



Appeal Decisions

Site visit made on 14 December 2021

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Appeal A Ref: APP/V2004/C/21/3281458

Land at 394a & 394B, Holderness Road, Hull, HU9 3DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Generis Properties Ltd against an enforcement notice ("notice A") issued by Kingston-Upon-Hull City Council.
- The notice was issued on 16 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the installation of replacement windows at first and second floor level of the principal (Holderness Road) elevation.
- The requirements of the notice are:
EITHER – Reinstate the first floor cross windows and second floor attic cross windows to match the design, style and detailing as shown in the attached photographs marked 'Photo 2' and 'Photo 3'
- OR – Replace or amend the currently installed first floor and second floor windows to achieve 'like for like' replacements as shown in 'Photo 1' and 'Photo 2'.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Appeal B Ref: APP/V2004/C/21/3281459

Land at 394a & 394b Holderness Road, Hull, HU9 3DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Generis Properties Ltd against an enforcement notice ("notice B") issued by Kingston-Upon-Hull City Council.
- The enforcement notice was issued on 16 July 2021.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 18/00574/FULL granted on 16 March 2020.
- The development to which the permission relates is the change of use of the premises from one retail unit to two retail units on the ground floor and two flats on the first floor and second floor, and external alterations to ground floor frontage. The condition in question is No 8 which states that: "Before development commences, a scheme containing further details/scale drawings/plans of the proposed ground floor shop front, to include details of design, materials, windows, and doors, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and retained thereafter (a pre-commencement condition is necessary to ensure the design and materials to be used are satisfactory, in the interests of visual amenity, to maintain the historic interest of the heritage asset, and to comply with policies 14 and 16 of the Hull Local Plan)". The notice alleges that the condition has not been complied with in that the development as undertaken does not match that shown in approved plan reference BUS/01/18/B submitted for application reference 18/00574/FULL.
- The requirements of the notice are:
EITHER – Reinstate the ground floor frontage to how it appeared prior to the development (except for the 'Busy Bodies' sign) as shown in the attached photograph (taken from 'Google Streetview Image' marked 'Photo 1')

OR – Amend the ground floor frontage to match that shown on approved plan BUS/01/18/B or later plan BUS/01/18/C, both attached to this notice.

- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
-

Decisions

1. It is directed that the enforcement notices be corrected by:

Notices A and B:

In section 2 THE PREMISES AFFECTED the deletion of the words "within the Holderness Road East Conservation Area" and the substitution of the words "Hull HU9 3DL".

Notice A:

In section 5 WHAT YOU ARE REQUIRED TO DO, EITHER - the deletion of the words "Photo 2 and Photo 3" and the substitution of the words "Photo 1 and Photo 2".

Subject to these corrections, Appeals A and B are dismissed, enforcement notices A and B are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended in respect of appeals A and B.

Preliminary Matter

2. The appellant's statements refer to notices A and B being served on several people with no vested interest in the matters alleged. The appeal parties' views were sought on whether this amounted to appeals on ground (e). The appellant has not responded within the specified time. The Council has advised that no injustice would arise if appeals on ground (e) were accepted.
3. S172 of the 1990 Act¹ requires a copy of a notice to be served on any owner, occupier or other person having an interest in the land. The appellant claims that notices A and B were issued to the former property owners, after it had been sold to the appellant. S176(5) of the 1990 Act allows me, where a person required to be served with a copy of the notice(s) was not served, to disregard that fact if neither the appellant nor that person has been substantially prejudiced. The appellant clearly knew of notices A and B as the appeals have been made. No substantial prejudice has occurred and, had an appeal on ground (e) been made, it would have failed.

Matters concerning the notices

4. While the premises are identified on the plans attached to notices A and B, for clarity, the city and postcode shall be added to the written description of the premises affected by the notice. Furthermore, there is no need for the written description of the premises affected by the notice to refer to the conservation area.

¹ Town and Country Planning Act 1990 as amended

5. On notice A, in section 5 WHAT YOU ARE REQUIRED TO DO the 'either' step refers to "attached photographs marked 'Photo 2' and Photo 3'", whereas the photographs attached are labelled 'Photo1' and 'Photo 2'. The Council has confirmed that the attached photographs are correct. This amounts to a typographical error in section 5 of notice A and I shall correct it accordingly.
6. The appeal parties know which premises are affected by the notice and which windows were removed. My corrections will not cause injustice and I shall proceed on that basis.

Appeals A and B on ground (a) and the deemed planning permission

7. The appeal property is located within the Holderness Road East Conservation Area ("the CA"). The grounds of Holderness House, a grade II listed building, are located opposite and a curtilage listed gate lodge building is nearby. The CA and the gate lodge are designated heritage assets. The **main issue** is whether the developments preserve or enhance the character or appearance of the host property, the CA and the setting of the gate lodge.
8. The property is a mid-terraced early twentieth century 2½ storey building, which is occupied by 2 commercial units on the ground floor and 2 self-contained flats on the upper floors. These uses are repeated throughout the terrace, which is designated as a District Centre. Most shop fronts in the terrace are of modern designs and materials, incorporating roller shutters and brightly coloured fascia signs. Upper floors exhibit a variety of uPVC window designs. An exception to this is 396 Holderness Road, which retains a traditional shop front and painted timber windows to the upper floors. Opposite, the grounds of Holderness House provide a considerable length of undeveloped road frontage, with the gate lodge located at its western end. While Holderness Road is a busy thoroughfare for commuters and commercial traffic entering and leaving the city, along this stretch, it is lined with established trees.
9. The use of the property has the benefit of planning permission², which was the subject of several conditions including that the development be carried out in accordance with the submitted plans. Other conditions required the submission, and approval, of details of all external materials and a scheme showing the proposed details of the 2 new shop fronts and access arrangements for the flats. While an application seeking approval of relevant details was submitted to the Council, it was not refused until after the developments had been completed and the enforcement notice issued.
10. The approved plans do not show any changes to the upper floor windows and therefore the replacement windows do not have the benefit of planning permission. The replacement windows are installed in the original window openings and the overall proportions of the glazing are like those shown in Photos 1 and 2. That is however where the similarity ends. The pronounced profile of the former timber frames has been replaced with plain uPVC frames. The single glazing has been replaced by double glazed units and the crossed glazing bars to the transom lights have been lost. Features making a positive contribution to the building's architectural and historic interest have been removed to the detriment of the character and appearance of the host building and street scene.

² Planning permission 18/00574/FULL granted 16 March 2020

11. The approved plans show architectural features such as over-lights to doors, plinths, pilasters and corbels surrounding the shop front windows, which have been omitted from the development. The proportions of the shop windows and transom lights are also not as approved. The brickwork, to either side of the flats' entrance door, is wider than approved and meter boxes have been installed. There is no dispute that the shop fronts are an improvement on the modern shop front they replaced. However, the changes to the ground floor frontage, taken as a whole, fail to respect the character and appearance of the original built form of the host building and street scene.
12. Intervisibility between the appeal site and the gate lodge is limited by established trees along both sides of Holderness Road. The architectural and historic significance of the gate lodge is also unaffected by the developments. The developments therefore have a neutral effect on the significance of the setting of the gate lodge.
13. The harm to a heritage asset might be defined as 'substantial' or 'less than substantial'. Planning Practice Guidance advises that in general terms, substantial harm is a high test and that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. Given the small-scale nature of the developments, I would quantify the harm to the CA to be less than substantial.
14. Nonetheless, I must attach considerable importance and weight to that harm in applying the test set out in paragraph 202 of the National Planning Policy Framework. No public benefits arising from the developments are specifically claimed by the appellant. However, reference is made to the previous owner's difficulties in securing tenants for the property and the associated lack of property maintenance. The appellant claims that it is the provision of 2 smaller commercial units that has secured occupation and not the shop front design. There is nothing before me to demonstrate that a form of window type, appropriate to the age and design of the host building, could not have been utilised to meet Building Regulation constraints. Accordingly, I find that any public benefit identified would be nominal, which does not outweigh the less than substantial harm identified.
15. For the reasons given above, the development fails to preserve or enhance the character and appearance of the host property or the Holderness Road East Conservation Area. The development conflicts with policies 14 and 16 of the Hull Local Plan 2016 – 2032 (November 2017), which seek, amongst other things, to deliver high quality design that respects the character of the built form and that preserves or enhances the significance of the city's heritage assets.
16. I conclude that appeals A and B should not succeed. I shall uphold enforcement notices A and B and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Ms Madge

INSPECTOR