from the north.
16. As I note above, I do not have photographic evidence of the appeal building prior to the installation of the unauthorised cladding but it would appear that this was black painted brick/render. Even if previously in a state of disrepair, nonetheless I consider that the end elevation would have been more in keeping with the primarily brick materials in the CA.
17. The presence of other properties in a state of disrepair within the CA is not a justification for harmful development. In view of the very large area of plastic introduced by the cladding, it is not comparable to the uPVC windows, fascias, soffits, guttering and downpipes elsewhere within the CA. As planning developments fall to be considered on their merits, there is no question of a precedent being set in any event. Support received from residents does not obviate the harm identified.
18. The appellant proposes to paint the cladding black so as to make it less 'clean' looking. However, this would not overcome my concerns related to the material used itself being out of character with the predominantly brick materials characterising the host property and many other properties in the CA.
19. Thus, I find on the first main issue that the unauthorised cladding harms the character and appearance of the host property and CA. It conflicts with Policies CC7, EN1 and EN3 of the LP which require development to respond positively to local context including protecting the historic environment of the Borough; for all proposals to protect and, where possible, enhance the significance of heritage assets; and for the special interest, character and architecture of Conservation Areas to be conserved and enhanced.
20. In making this assessment, I have undertaken my statutory duty pursuant to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area. I have found that this objective is not achieved as harm would be caused.

Other material considerations

21. The appellant states that a property previously attached to the appeal building was removed in the past and that the end wall of the appeal property was therefore only of single skin construction. The purpose of the cladding was thus to prevent water ingress into the flats contained within the appeal building so as to make them habitable and prevent associated health issues. The appellant comments that, since the installation of the cladding, no further water ingress has occurred.
22. The appellant contends that all other means of resolving the water ingress issue have been exhausted: areas of the wall were rendered previously and this did not resolve the issue and 'water proofing' and re-roofing has also been undertaken. A letter submitted from a plasterer states that lime render would not resolve the water ingress issue due to the scale of the area and likely water absorption of the render. It is asserted in this letter that the unauthorised cladding is the best method of resolving this issue.
23. However, whilst I note the attempts that have already been made to resolve the water ingress issue, other than regarding lime rendering, I have no detailed information as to what other methods might be possible but have been discounted.

Balancing and Conclusion

24. The unauthorised cladding has resulted in material harm to the character and appearance of the host property and the CA. This harm to a designated heritage asset is less than substantial in the terms of paragraph 196 of the Framework. Nonetheless, it carries considerable importance and weight.
25. Evidence that the unauthorised cladding has prevented water ingress into the property, making it habitable and preventing potential resultant health issues is a public benefit of the proposal. However, I have very little evidence as to whether there might be alternative methods of achieving this health-related aim which might be more visually appropriate in the CA. As such, this factor can only be accorded moderate weight as a public benefit.
26. I acknowledge that the appellant was not aware that planning permission was needed for the cladding. Concerns in relation to the Council's handling of the matter are not for me in dealing with this appeal.
27. Consequently, I find that the unauthorised cladding materially harms the character and appearance of the host property and the CA. The harm to the significance of the CA would not be outweighed by public benefits identified. There would be conflict also with the development plan, read as a whole, and there are no material considerations that lead to a decision other than in accordance with the development plan. I conclude that planning permission should not be granted on the DPA and that the ground (a) appeal should fail.

The Appeal on Ground (f)

28. The appeal on this ground is that the steps required by the enforcement notice go beyond what is necessary.

29. Section 173 of 1990 Act states two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy any consequent injury to amenity.
30. The requirements of the notice include removal of the cladding, making good of the existing building and removal of any resultant materials. The notice thus seeks to restore the building and land to its former condition and so the purpose of the notice is to remedy the breach of planning control.
31. On the basis that the notice seeks to remedy the breach, requirements seeking to restore the land/building are not excessive to achieve this aim. This aim also would not be achieved by painting the cladding, since that would not remedy the breach. I have in any event found under ground (a) that painting the cladding would not overcome the harm found.
32. The appeal on ground (f) therefore fails.

Overall Conclusion

33. 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 DPA.

Formal Decision

34. It is directed that the enforcement notice be corrected by the deletion of the words 'using materials which are unsympathetic to the Russell Street/Castle Hill Conservation Area' from paragraph 3 of the Enforcement Notice. 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.

V Bond

INSPECTOR