



Appeal Decision

Site visit made on 22 June 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/W2465/C/22/3300478

Land at 203 Narborough Road, Leicester LE3 0PE

- 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 Act).
- The appeal is made by Mr Kian Parmar of ASKKD Limited against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is failure to comply with condition imposed on a planning permission ref 20141807 granted on 5 March 2015.
- The development to which the permission relates is:
Change of use of first floor and two storey extension to public house (class A4) and conversion and two storey extension to outbuilding at rear to create enlarged ground floor to public house, 4 studio flats and 6 one bed roomed flats (class C3) (amended plans) (S106 agreement).
- The condition in question is no 4 which states that:
Before the development is begun, joinery details & finishes for all new windows & doors, cills & lintel details, stringcourse & parapet coping details shall be submitted to and approved by the City Council as local planning authority. Development shall be carried out in accordance with the approved details.
- The notice alleges that the condition has not been complied with in that UPVC windows had been installed into the front, side and rear elevations of the extended part of the building and to the front of the coach house building. In addition, application 20171277 to discharge condition 4 and retain the windows was refused.
- The requirements of the notice are as set out in the Appendix to this Decision.
- The period for compliance with the requirements is 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Act. 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.

Decision

1. The enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Mr Kian Parmar of ASKKD Limited against Leicester City Council. This application is the subject of a separate Decision.

The Enforcement Notice

3. The appeal site comprises of a former public house, a coach house and associated parking area. The site is locally listed as a non-designated heritage asset as it is a good example of an early 20th century dwellinghouse with ancillary coach house.

4. Planning permission¹ was granted in March 2015 for the change of use of first floor and two storey extension to public house (Class A4) and conversion and two storey extension to outbuilding at rear to create enlarged ground floor to public house, 4 studio flats and 6 one bedroomed flats (Class C3). A discharge of conditions application² was approved in July 2015 which discharged conditions 3, 18 and 19 of permission 20141807. A further discharge of condition application³ to discharge condition 4 of permission 20141807 was refused in August 2017 which was also dismissed at appeal⁴.
5. The breach of condition alleged in the enforcement notice is that condition 4 of permission 20141807 which relates to joinery details and finishes for all new windows and doors, cill and lintel details, stringcourse and parapet coping details that should be submitted for approval, has not been discharged. The Council's concerns are that by reason of design and material, the installed windows are harmful to the character and appearance of the building.
6. At my site visit however, I saw significant differences between the approved plans of permission 20141807 and what has actually been constructed at the site. These differences included window and door sizes and position with some windows being omitted and the inclusion of other windows elsewhere in the building, larger roof design, rear porch design and scale, and larger rear extension with increased floorspace. Not all the conditions of permission 20141807 have been discharged, most notably conditions 2 and 7 which are pre-commencement conditions relating to brick panel samples and noise assessments which were imposed to maintain the character and appearance of the area and protect residents from unreasonable levels of noise. In addition, the differences between the approved plans of permission 20141807 and what has been constructed on site in combination are extensive and substantial resulting in a significantly different form of development overall than was approved.
7. Taking account of all these factors, including the comments I received from both parties in respect of this matter, I consider that permission 20141807 has not been implemented and the works undertaken at the appeal site is unauthorised development.
8. My attention has been drawn to the previous appeal decision⁴. However, the appeal matters before the Inspector related solely to a refusal to discharge a single planning condition. The question of the nature of any wider breach of planning control that may have occurred was not addressed in that appeal. This previous decision does not alter my conclusion that permission 20141807 has not been implemented.
9. I am unable to correct the notice to one of unauthorised operational development in accordance with my powers under section 176(1)(a) of the Act as the appellant has not had the opportunity of arguing other grounds of appeal that might be available. It would therefore result in injustice.
10. I therefore conclude that the enforcement notice is invalid and incapable of being corrected without injustice. The notice will be quashed.

¹ Local Planning Authority (LPA) Reference: 20141807

² LPA Reference: 20150941

³ LPA Reference: 20171277

⁴ Planning Inspectorate Reference: APP/W2465/W/18/3194792

11. In these circumstances, the appeal on the grounds (a), (f) and (g) set out in section 174(2) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Chris Baxter

INSPECTOR

Appendix

5.1 Carry out the following works to the windows and doors numbered and shown on the plans attached as Appendix 1 and marked " window plans".

5.2 All the replacement windows and doors materials to be timber framed hardwood, painted white ; the windows, doors , cills and lintels all to be of a size and style and detail and design as shown on the window plans and the photos attached as Appendix 2, and also in accordance with the additional details and specifications set out in the schedule below.

SCHEDULE

Coach House

Window marked 1. – Remove the uPVC window, frames and plastic sill. Remove brick infill. Install a window unit in four vertical and three horizontal segments as per the Approved Plans. All windows to be fixed casements except for two flanking units, side hung casements.

Window marked 2. Remove all uPVC windows, frames, panelling and plastic sill. Remove brick infill. Install six casements, three to top (to semi-circular arch) and three to bottom, as per the Approved Plans All casements to be fixed, except for the bottom central unit which should be an openable side-hung unit. Install a stone sill.

Windows marked 3 (2 in number). Open up bricked in openings, retaining stone lintels and install fixed casements.

Windows marked 4. (3 in number). Remove uPVC windows, frames, sills and brick infill. Install three sets of three casements, fixed or side hung casements.

Window marked 5. Remove uPVC window, frame and sill. Install blue brick sill and two casements. These should be fixed or side hung.

Window marked 6. Remove uPVC windows, frame and sill. Install blue brick sill and brick slip feature lintel. Install a unit consisting of six casements, with three smaller units to top, with central mullions (integrated or externally applied) and three larger one-light units to bottom.

Window marked 7. Remove uPVC windows, frame and sill. Relocate services and remove brick infill. Install blue brick sill and brick slip feature lintel. Install a unit consisting of six casements, with three smaller units to top, with central mullions (integrated or externally applied) and three larger one-light units to bottom. Top casements to be fixed, bottom casements to be fixed or side hung.

Doors marked 8. (2 in number) Remove uPVC door and frame. Install solid hardwood timber doors with timber frames of a design to match that shown on the Approved Plan.

Main Building

Windows marked 9 (11 in number). Remove uPVC windows, frames; and brick infill. Install reconstituted stone sills and red brick slip feature lintels per the Approved Plans. Install 6:2 light working sash windows of a design shown in the Approved Plans. The details of the window to match the existing sash windows to

the front of the original building as shown outlined in black on the attached photo at Appendix 2. mullions and transoms to be integrated or externally applied. Timber moulded horns to be included.

Window marked 10 Remove uPVC window, frame and sill. Install reconstituted stone sills, instal 1:1 light working sash window, with leading to glazing in the lower two thirds of the window 6 rows of four column internally glazed. Tthe design of the windows to be in accordance with the Approved Plans Timber Moulded horns to be included.

Windows marked 11 (2 number side windows to bay) – Remove uPVC windows, frames and sills. Install reconstituted stone sills to match windows to the front of bay, of matching profile. Install 1:1 light working sash windows, with the top sash being of reduced width, to match the proportions of the windows to the front of bay as shown on the Approved Plans. Install leading to glazing to match window to front. Timber Moulded horns to be included. Front of bay window to remain as existing Windows marked 12 (2 in number) – Remove uPVC windows, frames and sills. Install reconstituted stone sills and brick slip feature lintels. Install one light top hung casement units.

Window marked 12a (1 in number) Remove uPVC window, frame and sill. Install reconstituted stone sill and brick slip feature lintel. Install 1:1 light top hung casement unit.

Windows marked 13 (5 in number) Remove uPVC windows and frames. Install timber framed 1:1 light casements with timber frames. Fixed bottom light and top hung casements

Windows marked 14 (1 in number)) Remove uPVC windows, frames and sills. Install reconstituted stone sills to match windows to the front of bay at window 11, of matching profile. Install 1:1 light working sash windows. Timber Moulded horns to be included

Window marked 14a (1 in number) Remove uPVC window, frame and sill. Install reconstituted stone sill and brick slip feature lintel. Install 1:1 light top hung casement unit.

Windows marked 15 (5 in number) – Remove uPVC windows, frames and sills. Install reconstituted stone or moulded brick sills. Install side hung timber casements, two vertical units in each opening with wooden l glazing bars to match the designs of the windows edged Light blue on the photo at appendix 2 .

Windows marked 16 (3 in number windows in bay window) – Remove uPVC windows, frames and sills and brick infills. Install reconstituted stone or moulded brick sills. Install three timber framed 1:1 light working sash windows. Leading to glazing to match the design of the bay window to the front of the original main building.

Door marked 17 – Remove uPVC door and frames. Install solid hardwood timber doors with timber frames and infill brickwork to match original brickwork.