



Appeal Decision

Site visit made on 23 August 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/Y3615/C/22/3295054

Emmaus Road Church, The Founders Studio, Millbrook, Guildford GU1 3UT

- 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 Alan Buckland on behalf of Emmaus Road Church against an enforcement notice issued by Guildford Borough Council.
 - The enforcement notice was issued on 15 February 2022.
 - The breach of planning control as alleged in the notice is Without planning permission operational development comprising the installation of air-conditioning units with associated pipework, ducting and cabinet.
 - The requirements of the notice are:
 - i) Remove the unauthorised air-conditioning units and associated pipework, ducting and cabinet
 - ii) Make good any damage to the building using materials to match existing.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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 be varied by:

- Deletion of steps i) and ii) under section 5 - What you are required to do, and substituted therefor by the following steps:
 - 1) Remove the unauthorised air-conditioning units and associated pipework, ducting and cabinet; and
 - 2) Make good any damage to the building using materials to match existing.
- or
- 3) Carry out the development in accordance with the Planning Permission reference: 20/P/00224 approved on 17 April 2020, so as to comply with the terms of this permission, including its conditions and limitations; and
- 4) Remove all constituent materials from the land resulting from the compliance with steps 1, 2 or 3 above.
- Varied by deleting the words "2 months" within section 6 (Time for Compliance) and its replacement with "6 months".

2. Subject to the variations, the appeal is dismissed, and 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.

Procedural matters and background

3. Planning permission was granted for the installation of air conditioning units to the rear flat roof, replacement roof and roof lights together with minor changes to the elevation¹. The appellant accepts that works were undertaken relating to the installation of fresh air supply and ducting on the roof, that was not built in accordance with this approval, which resulted in the serving of the enforcement notice. I shall therefore deal with the unauthorised works, as alleged within the notice, below.

Ground (a) appeal and the Deemed Planning Application

Main Issue

4. The main issue is the effect of the unauthorised development on the character or appearance of the Town Centre Conservation Area (CA) and on the setting of nearby listed buildings.

Reasons

Town Centre Conservation Area (CA) and on the setting of nearby listed buildings

5. The appeal property is a two storey brick built building, with a pitched roof at the front and a part flat roof at the rear and lies within the historic core of Guildford and the CA. The property also lies directly opposite the Millmead and Portsmouth Road Conservation Area (MPRCA).
6. The building is used as a meeting hall/place of worship/community centre². A programme of refurbishment works has been undertaken at the site, which includes the installation of new air conditioning plant on the roof of the building (the subject of this appeal) to improve energy efficiency and improve air flow. The air conditioning plant equipment installed on the roof is visible from public vantage points on Rosemary Alley, a stepped footway, which connects Millbrook with Quarry Street.
7. With regards to the effect on designated heritage assets, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. 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.
8. The National Planning Policy Framework, 2021 (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight

¹ Council ref: 20/P/00224

² Taken from the appellant's statement of case.

should be). Paragraph 200 of the Framework 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 in terms of the surroundings in which it is experienced.

9. The significance of the CA largely derives from its rich architectural and historic interest. The CA covers the historic town centre, encompassing Guildford Castle, the High Street, a residential suburb, and a very mixed commercial, residential, and civic area which stretches up to London Road Station. The CA includes many listed buildings, including a large number which are listed grade I or II*. Topography is a key characteristic of the CA and was instrumental in shaping how the settlement developed with the southern and eastern parts of the CA being generally higher than the west and north. In addition to the age and variety of the building, the CA contains a variety of materials and architectural styles developed informally over the centuries which help to give the area its distinctive character. Also of significance is streetscape and connecting historic pathways including Mill Lane and Rosemary Alley.
10. Adjacent to the appeal property are the Grade I listed St Mary's Church, and opposite are the Grade II Listed Town Mill and the Yvonne Arnaud Theatre. To the rear of the site Nos 5 Quarry Street is Grade II listed. Nos 6 and 8 and 8A Quarry Street are both Grade II* listed. The significance of these nearby buildings in heritage terms mainly stems from their architectural and historic interest.
11. St Mary's Church, made from Flint and Chalk rubble with clunch dressings and plain tiled roofs, is one of the oldest buildings in the CA and the only church in the CA with surviving Saxon Fabric (the Pre-conquest tower, circa 1040). The listing description explains that the church tower is the most important structural pre-conquest work remaining in Surrey. As Guildford was a popular Royal abode in the C12 and C13 the church was used for Royal worship and Thomas Becket may have celebrated Mass here. The church is set within an urban context with a reasonable sized church yard.
12. Nos 5, 6, 8 and 8A Quarry Street are the closest listed buildings to the appeal site and are all two storeys with an attic built on a slope, where the road level is on the first floor, with the ground floor below overlooking the appeal site at the rear.
13. No 5 Quarry Street is a late C17/early C18 front on C16/early C17 core with colour washed brick cladding on the front with tile hanging on right hand return front, cement render on rear extension. The building comprises plain tiled roof with a half-hipped to front and a gabled wing to rear. The front elevation contains two hipped roof casement dormers to front over bold modillioned eaves cornice.
14. No 6 Quarry Street is a timber framed late C17/early C18 front on C16 house to rear. The walls comprise colour washed render with pargetted panels on the first floor, tile hanging on left hand return front and across first floor of rear wing, with cement render below. The building has a plain tiled roof hipped over rear and half-hipped to right end on front, and two hipped-roof casement dormers to front, over a bold modillion eaves cornice.

15. No 8 and 8A Quarry Street, is a Late C15/early C16 with late C17/ early C18 front and parallel early C18 range to rear. The materials comprise white-washed render infilling to exposed frame on right hand return front and to rear; colour washed rendered cladding on front, and a plain tiled roofs with tile hung gable end to right, and two segmentally headed 12-pane glazing-bar sash dormer windows on front elevation over a bold modillioned eaves cornice.
16. The Town Mill (Mill Studio), a former Watermill dating from the circa 1771, now scenery workshops and a theatre. The building over three main floors with two attic floors in the gable ends, is made brown brick to east, red brick to west with plain tiled half-hipped roof and a tile hung gable end to west, some in a diamond pattern. The Mill Studio is a prominent building in the MPRCA, visible from the River Wey.
17. The listing description explains that The Yvonne Arnaud Theatre, designed and built in 1963-5, is Grade II listed for a number of reasons, namely its design interest, its interesting plan form; materials, auditorium, and historic interest. The building has a distinctive, sculptural form with an exposed concrete structure and auditorium and a dramatic curved façade of glazed outer walls set behind by a fin-like 'brise-soleil', and an inventive plan for its date comprising a large circular auditorium with an apron stage, set within a horseshoe footprint, encircled by foyers overlooking the riverside terrace. The building is the epitome of the new generation of post-war provincial theatres.
18. The earlier permission for air conditioning units were relatively modest and not prominent from any public vantage points or neighbouring properties. In contrast, the air-conditioning units with associated ducting and equipment which have been installed on the roof is significantly larger than the previous approval and cover a large proportion of the flat roof of the appeal building. This has resulted in additional visual clutter and a discordant feature at roof level, which is visible from Rosemary Alley, and from the rear windows of Nos 6, and 8 and 8A Quarry Street (all Grade II* listed). Therefore, the development is intrusive and fails to preserve or enhance the character or appearance of the CA, and also harms the setting of the Grade II* listed buildings at Nos 6, 8 and 8A Quarry Street.
19. I have considered the effect of the development on the MPRCA opposite the appeal site, and the settings of other nearby listed buildings at St Mary's Church (Grade I), 5 Quarry Street (Grade II), the Town Mill (Grade II) and the Yvonne Arnaud Theatre (Grade II). However, in light of the separation distances from these heritage assets and the location of the development to the rear of the site, I find no harm in these respects.
20. In the terms of the Framework and paragraph 202, the harm that the development causes to the significance of the designated heritage asset, that is the CA and Nos 6, 8 and 8A Quarry Street, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development.
21. The plant equipment is required to provide fresh air supply to enable the building to function and support the community use of the building by the church which is a public benefit for Guilford and the surrounding area. Indeed, the community outreach programmes carried out at the site includes Christians Against Poverty and the Lighthouse Project which assists people of the community. I acknowledge that the appeal development has been carried out

in connection with the restoration works which have been carried at the appeal site which include the replacement the windows and brick cleaning. I also note that the appellant states that the building cannot rely on natural ventilation because the existing windows and rooflights cannot be opened. However, I have seen no substantive evidence to demonstrate that there are no alternative means of providing fresh air supply to the building in a satisfactory manner that would be less harmful to the designated heritage assets.

22. I am therefore not persuaded that the public benefits of the development constitute clear and convincing justification to outweigh the harm I have identified to the character and appearance of the CA, and setting of the nearby listed buildings identified above, to which I must attach considerable importance and weight. The development therefore conflicts with the relevant policies of the Framework.
23. The appellant states that screening could be erected along Rosemary Alley to hide the plant. A pre-application submission document has been submitted to the Council which states that screening could comprise the building up of the existing wall and installing coping stones facing Rosemary Alley to mitigate views of the development from the CA. The appellant also states that timber lattice could be installed horizontally to screen the equipment from the office windows above, and preliminary drawings showing these proposed works have been included with this pre-application document.
24. The allegation forms the basis of the deemed planning application, and this does not include the screening works now proposed. Furthermore, given the size and scale of the plant equipment installed on the roof, the size of screening required to mitigate the harm would modify the development substantially from that set out in the deemed planning application, with regard to the character and appearance of the CA and its effect on the setting of the adjacent listed buildings mentioned above. As such, a condition requiring those additional details and samples of the screening to be submitted to the Council for approval would not be reasonable in this case. Indeed, it is open to the appellant to apply for planning permission for these revised works if they so wish.
25. In reaching my findings above I have taken into account the urban nature of the area, and that planning permission has been previously granted for a three storey building at the appeal site. However, the scheme before me is materially different to a three storey building and so that previous permission does lend support for the appeal development.
26. I therefore conclude that the development does not preserve the settings of the Grade II* listed buildings at Nos 6 and 8 and 8A Quarry Street. The development also fails to preserve or enhance the character or appearance of the CA as a whole. The development also results in harm to the significance of these listed buildings and the CA. Therefore, the development is contrary to saved policies G1, G5 and HE7 of the Guildford Borough Local Plan (2003), and Policies D1 and D3 of the Guildford Borough Local Plan: Strategy and Sites 2015 – 2034 (2019). Amongst other things, these require that new development: respects.... roof treatment, aspect and relationship with other buildings; should preserve or enhance the character or appearance of the conservation area; will be required to achieve high quality design that responds to distinctive local character of the area in which it is set; and that

development of the highest design quality that will sustain and, where appropriate, enhance the special interest, character and significance of the borough's heritage assets and their settings and make a positive contribution to local character and distinctiveness will be supported.

27. The development also conflicts with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it does not preserve the setting of the nearby listed buildings as required by Section 66(1) of the Act or preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. Instead, the development is harmful to these designated heritage assets. This carries considerable weight and importance to my decision.

Conclusion on Ground (a) and the Deemed Planning Application

28. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

The appeal on Ground (f)

29. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
30. The enforcement notice requires the removal of the unauthorised works, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
31. The appellant states that the breach could be remedied by screening the equipment to remove any harm to the significance of the heritage assets. However, I have already dealt with this matter under the ground (a) appeal above and found that the screening proposed does not form "part of" the matters alleged in the notice. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
32. The appellant also states that planning permission was approved for air conditioning equipment in planning application ref: 20/P/00224 on 17 April 2020, and therefore, the requirements of the notice should include an option which allows for the implementation of this scheme.
33. Case law has established that enforcement should be remedial rather than punitive. In light of this earlier planning permission, the breach of planning control could be addressed through an alternative option to require the development to be carried out in accordance with the terms and conditions of this earlier permission. This would achieve the purpose of the notice which is to remedy the breach.
34. No persuasive argument has been made by the Council to explain why it would not be possible to implement this recently approved scheme. It is only stated that the approved scheme does not fully meet the appellants needs. Furthermore, the Council have not argued that this consent is not extant.

35. I will therefore add an alternative requirement to make the development comply with the plans approved under the earlier planning permission, which would remedy the breach of planning control, in line with s173(4)(a) of the 1990 Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
36. As such, the appeal on ground (f) succeeds to that extent only, and I will vary the notice to insert this alternative requirement.

The appeal on Ground (g)

37. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 2 months to 7 months in order to consider screening options for the equipment, as well as provide sufficient time to apply for pre-application, and submit a further planning application for the revised scheme and then carryout the necessary works.
38. In my view 6 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 2 to 6 months for compliance with the notice.
39. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

40. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR