The Planning Inspectorate

Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/Q3060/C/19/3242556
Land at 7 Hamilton Drive, Nottingham NG7 1DF

- 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 Glen Barrowcliffe against an enforcement notice issued by City of Nottingham Council.
- The enforcement notice was issued on 25 October 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the insertion of four uPVC windows in the front elevation of the property.
- The requirements of the notice are: Remove the uPVC windows at the front of the property and replace with timber sliding sash windows of a similar design and appearance to the original windows.
- The period for compliance with the requirements is 6 calendar 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that:

    - The enforcement notice be corrected by deleting the wording in paragraph 3 and replacing it with "Without planning permission the insertion of ten uPVC windows in the front elevation of the property."
    - The enforcement notice be varied in paragraph 5 by the deletion of the wording "and replace with timber sliding sash windows of a similar design and appearance to the original windows".

2. Subject to the correction and variation above, the appeal is dismissed, 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.

Preliminary Matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I am satisfied that I am able to reach a decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the early stages of the appeal

process. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

The Enforcement Notice

4. The breach of planning control alleged in paragraph 3 of the enforcement notice relates to the insertion of four uPVC windows in the front elevation of the property. However, because the fenestration pattern of each of those windows has a number of component parts, there are in fact ten individual window which have been replaced with uPVC on the front elevation of the appeal property. For clarity I have therefore corrected the notice by deleting the wording in paragraph 3 and replacing it with the following wording, "Without planning permission the insertion of ten uPVC window in the front elevation of the property." I am satisfied that there would be no injustice to the local planning authority or the appellant by my correcting the notice which has been done solely in the interests of precision.

Appeal on ground (a), deemed planning application

Main Issue

5. The main issue in this case is the effect on the character and appearance of the host property and The Nottingham Park Conservation Area.

Reasons

6. The appeal property is a substantial brick semi-detached villa situated within Nottingham Park Conservation Area (CA). From the details available to me, including the Council's Conservation Area Management Plan for The Park, dated August 2007 (CPM), I consider the significance of the CA as a heritage asset is mainly derived from its origin as part of TC Hine's development of the Park Estate constructed for the 5th Duke of Newcastle. The Park is a planned estate which was realised over a period of some 80-90 years. During that time the architectural styles of the dwellings responded to what was fashionable at that time. Consequently, the Estate includes development of contrasting character from Regency Classic, Victorian revivalism and Edwardian traditionalism. The appeal property forms part of a group of four pairs of semi-detached houses. They are all of a similar appearance and their high quality design, fine architectural details, craftmanship and materials contribute to the significance of this heritage asset.

7. Windows are often amongst the most prominent features and an integral part of the design of traditional buildings. In this case, the traditional timber joinery is a predominant original detail which can be found on many of the villas within the CA, including the adjoining semi No 6 Hamilton Drive and the neighbouring semi-detached pair, Nos. 8 and 9 Hamilton Drive. The traditional timber joinery makes a positive contribution to the significance of the CA.

8. In contrast, the windows that have been installed are constructed from a non-traditional material and their sections are bulkier, smoother and flatter than the timber windows they replaced. They have a more modern and less refined appearance, lacking the fine detailing, including horns, and depth of the timber frames. In addition, the bulk and incongruity of the uPVC frames is heightened where the casements have storm seals and fixed transoms. Moreover, when the windows in the ground and first floor are open, they upset the symmetry of the semi and appear as a discordant element. The overall design and materials

of the uPVC frames fail to preserve or enhance the character or appearance of the host property or CA.

9. The appellant has drawn my attention to a couple of other examples of where uPVC windows have been installed within the CA. I understand that there is no record of consent being granted by the Council for the uPVC windows at 11 Hamilton Drive. From the photograph I have seen of those windows, it is clear that they also detract from the character and appearance of the CA and therefore do not set a precedent that should be repeated. The uPVC windows which have installed at 9 Fishpond Drive, which I understand have consent from the Council, are sliding sash uPVC windows. They are not therefore directly comparable to the windows that have been installed at the appeal property which I have considered on their own merits.

10. I appreciate that despite the windows having been installed some time ago, the Council has only latterly chosen to serve an enforcement notice. However, the appellant does not allege that the windows are immune from enforcement action and therefore this is not a matter for my consideration in this appeal.

11. I conclude that the uPVC windows do not preserve or enhance the character and appearance of Nottingham Park Conservation Area and have a harmful effect on the character and appearance of the host property. They cause less than substantial harm to the significance of the CA as a heritage asset. This harm is not outweighed by any public benefit. The development is therefore contrary to policies in the National Planning Policy Framework which seek to conserve and enhance the historic environment. In addition, the development conflicts with the design and heritage aims of Policies 10 and 11 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (adopted 2014) and Policy HE1 of Nottingham City's Local Plan Part 2, Land and Planning Policies. I also find conflict with the CMP which, amongst other things, advises that any proposals to alter or extend original estate houses (pre 1918) which fail to respect the form, fabric, setting, character and appearance of the original building will be resisted.

12. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) must fail.

Appeal on ground (f)

13. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

14. Section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control and to remedy injury to visual amenity.

15. In summary, the appellant's case is that the removal of the double glazed uPVC windows would result in the loss of improved thermal efficiency which is a benefit to the occupiers. Furthermore, the Council has permitted the use of uPVC and double glazing elsewhere in the CA, and therefore the appellant

should be given the opportunity to look at alternative designs for the replacement window frames.

16. Sections 173(4)(a) and (b) of the Act limit the scope to which an enforcement notice can require works to be undertaken. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. The enforcement notice requires the windows to be removed and replaced with timber sliding sash windows of a similar design and appearance to the original windows. However, the original second floor windows were not sliding sashes, but side hung casements. The requirement to install sliding sash frames to all the windows is therefore excessive. Furthermore, the requirement to install windows of a similar design and appearance does not require them to be the same as their previous condition. Consequently, this requirement could also be excessive, as the exact details of what a similar window would look has not been specified.

17. I have found that the uPVC windows that have been installed are unacceptable. Therefore, nothing short of their complete removal would remedy the breach of planning control. In addition, it seems reasonable to me that the appellant should be given the opportunity to make an application for planning permission for an alternative window design should he desire. I therefore propose to vary the notice to remove the requirement to replace with timber sliding sash windows of a similar design and appearance to the original windows. I am satisfied that the remaining requirement to remove the uPVC windows from the front elevation of the property would remedy the breach of planning control and the injury to amenity, and therefore there would be no injustice to either the local planning authority or the appellant.

18. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and injury to amenity. The appeal on ground (f) succeeds and I shall vary the enforcement notice prior to upholding it.

Overall Conclusion

19. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR