
Appeal Decision

Site visit made on 22 February 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

Appeal Ref: APP/M4510/C/21/3276757

Land at 133 Sandyford Road, Newcastle upon Tyne NE2 1QR

- 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 John Paul Gardner/Tynefour Ltd against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 11 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a post mounted canopy, porch, storage unit with roller shutters and boundary treatment including planters and fencing to front elevation facing Sandyford Road.
 - The requirements of the notice are: (i) Remove the post mounted canopy in its entirety including all fixtures and fittings; (ii) Remove the porch attached to the front entrance of the premises in its entirety including all fixtures and fittings; (iii) Remove the storage unit with roller shutters in its entirety including any fixtures and fittings; and (iv) Remove the fencing, planters and boundary treatment to the front elevation on Sandyford Road in its entirety including all fixtures and fittings.
 - The period for compliance with the requirements is two 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, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Preliminary Matters

2. During the course of the appeal, the Council have become aware of some further unauthorised works at the appeal site comprising the insertion of windows and shutters between the canopy and the fence enclosure, and the erection of a timber screen wall along the boundary with the neighbouring property. However, as these works are not specified in the enforcement notice, I am not able to take them into account within the remit of this appeal. I note also that the unauthorised signage at the appeal site is the subject of a separate enforcement case currently under investigation by the Council.

The appeal on ground (a) and the deemed planning application

Main Issues

3. The main issues are:

- the effect of the development on the character or appearance of the South Jesmond Conservation Area; and
- the provision of cycle parking in the area.

Reasons

Background

4. Previously, retrospective planning permission ref: 2020/0616/01/DET was obtained for the use of the main premises at the appeal site as a restaurant. A further retrospective planning application ref: 2020/2109/01/DET was submitted in December 2020 for 'The erection of post mounted canopy to front incorporating associated boundary treatment, planters, storage unit with roller shutters and external tables and seating', and was refused on 15 March 2021.

The conservation area

5. According to the Conservation Area Character Statement, the South Jesmond Conservation Area (CA) 'essentially comprises late Victorian residential development within a mature landscape setting. The large gardens surrounding properties in the north of the conservation area and the substantial open spaces, including two cemeteries and a cricket ground, make the landscaped environment of particular significance'.
6. In contrast to the more spacious parts of the CA, the immediate area of the appeal site is characterised by more densely developed terraces. The appeal site sits between the southern ends of Portland Terrace and Osbourne Terrace. The end of terrace properties, 11 Osborne Terrace and 135 Sandyford Road, are attractive red brick Victorian style buildings which skilfully turn the corners with decorative elevations facing both the adjacent roads.
7. The adjacent building, 131 Sandyford Road, is a later Victorian building that is now a pub. It has a regular three bay, two storey frontage with bay windows on the ground floor and decorative window surrounds on the first floor. The front and side elevations are painted.
8. The appeal site itself is a converted garage which previously operated as a vehicle repair shop until around 2015. It is a single storey structure with a frontage facing Sandyford Road and a longer elevation onto the back lane between the terraces. The pitched roof is finished at the front with a sizeable brick pediment finishing at either corner with brick upstand features.
9. The building is estimated to date from the early to mid-20th century, having replaced an earlier Victorian property. On my site visit, I saw that it is typical of the brick-built shed-style garages of that era. The pedimented front in particular is reminiscent of the frequently more ornamental examples of this distinctive building type.
10. In addition to its physical features, the garage has illustrative and evidential value of the coming of the motor car and its growing influence on the infrastructure of towns and cities. In my experience, it is not uncommon to find early 20th century garages of this kind in urban locations, sitting cheek by jowl with residences and commercial land uses. It therefore adds a further layer to the history of the area.

11. Whilst it is clear that the building had undergone some unsympathetic alterations in recent years, the attributes I have identified contribute positively to the group of historic buildings in the vicinity of the appeal site, and to the significance of the wider CA.

The effect of the developments

12. The enforcement notice attacks the erection of a post mounted canopy, a porch, a storage unit with roller shutters and the boundary treatment including planters and fencing.
13. The appellant argues that the principle of an outdoor seating area was established within permission ref: 2017/1734/01/DET. This permission related to the neighbouring property at No 131. It appears from the documents that the front wall and gate enclosing the outside area at No 131 already existed, and so that situation is not directly comparable to the appeal site, which appears to have had no existing enclosure at the front.
14. Furthermore, I note that a timber knee rail along the front boundary at the appeal site was approved under permission ref: 2020/0616/01/DET. Whilst this would have demarcated the land in front of the former garage, it would have been wholly different in character to the unauthorised developments in question.
15. The post mounted canopy projects from the main front elevation of the garage building and covers the outdoor seating area. In terms of its visual impact, the appellant argues that the canopy is slightly taller than the enclosure at No 131. However, there is little evidence that the trellis at No 131 is authorised, and anyway, I saw that it detracts from the appearance of that building and the CA. Therefore, the fact that the canopy roof is not much higher than this structure does not go in favour of the appeal scheme.
16. In terms of size, the canopy spans the whole width of the frontage and projects by several metres. It is notably out of scale with the modest proportions of the garage, resulting in a structure that adds excessive bulk at the front of the building. On that basis, I am unable to agree that the canopy blends in against the building. The fact that the canopy is painted black does not mitigate its visual impact in the streetscape. Furthermore, its shallow pitch is at odds with the pitched roof profiles that are prevalent in the area, which draws greater attention to it.
17. Underneath the canopy is a porch enclosing the main entrance door to the restaurant. Whilst the materials and design of the porch relate to the aesthetic of the canopy and enclosures, it does not relate well to the character of the garage building or the characteristic built forms in the surrounding area.
18. To the side of the outdoor area and adjacent to the boundary with No 131 is a storage unit at approximately 1.2m in height. It has two roller shutters that allow the stores to be locked. The appellant argues that these roller shutters are in keeping with the existing roller shutters along the side elevation of the property. However, there is little evidence that the placing of roller shuttered enclosures of this kind in front of the principal elevation of a building is a typical form within the CA.
19. At the front and side, the seating area is enclosed by a boundary comprising upright timber sleepers interspersed with stone filled gabions which previously

had planters on top. Due to its design and use of these materials, the boundary has a weighty, solid appearance that further amplifies the visual bulk of the canopy structure. It departs still further from the simple utilitarian character of the garage building.

20. In support of his case, the appellant compares the unauthorised development to the enclosure at the front of No 131 which comprises grey and white timber materials and follows the same line as the enclosure at the appeal site. However, even if the principle of an outdoor seating area in this location could be accepted, it is clear that the overall bulk, scale and design of the appeal scheme has significantly more impact in the street scene than the adjacent seating area. The appellant argues that the unauthorised development uses better quality materials. However, the quality or otherwise of the materials is not in itself a determinative issue. Rather, the test is whether the overall design of the scheme preserves or enhances the CA.
21. Taken as a whole, the appeal scheme departs significantly from the established historic character of the area. It introduces built forms whose materials and aesthetic have few if any visual cues in the vicinity. It draws the eye unduly as a result of its lack of integration within the design of the existing building and its visual contrast with the traditional appearance of the garage and the adjacent historic buildings is stark. In departing so radically from the prevailing character of the appeal site and the neighbouring properties, the scheme appears as an incongruous addition that fails to harmonise with the character and appearance of the CA.
22. I agree that the development could be described as unique in its design. A deliberate contrast to the existing building style can often be a successful design approach. However, in view of my findings above, I am not able to agree that the scheme makes a positive contribution to the significance of the CA. The appellant argues that, when viewed from the west, significant planting along the side boundary of residential properties fronting Osborne Terrace also succeeds in providing some screening for the development. However, planting cannot be relied upon, and in any case, it does not mitigate a scheme that is fundamentally unacceptable in terms of its visual impact.
23. I have taken into account the proposed Option B (ref: SD-30.02B), which proposes a half permanent, half retractable canopy. However, this proposal would add a further element of visual complexity and clutter to the scheme, and would not address the matters relating to the remaining elements that I have found unacceptable.
24. Drawing these factors together, I conclude that the unauthorised development harms the significance of the CA. Accordingly, conflict arises with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF).
25. In addition, the scheme fails to comply with Policy DM15 of the Newcastle upon Tyne Development and Allocations Plan 2015-2030 (DAP), which requires the conservation of heritage assets, DAP Policy DM20, which seeks high quality design, and DAP Policy DM23, which amongst other things, seeks to protect the distinctive character of existing buildings. Further conflict arises with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle

upon Tyne, insofar as it requires development to safeguard the historic environment.

26. Although serious, the harm to the heritage asset in this case would be less than substantial, within the meaning of the term in paragraph 199 of the NPPF. Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 202 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
27. The appellant contends the development supports the use of the property as a thriving restaurant which reduces the number of vacant plots within the area. He considers the restaurant to be more sympathetic to the character of the area than the previous lawful use as a car garage in a sensitive residential area. However, there is little evidence that the garage use gave rise to any problems in terms of the living conditions of residents. Furthermore, there is no evidence that any social or economic benefits of the outdoor area to the restaurant or the surrounding area are dependent on this specific design.
28. I have taken into account the previous vacant condition of the garage building, and the fact that there is other vacant land in the area, but these circumstances do not justify the harm to the CA.
29. I therefore find that insufficient public benefits have been identified from this specific scheme that would outweigh the harm I have found. The scheme therefore further conflicts with the NPPF, which directs, at paragraph 199, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Cycle provision

30. As part of the permitted restaurant scheme, provision was made for cycle parking on the pavement area at the front of the site. By building out over the forecourt of the premises, the unauthorised development has removed the possibility of implementing the proposed cycle parking.
31. CS Policy CS13 seeks to deliver an integrated transport network to support sustainable development and economic growth. As part of this strategy, development should minimise car trips and provide cycle parking and supporting infrastructure. Similarly, DAP Policy DM12 requires development to provide safe, secure and useable vehicle and cycle parking that satisfies its operational requirements and is generally in accordance with the given parking levels.
32. The appeal site is well served by bus routes and the nearby Jesmond Metro Station. It is close to residential areas and student accommodation, on which basis the appellant assumes that the majority of customers walk to the site. I note that no supporting evidence is provided to corroborate this assumption. Car parking for non-residents in the immediate area is significantly restricted, which undoubtedly discourages people from coming by car.
33. It is evident that the site is in a location easily accessible by more sustainable means of travel, and the development is unlikely to generate significant amounts of trips by private car. However, there is nothing in the wording of

the policies to indicate that such locations are excluded from the requirement to provide cycle parking.

34. As stated in paragraph 11.12 of the CS, the aim of the Plan is to create sustainable communities, centres and new developments where priority is given to sustainable modes of transport. Within the hierarchy of sustainable modes of transport, cycling is second after walking. The removal of the cycle parking facilities therefore conflicts with the Council's aim to promote sustainable transport choices. In the absence of any compelling reason to set aside the development plan requirements regarding cycle parking, I conclude that the appeal scheme unacceptably fails to comply with CS Policy CS13 and DAP Policy DM12.
35. Although the appellant makes reference to highway safety, the Council have not cited this issue as a reason for the issue of the enforcement notice, and so paragraph 109 of the NPPF is not relevant in this instance.
36. I note the appellant's suggestion that this matter could be resolved with a planning condition, on the grounds that there is scope to provide cycle parking at the rear of the building adjacent to the stairs, or alternatively, within the brick building at the back. However, no such scheme has been drawn up for consideration, and in any event, it could not reasonably be regarded as part of the scheme that constitutes the breach of planning control.

Conclusion

37. For the reasons above, the appeal is dismissed, deemed planning permission is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR