



Appeal Decision

Site visit made on 18 May 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal Ref: APP/M2840/C/21/3283460

Land situated at Land Adjacent to Prince of Wales, Jobs Yard, Kettering, Northamptonshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Michigan Construction Ltd against an enforcement notice issued by North Northamptonshire Council.
 - The notice was issued on 6 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a 5th storey following the grant of planning permission KET/2019/0908, which was for four-storeys only.
 - The requirements of the notice are to: (1) Permanently remove the 5th storey to comply with KET/2019/0908.
 - The period for compliance with the requirement is: 2 months from the date this Notice takes effect.
 - 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 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.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of 'following the grant of planning permission KET/2019/0908, which was for four-storeys only' from section 3 of the notice and the deletion of 'to comply with KET/2019/0908' from section 5 of the notice.
2. Subject to these corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The Council adopted its Site Specific Part 2 Local Plan in December 2021. The appellant has been given the opportunity to comment on the newly adopted local plan through the appeal. The Council advises it considers the policies are not relevant and I have no reason to disagree with their conclusion in this regard.
4. The appellant states the additional floor is within the scope of Permitted Development. Although this is a matter which would ordinarily be dealt with under ground (c), the appellant has not explained on what basis the development would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). While the GPDO permits the addition of additional storeys on flats, development is not permitted, amongst other things, if the building was constructed after 5 March 2018. The development would therefore not be permitted by the GPDO.

Matters concerning the notice

5. The enforcement notice states there has been a breach of planning control under Section 171A(1)(A) of the Act, which is carrying out development without the required planning permission and alleges the construction of a 5th storey following the grant of planning permission KET/2019/0908, which was for four storeys only. The reasons for issuing the notice state that it appears to the Council that the breach of planning control has occurred within the last four years.
6. From the wording of the breach and the reasons for issuing the notice, it is clear that the notice is attacking the operational development, not a breach of condition. Although planning permission has been granted for a four-storey building, I consider it is unnecessary to include this in the allegation and shall delete the words 'following the grant of planning permission KET/2019/0908, which was for four-storeys only'. I consider such a correction can be made without causing injustice to either party, since the deleted words simply describe the planning history of the site and not an act of development.
7. Requirement (1) states 'Permanently remove the 5th storey to comply with KET/2019/0908'. Since the breach only relates to the 5th storey, it is unnecessary to refer to planning permission KET/2019/0908 in the requirements. The notice cannot require compliance with the planning permission and whilst the wording of the requirement, in my view, does not require such compliance, for the avoidance of doubt, I shall delete the words 'to comply with KET/2019/0908'. Since the requirement to remove the 5th storey would remedy the breach, I consider I can make the correction without causing injustice to either party.

Main Issues

8. The main issues of the appeal are the effect of the appeal scheme on:
 - The character and appearance of the area and its effect on the setting of the adjacent conservation area; and
 - The living conditions of neighbouring occupants, having regard to outlook and privacy.

Reasons

Character and appearance

9. The appeal site is located along Jobs Yard, a narrow road with restricted access to Meeting Lane beyond, which, despite the presence of a relatively modern four-storey building, has the intimate character and appearance of a subservient street. The area is generally characterised by a mix of retail, commercial and residential uses and while scale varies, buildings are typically two to three storeys high. The appeal site is surrounded by, but outside of, the Kettering Town Conservation Area (KTCA) and is adjacent to the Prince of Wales public house, a traditional two storey building.
10. The building, including the 5th storey, which is the subject of this appeal, was unfinished at the time of my site visit. Section 177(1) only allows for a grant of planning permission for the whole or part of the matters. Planning permission cannot be granted for more than the partially constructed structure. Another

- grant of planning permission would be required to complete the appeal scheme.
11. Although the appellant has submitted plans of a 5-storey building, these do not appear entirely consistent with what I saw has been constructed on site. The openings differed and there were breeze block structures on the roof. The nature of the finished development is therefore not known and so it would not be possible to secure remaining works to the 5th storey by planning condition.
 12. Paragraph 200 of the National Planning Policy Framework ('the Framework')(2021) 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. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced.
 13. Although the appeal site is located outside the KTCA, it can be seen from different locations within it, in particular from Dalkeith Place and Silver Street. Given its position in relation to the KTCA, in my view, the appeal site forms part of the setting of the KTCA. From the evidence before me and my observations on site, the significance of the KTCA is derived from the fine architectural detailing used on various buildings throughout the KTCA, the use of traditional materials and the layout and scale of development.
 14. The 5th storey is a substantial structure which, despite its position along Jobs Yard and the stepping back from the highway, is a prominent feature when viewed from Dalkeith Place and Silver Street. While the area has a varied character with some large-scale flatted developments, including Job's Court, the 5th storey extends well above Chancery House, which is located on the corner of Dalkeith Place. The flat roof form and use of white render contrasts significantly with the traditional pitched roof form and materials used in construction of Chancery House and appears an incongruous feature, which is harmful to the KTCA.
 15. The appellant suggests the five-storey building is similar in overall height and width to the approved building. I do not agree. While the approved scheme would also have a flat roof, the approved elevations show that it would not extend above the eaves of Chancery House. Consequently, the approved scheme would not appear such a dominant feature when viewed from Dalkeith Place and so would not be harmful to the KTCA. Given its prominence, the 5th storey, by contrast, undermines the intimate character and appearance of this subservient street.
 16. Although I saw that there are other 3 and 4 storey buildings in the vicinity of the site, including Jobs Court, they are not, in my view, comparable to the appeal scheme before me. Jobs Court, for example, is separated from Chancery House by a road and, given its position away from other buildings, does not dominate or detract from buildings within the KTCA. Moreover, the appeal scheme is for a 5th storey.
 17. Thus, for the reasons given above, the appeal scheme appears an incongruous feature which is harmful to the character and appearance of the area and the KTCA, contrary to policy 2 of the North Northamptonshire Joint Core Strategy (NNJCS) 2011-2031 (adopted 2016), which seeks to ensure that proposals conserve and, where possible, enhance the heritage significance and setting of

heritage assets and policy 8(d) which seeks to create a distinctive local character by responding to the site's immediate and wider context. I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 202 of the Framework.

Living conditions

18. The appeal building is located opposite Jobs Court, which comprises residential flats. Planning permission has previously been granted for a four-storey building with flats on each floor, with windows facing towards Jobs Court. Although the 5th storey has increased the height of the overall building, given the setback of the 5th storey from Jobs Court, which is itself set back at fourth floor level, I consider it unlikely that occupants of Jobs Court would find it harmfully overbearing.
19. There would be a degree of mutual overlooking as a result of the consented scheme. Furthermore, since the deemed planning permission is for an unfinished part of a building, were I to grant planning permission for the 5th storey, as constructed at the time of the enforcement notice, it is highly unlikely to be occupied and so there would be no harm arising from overlooking.
20. Consequently, I consider there would be no significant harm to living conditions arising from the appeal scheme and no conflict with policy 8(e)(i) of the NNJCS, which seeks to protect the amenities of neighbouring properties, or the Framework in this regard.

Other Matters

21. The appellant states that no complaints have been received in respect of the development. While this may be true, it is a neutral factor in my consideration of the appeal.

Conclusion

22. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 202 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
23. While the Framework seeks to encourage the use of brownfield land, as set out above, the deemed planning application is for an unfinished 5th storey. I consider granting planning permission for an unfinished structure is highly unlikely to improve the viability of the overall site and could actually reduce the overall value of the scheme. Furthermore, the structure would be uninhabitable and so there would be no increase in living accommodation as a result of the appeal scheme.
24. The appellant suggests benefits, including the provision of ground floor flats designed for disabled assisted living and the provision of secure cycle parking, appear related to the previous appeal. However, such measures would be secured as part of the approved scheme and so do not weigh in support of the appeal scheme. Although I have found there would be no significant harm to

living conditions arising from the appeal scheme, this is a neutral factor in my consideration of the appeal.

25. In my view, there are no benefits which would outweigh the harm to the character and appearance of the area and the harm to the KTCA, the conservation of which I attribute great weight to.
26. Thus, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR