
Appeal Decisions

Site visit made on 17 November 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2021

Appeal A: APP/M4510/W/20/3255119

8 Higham Place, Newcastle upon Tyne NE1 8AF

- 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 Neeraj Handa of The Handa Family against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref: 2020/0167/01/DET, dated 15 January 2020, was refused by notice dated 18 May 2020.
 - The development proposed is described as: Change of use from office (B1) to 5 x studio apartments (C3) and 1 x 3 bed apartment (C3), alterations to interior and erection of single storey rear extension.
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Appeal B: APP/M4510/Y/20/3256572

8 Higham Place, Newcastle upon Tyne NE1 8AF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Neeraj Handa of The Handa Family against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref: 2020/0168/01/LBC, dated 15 January 2020, was refused by notice dated 18 May 2020.
 - The works proposed are described as: Erection of single storey extension to rear, alterations to elevations, and internal alterations including removal and provision of partition walls.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural matters

3. The joint application form for planning permission and listed building consent describes the proposal as 'Change of use from office (B1) to 5 x studio apartments (C3) and 1 x 3 bed apartment (C3), alterations to interior and erection of single storey rear extension'. The decision notice issued by the Council in respect of the application for listed building consent describes the proposed works as 'Erection of single storey extension to rear, alterations to elevations, and internal alterations including removal and provision of partition

walls'. I note that the appellant has also adopted this description on the appeal form relating to the listed building consent. As this description accurately sets out the proposed works to the listed building to facilitate the proposed change of use, I have therefore also used this description for the purposes of the listed building appeal.

4. The Newcastle upon Tyne Development and Allocations Plan (the DAP) was adopted on 24 June 2020, after the decisions on the applications were made and just before the date of the submission of the appeals. The DAP supersedes the policies from the Newcastle upon Tyne Unitary Development Plan that are cited on the Council's Decision Notices. The views of the parties were sought on any implications that the adoption of the DAP may have on their respective cases. Both parties advised of which policies from the DAP were now relevant to the appeal proposals and the appellant confirmed that he did not wish to add any further comments to those set out in his Final Comments document. I have, therefore, determined the appeal based on the relevant policies in the DAP and those in the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2015 (the CSUCP).
5. As the appeals relate to a listed building, I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

6. The main issues in these appeals are:
 - Whether the proposal would preserve a Grade II listed building, Numbers 6, 7 and 8 Higham Place [Ref: 1024848], and any of the features of special architectural or historic interest that it possesses; and
 - Whether the proposed development would provide suitable living conditions for the future occupiers, with particular regard to internal living space.

Reasons

7. The building was listed in 1976, and dates from between 1819-1820. The appeal property is at one end of the listed terrace. The appeal property comprises three storeys plus an attic and is built in brick with stone dressings under a slate roof. The dormer window to the attic is an Edwardian addition. To the right hand side of the rear elevation there is a single storey lean-to addition, the rear wall of which forms the boundary wall to the street. At the left hand side of the rear elevation a later, two storey, addition with a pitched roof forms a small closet wing to the building.
8. The terrace is identified as one of the earliest buildings by Richard Grainger, a prolific local developer who was responsible for the redevelopment of much of the centre of Newcastle in the mid-nineteenth century. The three terraced properties at 6 to 8 Higham Place are a remnant an earlier terrace now facing the impressive façade of the Laing Art Gallery but hemmed in on the other three sides by larger, more modern, developments. However, it still provides evidence of the former residential expansion of this part of the city and the historic street layout, proportions, and street scene. The rear additions to the building and the Edwardian dormer window in the front roof plane are evidence of the adaptation of the building over time to reflect the changing requirements of the occupiers and this historic layering adds to the special interest of the building.

9. Given the above, I find that the special interest of the listed building, insofar as it relates to these appeals, to be primarily associated with its historic and evidential value as an example of a dwelling built by a prominent local developer as part of the early expansion of middle-class residential housing within the city, which has subsequently been added to in order to meet changing living requirements. It illustrates the approach to urban housing design at that time, with direct access from the street and a small rear yard accessed from a back lane. It also provides evidence of the building techniques and materials utilised in such houses. The simple and restrained Georgian style of the building and the high quality brickwork, combined with the buildings corner location, also has an aesthetic value.
10. The current lawful use of the building is as an office and the ground floor was in use as such at the time of my site visit. The upper floors were not in use. Internally the building has been much altered to accommodate the present office use. On the ground floor, internal walls have either been removed or had new openings made and the rear ground floor room has also been sub-divided to create a circulation corridor. On the upper floors, historic doorways have been blocked up, internal walls pierced with new openings and partition walls erected to create smaller rooms and circulation spaces.
11. Externally, as well as the two later rear additions, the rear of the property has been modified by the replacement of some of the rear windows on the upper floors with fire escape doors and the addition of a metal escape stairway to the rear elevation to facilitate the office use. However, the basic proportions and positions of the fenestration to this elevation still remain legible.
12. The proposed ground floor extension would not be large and would have a pent roof falling away from the main rear wall of the building. This extension would, however, result in the obscuring of the sole, visible, remaining historic window opening in the middle of the ground floor rear elevation. It is suggested that this opening together with the window frame and surrounds would be retained in situ and carefully boxed in to allow reinstatement in the future. Nevertheless, the nature of the proposed extensions and internal alterations, including the formation of a shower room against the original main rear wall, co-located with the window opening, and the creation of a corridor beyond the original rear wall to link the proposed lounge and kitchen areas are such that the blocking off of this opening would have a degree of permanence.
13. As a result, the proposed rear extension would diminish the legibility of the rear elevation of the building. The two adjoining buildings both have modern, three storey, extensions to the rear which cover much of their respective rear elevations. Consequently, the rear elevation of the appeal building provides the best impression of how the rear of the terrace would have looked historically. Although the rear elevation of the appeal building has previously been altered, the two previous rear additions are illustrative of how the building has been adapted over time to meet changing requirements of the residents. The further extension of the ground floor would, in addition to the loss of the last historic ground floor window opening, blur the present distinction between the original building and the later rear additions, making the historic sequencing less clear.
14. The appellant has suggested that the proposed rear extension would not harm the listed building because it would not be widely visible due to the high rear yard walls. However, listed buildings are safeguarded for their inherent

architectural and historic interest irrespective of whether or not public views of the building can be gained. This element of the proposal would therefore be harmful to the special interest of the building.

15. It is also proposed to insert a new window into the ground floor gable end of the building in the location of a current built-in cupboard. The proposed new window would be of a similar design and proportion to existing windows in the gable elevation on the upper floors of the building and would align with them. The new window opening would also have a stone head and cill of a similar design to these existing windows. Whilst this seeks to replicate the existing windows it would, nonetheless, result in a loss of historic fabric from the building and, due to changes in ground level, the cill and base of the proposed new window opening would be located noticeably closer to the footway than the openings on the principal elevation. Consequently, this new opening would appear as an inauthentic pastiche that would not be clearly differentiated from the historic elements and would, therefore, be harmful to the special interest of the building.
16. Internally, the ground floor of the building would be adapted to form a three bedroom flat through the introduction of new partition walls within the two principal ground floor rooms. Although there have been some previous alterations to the ground floor of the building to facilitate the current office use, it is still possible to determine the historic floor plan and functions of the spaces within the building. A current glass internal porch would be removed and a wall to the hallway between the ground floor front room would be reinstated. These latter works would restore part of the historic floor plan around the stairwell and circulation space and would have a minor positive effect to which I attach limited weight.
17. However, the subdivision of the main ground floor rooms to create bedrooms, bathrooms, and circulation space within the resulting flat would compromise the ability to interpret the historic floor plan of the building and disrupt the historic proportions of the rooms. This would be exacerbated by the blocking of the historic opening in the main rear wall of the building and the creation of a link corridor between the two existing rear additions, which would further reduce the legibility of the ground floor of the building as a whole. This element of the proposal would, therefore, be harmful to the special interest of the building.
18. The proposed works to the upper floors would result in a partial restoration of the historic floor plan through the removal of later partitions and openings, and the reinstatement of historic openings, although this has to be balanced against provision of bathroom pods within the rooms. I accept that these bathroom pods may not extend to full height of room which would preserve features such as picture rails and cornices. However, no details of these pod style bathrooms, in particular the heights, have been provided and as a result the effect of their insertion on the room proportions cannot be accurately assessed. In flats 2 and 4, the wall of the bathroom pod would spring from the edge of the chimney breast. Whilst the chimney breasts have had the fireplace removed and the openings blocked, they, nonetheless, contribute to the historic proportions and the visual appearance of the rooms and inform the historic legibility of these spaces. Whilst there would be a minor positive effect on the building resulting from the partial restoration of the historic floorplan and circulation space, the insertion of the bathroom pods would, in terms of floor area, reduce the understanding of the room proportions and functions. As a result, the effect of the proposed works to these floors would be neutral overall.

19. The proposal would retain the present stairwell, staircase, and circulation core largely unaltered, and would also retain the current windows and panelling around internal window reveals, which would also have a neutral effect on the building.
20. The proposed works to the upper floors would have an overall neutral effect on the building. Nevertheless, the proposed works to the ground floor, the side elevation and the proposed rear extension would have a harmful effect on the building and, when taken as a whole, they would fail to preserve its special interest. Consequently, I give this combined harm considerable importance and weight in the planning balance of these appeals.
21. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 194 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets, or from development within their setting, and that this should have a clear and convincing justification. Given that the proposal would not result in a total loss of significance of the building and the harm would be limited to the interior and to the side and rear elevations of the building, I find the harm to be less than substantial in this instance but, nevertheless, of considerable importance and weight.
22. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of listed buildings. The appellant is of the opinion that the proposal would be beneficial because an empty listed building would be brought back into active use and a range of affordable and manageable, self-contained, living units would be delivered in a sustainable city centre location.
23. At the time of my site visit the ground floor of the building was in use as an office but the upper floors were vacant. Whilst I have noted that the appellant stated this is a temporary measure due to planning permission not being obtained for a residential use, the fact remains that the building was not wholly vacant or unused. This notwithstanding, the appeal proposal would utilise the whole of the building although as there is no evidence that would indicate that the appeal proposal is the only possible use or configuration of the building, this only weighs moderately in favour of the proposal.
24. I have noted that the appellant's submissions provide some evidence that there is a potential demand for smaller sized residential accommodation in the city centre. However, this evidence does not include any details of the current supply or availability of this type of accommodation and is provided in the context of establishing whether there is a demand for family sized accommodation. Nonetheless, this also weighs moderately in favour of the proposal.
25. In terms of the optimum viable use of the building, I accept that the size and location of the building is such that it is unlikely to be attractive as a single family house. Similarly, due to the location of the building, I accept that a restaurant or bar use may not be attractive. Whilst there is some evidence that there are other vacant office premises in the city centre, I have no compelling evidence before me that the present lawful use of the premises could not be continued. Although the appellant states that a differently configured residential

conversion of the building would not be viable, I have not been provided with any viability evidence for either the appeal proposal or any alternative proposals. In this context I cannot conclude that the appeal proposal represents the optimum viable use of the premises, or that it is preferable to the present lawful use.

26. The Framework requires that, as a minimum, great weight must be given to the conservation of designated heritage assets irrespective of whether any harm would amount to substantial harm, total loss, or less than substantial harm to its significance. It also states that any harm to the significance of a designated heritage asset requires a clear and convincing justification. Whilst some public benefits would result from the proposals, the moderate weight that can be given to these would not, either individually or together, overcome the harm that would be caused.
27. Given the above and in the absence of any significant public benefit, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed building. This would fail to satisfy the requirements of the Act, paragraph 192 of the Framework and conflict with policies CS15 and UC14 of the CSUCP and Policy DM15 of the DAP which seek, among other things, to ensure that proposals sustain, conserve and, where appropriate, enhance the significance, appearance, character and setting of heritage assets. As a result, the proposal would not be in accordance with the development plan.

Living conditions of the future occupiers

28. It is common ground that the proposal would result in dwellings that would have access to sufficient light and could be appropriately protected against external noise sources. The principal matter in dispute is whether the proposed flats would provide suitable, practical, and useable accommodation for the future occupiers in terms of internal space.
29. Policy CS11 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015 (CSUCP) expects new development to provide a good range and choice of accommodation that incorporates adequate space inside and outside the home to meet the needs of residents. The reason for refusal also refers to CSUCP Policies CS14, CS15 and UC14. Whilst these policies refer to high standards of design, positively adapting historic buildings and creating an inclusive built and natural environment to promote health and well-being, it is not clear from the Council's evidence in what ways it considers the proposal offends these policies with regard to internal floorspace requirements. From the wording of the policies themselves and the supporting text, these latter policies are tangential to the principal matter in dispute, and the primary relevant policy from the CSUSP is Policy CS11.
30. The Framework sets out that all new development is expected to be of a high standard of design that will function well and provide a high standard of amenity for existing and future users.
31. DAP Policy DM7 sets out that all new homes should meet the internal space standards set out in the Housing technical standard – nationally described space standard (the NDSS). This Policy was not adopted at the time that the application was determined but is now a current and adopted policy.

32. The supporting text to the policy sets out that the internal space standards in the NDSS will not be applied until one year after the adoption of the DAP to allow for a period of transition until 24 June 2021. The supporting text does not form part of the policy and its purpose is to set out how it is intended that the policy will be implemented. The policy is, nonetheless, an adopted policy that has been subject to examination and found to be sound. Although the Policy is not yet fully operative, some weight can be given to it in so far as it gives an indication of the minimum floor space that will be expected in all new homes. This differs from my findings in the decision in respect of Appeal Reference APP/H4505/W/18/3214418, which has been referred to by both parties, as at the time of that decision the local planning authority in question did not have an adopted policy in respect of minimum floor areas and had not adopted the NDSS.
33. There is nothing in either the NDSS or Policy DM7 that indicates that the requirements of the NDSS do not apply to conversions of existing buildings. I do, however, accept, as does the supporting text to Policy DM7, that other policy requirements in respect of heritage assets and the nature of historic buildings are factors that may impinge on how internal space can be distributed or accommodated within a building conversion.
34. The appeal proposals would sub-divide the building to create 6 flats with a three bedroom flat on the ground floor with a floor area of 70m² and 5, one room, studio, flats on the upper floors of the building ranging in size from 22m² to 34m². It is not in dispute that all of the proposed flats are below the minimum gross floor area set out in the NDSS and Policy DM7.
35. It was evident from my internal inspection of the building that Flat 6, which would be located within the roof space, would have very restricted head room especially in the bathroom and kitchen/dining areas sited beneath the steeply sloping roof plane. Although Flat 1 on the ground floor would have some small communal areas in addition to the small bedrooms, a substantial amount of the floor area of this flat would be comprised of corridors and circulation area which would result in a constrained internal space. Flats 3 and 5 would also be very restricted in terms of space due to their 22m² gross internal area.
36. Whilst I accept that the internal, furnished, layouts shown on the submitted plans are indicative, due to the overall small size of the proposed flats, the inclusion of ensuite shower rooms which require access from within the room, and the positioning of window and doors openings, the configuration of the rooms would leave little scope for alternative arrangements. This would result in cramped and contrived arrangements of furniture and fittings, most notably in Flats 1, 3, 5 and 6. Consequently, I find that the development would not provide suitable, practical, and useable accommodation for the future occupiers in terms of internal space.
37. I have noted that the appellant has suggested a planning condition could be imposed to the effect that bedrooms would be single occupancy. Such a condition would be difficult, if not impossible, to monitor or enforce effectively and, consequently, would not meet the tests for planning conditions set out in the Framework and the Planning Practice Guidance.
38. My attention has been drawn to several other examples of conversions to flats elsewhere in the city. I accept that the development at Melbourne Apartments has extremely small units of accommodation. However, I note that this was

primarily the subject of a prior approval application to convert offices to flats and at the time that it was approved the consideration of such prior approval applications did not include assessment of the floor areas. Notwithstanding that, the prior approval in question also pre-dates the publication of the NDSS.

39. The scheme at Westgate Road appears to have been both promoted and considered as purpose built student accommodation. As such it is not directly comparable with appeal scheme which, although stated as being targeted at students, is neither described as student accommodation, nor is there a mechanism proposed to restrict the use to such. Consequently, I do not consider that either of these schemes is directly comparable to the appeal proposal.
40. I also note that although Policy DM7 is not cited in the officer's report for the scheme at Sailors Bethel, from the dimensions given on the drawings, the proposal meets the NDSS floorspace requirements. I also note that this scheme is for the conversion of a listed building and that the constraints of this building did not prevent realistically sized flats being formed. I recognise that this building is of a different typology to the appeal building and that policy requirements in respect of heritage assets and the nature of historic buildings necessitate some compromises when considering new uses for listed buildings. Nonetheless, no compelling evidence has been put to me that there are not alternative, viable, schemes for the appeal building that would not result in the harm to the heritage asset that I have identified.
41. I therefore conclude that the proposed development would not provide suitable living conditions for the future occupiers, with particular regard to internal living space. It would not comply with the relevant requirements of Policy CS11 of the CSUCP and the Framework.

Other matters

42. I have had regard to the appellants comments in respect of the number of units and the viability of the scheme. However, the proposals were not accompanied by a viability assessment which would corroborate this. I accept that there is unlikely to be demand for a single family sized house in this location and note that from the appellant's evidence there is a demand for student accommodation but, as set out above, the proposal is not specifically framed as student accommodation and no mechanism is proposed that would restrict its future use to such. As a result, I can give little weight to these points and neither would justify the harm that would be caused to the listed building or the provision of substandard living accommodation for the future residents.

Conclusion

43. For the above reasons, I conclude that the appeals should be dismissed.

John Dowsett

INSPECTOR