



Appeal Decision

Site visit made on 8 September 2020 by L Wilson BA (Hons) MA MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/X3025/W/20/3248798

26-29 Market Place, Mansfield, Nottingham NG18 1JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nigel Carnall (Cullen Mill Limited) against the decision of Mansfield District Council.
 - The application Ref 2019/0688/FUL, dated 23 October 2019, was refused by notice dated 17 December 2019.
 - The development proposed was described on the application form as retrospective planning consent for the installation of 5 UPVC double glazed windows on the first floor above Shoe Zone to match the uPVC windows that were installed in 2014.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The description of development on the application form includes the word "retrospective", however this term does not amount to an act of development. On the application form the appellant confirms that the development was completed in June 2017. I noted on my site visit that the development had been carried out. From the evidence before me, it is clear that the proposal is to retain the development that has already occurred, and I have dealt with the appeal on that basis.

Main Issue

4. The effect of the windows upon the character and appearance of the host building and surrounding area, and linked to that, whether the development preserves or enhances the character or appearance of the Market Place Conservation Area (CA) and preserves the setting of nearby listed buildings.

Reasons for the Recommendation

5. The appeal site relates to a commercial building located within the CA. The building is not listed and is part of a block of commercial properties to the north eastern side of Market Place. The building is 3-storeys in height and features five bays which are segmented by columns which give the frontage a

strong vertical emphasis. The ground floor of the building is currently occupied by Shoezone and the upper floors are used as storage and office space.

6. There are numerous Grade II* and II listed buildings within the vicinity of the appeal site. These include Cavendish Monument, 1 Market Place, 6 and 7 Market Place, 8 Market Place, The Old Town Hall, Probate Office, The Dial Public House, The Market Inn, 17 and 18 Market Place, 23A Market Place, Former Moot Hall at north corner of Market Place and Westgate House. The Council has highlighted that within the vicinity of the site are also a range of non-designated heritage assets (NDHA). These include 12, 23 and 31 Market Place, Regents Chambers and 5 Leeming Street.
7. The Cavendish Monument and The Old Town Hall are particularly prominent within Market Place and are both Grade II* listed buildings. The Cavendish Monument is gothic in style with a square base and crocketed spire. The Old Town Hall is a two-storey building constructed of ashlar with a hipped, slate roof and 12-pane sash windows. The principal elevation of the building, facing towards the appeal site, has a projecting central bay featuring a clock face.
8. The Conservation Area Character Appraisal and Management Plan (CACAMP) sets out the key characteristics of the area. Market Place evolved as a significant public open space with a clearance of buildings in the early nineteenth century. It is surrounded by many interesting buildings, with architectural styles spanning from the Georgian period to Art Deco through to more modern examples. The CACAMP highlights a number of buildings close to the appeal site as buildings of special interest, including the HSBC building and Regent Chambers, which is also a NDHA, as highlighted above.
9. The CACAMP does not explicitly state that uPVC windows within Market Place have harmed the CA. Nevertheless, paragraph 7.12 and 7.13 of the CACAMP emphasizes the importance of reinforcing the historic integrity of the area and maintaining the appearance of traditional features. It states that where windows are beyond repair, and where they are constructed of timber they shall be replaced in timber to a design to match the age of the building to which they belong. The guidance suggests that the use of uPVC windows to replace timber is not acceptable as they are unable to replicate the fine mouldings evident on traditional properties but also the use of such materials would harm the visual appearance of the traditional building and the surrounding area.
10. The windows traditionally would have been four pane upper sash over one lower sash constructed from timber with thin timber glazing bars and painted timber joinery. Five timber sash windows immediately to the east of the subject windows retain that traditional design, although I understand that a planning application to replace those windows is pending. The upper floor of the building contains uPVC windows of the same design as those proposed. From the evidence before me, the appellant did not submit a planning application for the upper floor windows, however given the time that they have been in situ, they can no longer be subject to enforcement action. There is no substantive evidence before me to demonstrate that the appellant has deliberately neglected the timber windows.
11. Framework paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the

asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use.

12. UPVC windows are evident within the area, including the appeal building, nonetheless sliding timber windows are still a common feature within the CA and the block, particularly to the upper floors. The appellant has highlighted that the ground floor of the HSBC building, which as stated above is identified as an important building within the CA, contains uPVC windows. However, I observed on my site visit that the upper floors contained traditional timber sash windows. Generally, the shop fronts at ground floor level do not reflect the traditional character of the buildings and appear more modern, though the upper floors maintain the traditional character of the building and CA. Traditional sash windows contribute positively to the character of the CA.
13. I recognise that there has been an attempt to mimic the timber windows though I observed on my site visit that the replacement windows are noticeably different and of poor design. The design, detailing and operation of the windows do not reflect that of those they have replaced. The upper section of the replacement windows opens outwards compared to the original sliding opening. Thus, when the windows are open, they break the façade of the building and disrupt the strong vertical emphasis which is a key feature of the design and one which the opening mechanism of the former sash windows sought to reflect. They also have more modern appearance due to the flush profile, thickness of the horizontal glazing bar and materials used. In addition, the reflective nature of the manufactured uPVC windows does not mimic the design of the timber windows.
14. Although the existing shop frontage and uPVC windows have eroded the character and appearance of the building, the replacement windows cause further harm. I find the design of the windows to be unsympathetic and the presence of the shop frontage and uPVC windows should not dictate that further harmful development should be allowed. For these reasons, the new windows have a harmful impact upon the host building and CA because they do not resemble the original traditional timber sash windows.
15. I recognise that the uPVC windows on the upper floor are likely to be retained regardless of this decision and that would result in different window styles across the frontage, if the former timber sash windows were restored and the remaining examples are retained. However, any benefit arising from consistency of appearance would not outweigh the harm that would be caused by the loss of the remaining traditional sash windows which would further erode the character and appearance of the building and disrupt its vertical emphasis.
16. The windows do not unduly interrupt views of the listed buildings or NDHAs, nor do they have any notable impact on how these heritage assets are experienced because of the existing uPVC windows within the block, clear separation distance between the appeal site and these buildings. Thus, the

scheme has a neutral impact upon the setting of the nearby listed buildings and NDHAs given that there is little visual relationship with these buildings.

17. The harm arising is less than substantial, given uPVC windows are present within the area, nonetheless it is of considerable importance and weight. This harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
18. The appellant considers that the windows secure the building making it weatherproof and improving the energy efficiency at a cost commensurate with the benefits, retain small business tenants at a time where there is business uncertainty, and ensure the optimum viable use.
19. The appellant asserts that timber windows would need to be painted regularly, resulting in costs including scaffolding which would encroach the highway, whereas uPVC windows would require less maintenance. There is no substantive evidence to demonstrate that this is the case, well painted frames can last a relatively long period of time before needing to be repainted.
20. The benefits presented are to some extent anecdotal. Little evidence has been submitted to show that more sympathetic sash windows would not achieve the same benefits. Furthermore, the windows were replaced before the pandemic and there is no evidence to demonstrate that when they were installed there were viability issues. However, I recognise that replacing the windows now would be at a cost to the landlord and businesses in uncertain times. Nevertheless, there is no firm evidence to demonstrate that replacing the windows would compromise the viability of the businesses and as a consequence would result in the current tenants leaving or closing.
21. In any event, those are private matters and would not amount to a public benefit. Moreover, the windows were installed without planning permission and to allow an appeal on the basis that an appellant could not afford the cost of replacing the original windows would set a dangerous precedent for unauthorised work, particularly where little firm evidence has been presented. The public benefits are modest and do not justify or outweigh the harm to the heritage assets that I have identified, as required by the Framework.
22. The appellant has drawn my attention to other appeal decisions in support of their scheme¹. In these decisions the Inspectors found that uPVC windows were evident on many buildings and the replacement windows were of good design. These decisions relate to sites in different towns and cannot be directly compared to the scheme before me. This is due to the fact that timber windows are still a key element of the CA and I have found in this case that the replacement windows do not provide a high standard of design as they poorly replicate the previous timber windows. The Council has also highlighted appeal decisions to support their stance². In these decisions the Inspectors found that uPVC windows would cause harm to heritage assets and no public benefits outweighed the harm identified. In any event, each application must be considered on its own merits and I have considered the appeal on the basis of the characteristics of the building and its prominent location within the Market Square.

¹ References: 2186692 and 3216929.

² References: APP/X3025/D/18/3197666, APP/P1425/D/18/3200442 and APP/G0908/W/16/3156483.

23. For the reasons given above, although I have found that the windows do not harm the setting of the nearby listed buildings, they do harm the character and appearance of the host building and surrounding area and do not preserve or enhance the character or appearance of the CA. Consequently, the scheme conflicts with Policies BE1 and BE6 of the Mansfield District Local Plan (1998) and the Framework. These policies and the Framework collectively seek, amongst other matters, to ensure new development achieves a high standard of design and protects the historic environment.
24. The reasons for refusal also relate to Policies HE1 and RT4 of the Mansfield District Local Plan 2013 – 2033 Publication Draft September 2018. As this plan has not been formerly adopted and is subject to a number of main modifications, I have given it limited weight, in line with paragraph 48 of the Framework.

Conclusion and Recommendation

25. For the reasons given above I recommend that the appeal should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

26. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR