The Planning Inspectorate

Appeal Decision

Site visit made on 6 September 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/X4725/C/20/3261620
Land at 14 Whitwood Terrace, Castleford WF10 5PU

- 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 Ms Jill Jepson against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 25 September 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a fence within the curtilage of a Listed Building.
- The requirements of the notice are: Remove the fence and attached tarpaulin and boards.
- The period for compliance with the requirements is 28 days.
- 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 as amended.

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.

Appeal on ground (a), deemed planning application

Main Issue

2. The main issue in this case is the effect on the setting of Whitwood Terrace and the character or appearance of Whitwood Common Conservation Area.

Reasons

3. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act, (the Act) requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

4. The appeal premises is a mid-terraced residential property which forms part of Whitwood Terrace, which is Grade II listed. The terrace was constructed in 1904 by C.F.A Voysey for Henry Briggs & Son. Its form is a long rectangular

range of double fronted units composed in pairs and constructed in an Arts & Crafts Style from roughcast render on brick with tiled roofs.

5. Based on the evidence before me, including the list description and my own observations on my site visit, I consider the significance of the appeal property as a heritage asset to be mainly attributable to its historic interest as workers housing built by a colliery company to house colliery foreman. It also has architectural interest derived from its architectural detailing, proportions and symmetry, which give the terrace a visually distinct rhythm. The long front gardens individually enclosed by privet hedgerows make an important contribution to the setting of Whitwood Terrace.

6. Whitwood Terrace is situated within Whitwood Terrace Conservation Area (CA). The CA contains a high proportion of buildings of architectural or historic interest, including Whitwood Terrace, the adjacent Rising Sun Public House, formerly a Miners' Institute, and the Briggs Memorial Hall. All of these buildings make a positive contribution to the character and appearance of the CA.

7. The unauthorised fence has been erected within the front garden of No 14 Whitwood Terrace and adjacent to its common boundary with No 13. It is approximately two metres in height and constructed from galvanised steel posts and mesh which are coated dark green. In addition, part of the fence has tarpaulin attached to it and some wooden boards which have also been painted green.

8. The fence by reason of its height and materials has a harsh and prison like appearance. In addition, its design does not reflect the traditional materials or architectural style of Whitwood Terrace.

9. It is clear that since the fence was erected, new privet hedging has been planted and grown to conceal most of the fence when viewed from within the garden of No 14. However, there is no mechanism available to me which would secure the retention of the hedging in perpetuity. Moreover, the fence with its boards has an unsightly appearance when viewed from the garden of No 13, as the adjacent hedging along No 13's boundary is much lower in height than the fence.

10. As set out above, the front gardens with their hedgerow planting make an important contribution to the setting of Whitwood Terrace and the CA. The fencing that has been erected and attached boarding is clearly visible from the adjoining street through the entrance gate to No 13, and it has a harmful effect on the setting of Whitfield Terrace and the character and appearance of the CA.

11. I appreciate that the fence has been erected to provide some privacy and personal/pet security for the Appellant. However, it seems to me that there would be other solutions that would be less intrusive than the high security fencing and boarding that has been erected. This consideration does not outweigh the harm I have identified to the setting of the listed building and character and appearance of the CA. I have also taken into consideration the existence of other fences which have been erected at Whitwood Terrace, although I do not know the precise circumstances of their existence. However, those other examples also cause harm to the setting of Whitwood Terrace and the CA and are not therefore a precedent that should be repeated.

Furthermore, the existence of those other means of enclosure do not justify the harm I have identified in this appeal case.

12. I conclude that the fence fails to preserve the setting of Whitwood Terrace and has a harmful effect on the character and appearance of Whitwood CA. It would cause less than substantial harm to the significance of those heritage assets. This harm is not outweighed by any public benefits. The fence is contrary to the policies in the National Planning Policy Framework (the Framework) which seek to conserve and enhance the historic environment. In addition, there would be conflict with the design and heritage aims of Policies D9 and D18 of the Wakefield Local Development Framework Development Policies Document, 2009.

Other Matters

13. I recognise the need to have due regard to the PSED[1] as required by section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations, although that is a duty to consider, rather than a duty to achieve any particular outcome.

14. In this instance there is no robust evidence before me to demonstrate that the fencing that has been erected is the only way to provide privacy and security for the appellant. Consequently, I am not persuaded that there are no other possible and less harmful ways of achieving those aims.

Conclusion

15. For the reasons set out above and taking into account all other matters raised, the fence would not comply with the development plan and no considerations merit a decision otherwise than in accordance with the development plan and the Framework. I conclude that the appeal on ground (a) fails

Appeal on ground (f)

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

17. Section 173 of the Town and Country Planning Act 1990 (as amended) 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 of the notice is to remedy the breach of planning control.

18. The Appellant has not suggested any lesser steps that could be taken and there are no planning conditions that could make this development acceptable. Therefore, there are no lesser steps that would achieve the statutory purpose behind the notice and the appeal on ground (f) fails.

Overall Conclusion

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

[1] Public Sector Equality Duty

have been made under section 177(5) of the Town and Country Planning Act, 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR