

Appeal Decisions

Site visit made on 2 August 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 25 September 2023

Appeal A Ref: APP/U5360/C/22/3297320

Appeal B Ref: APP/U5360/C/22/3297321

96 Colvestone Crescent, Hackney, London E8 2LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The Appeal A is made by Ms Fiona Ellis and Appeal B is made by Mr Michael Casserly against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 24 March 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the painting of the rear elevation windows, and window cills in black paint.
 - The requirements of the notice are to: 1. Restore the rear elevation including removing all paintwork from the brickwork on the rear elevation of the Property to the previous state that existed prior to the unauthorised works taking place. 2. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 3 (three) months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended (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. Appeal B is proceeding on the grounds set out in section 174(2)(f) of the Act.
-

Decision

1. The appeals are 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

2. The breach of planning refers to the painting of the windows, window cills and rear elevation in black paint. The requirements of the notice purposefully seek the removal of the paint from the brickwork only. Section 173(11) of the Act provides that (a) where an enforcement notice in respect of any breach of planning control 'could have required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities'.

Ground (a) and the Deemed Planning Application

Main Issue

3. This is whether the development preserves or enhances the character or appearance of the St Marks Conservation Area (the CA).

Reasons

4. The appeal relates to a three storey mid-terrace property which is part of a group of 8 terraced houses of similar design that form part of the larger crescent throughout which are examples of more varied Victorian design. The group, built in the mid-1860s, consisting of Nos. 90 - 104 (evens) Colvestone Crescent, also known as Herford Villas, is locally listed. Street access is via steep steps to paired front doors. To the rear, the gardens appear to be generally at the same level as the lower ground floor. The remaining properties within the Crescent are identified as 'Buildings of Townscape Merit' on the CA map. These are described as handsome with unusual detailing and make a positive contribution to the CA.
5. The CA is notable for its important and well-preserved mid-Victorian houses, a building type that Hackney has in many varied examples. The houses and villas are described in the CA Appraisal, dated May 2008, as being amongst the very best within the borough. Exposed or unpainted London stock brick is a characteristic prevalent material of the area which contributes to the composition and appearance of the townscape/street scene. The Appraisal identifies threats to the quality of the historic environment such as the painting of brickwork.
6. The Appraisal considered that the Council had an opportunity to protect such distinctive features and original detailing by making an Article 4 Direction (A4D). This was subsequently made in July 2008 and covers the length of Colvestone Crescent and most of the CA. Relevant to this appeal, the A4D removed permitted development rights for the painting of the exterior of any building.
7. The appellant raises issues with the A4D and claims that it does not meet the tests of the legislation and guidance in that protection of the rear elevation is not required to protect local amenity or the well-being of the area. This is said to conflict with paragraph 53 of the Framework.
8. An A4D means that a particular development cannot be carried out under permitted development and therefore requires planning permission. This does not prohibit development but gives the Council the opportunity to consider a proposal in more detail. Protecting the quality of heritage assets protects the well-being and positive qualities of the area and its expediency is satisfied by the findings of the CA Appraisal. Furthermore, there is no distinguishment between front and rear elevations in Class C of Schedule 2 Part 2 of GPDO¹ which permits the painting of the exterior of any building or work.
9. The appellant has provided examples of painted front elevations within the CA and during my visit I noted the occasional painted front elevation, some being painted render rather than painted brickwork. There are also examples of properties that are painted on the lower levels only. Historically this is common at basement/lightwell level to increase the light levels within the space. While details concerning these properties are limited, the Council responded that, following a review, all local examples were considered immune from enforcement action through the passage of time.
10. The appellant also argues that "inherent alterations" to the rear of properties within the terrace have affected the appearance and reduced the historic significance of the rear elevation. Although it is not uncommon for properties to be altered to the rear, it seems to me that such works are modest and have not

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

resulted in non-conformity to an extent that would undermine the significance of the CA.

11. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a CA, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area. In addition, Paragraph 199 of the National Planning Policy Framework (the Framework) requires 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. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.
12. The significance of a CA is largely dependent upon how it is experienced. Under such circumstances, case law² has established that proposals must be judged according to their effect on a CA as a whole and must therefore have a moderate degree of prominence. The paint differs significantly from the predominant walling materials on surrounding properties. The rear elevation is discernibly different and distracts from the original form of the Victorian property within the locally listed terrace.
13. Although the harmful effect of the development would be highly conspicuous and readily perceived from the private domain of adjacent properties, it is likely that it would not be visible from the public domain. This limits the degree of harm that the proposal would incur to the special interest of the CA. Nevertheless, it is out of keeping with the characteristics of the area and weakens the special interest/significance of the CA, as a whole, given the key contribution that the property makes to the CA and the valued local scene.
14. I conclude that the painting of the brickwork over the entire elevation, although its intention was to harmonise and mask unsightly parts of the brickwork, has a harmful effect on the character and appearance of the CA. I appreciate that the appellant has significantly improved the property to a high level and that there is a level of support for the paint. However, this cannot outweigh the harm that I have found given the historic importance of the building and the contribution it makes to the CA.
15. While the development has a harmful effect on the CA, given the scale of the impact on the CA, the harm is less than substantial. Paragraph 202 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case I have limited evidence before me regarding the reasons for painting the entire elevation save for the appellant's reference to the poor level of maintenance of the building and unsightly parts of brickwork. Notwithstanding this, there are no public benefits suggested and none that are apparent that would outweigh the harm to the designated heritage asset that I have found in this instance. In this respect the development is contrary to Policy LP3 of the Hackney Local Plan 2033 (adopted 2020) (the HLP).

² *South Oxfordshire DC v SSE & J Donaldson* [1991] CO/1440/89.

16. For the reasons above, the development fails to preserve or enhance the character or appearance of the CA. Accordingly, it is also contrary to Policy LP1 of the HLP and Policy HC1 of the London Plan 2021 (the LP21) which seek to deliver good design and to conserve the significance of heritage assets. Policy D1 of the LP21 refers to defining an area's character to understand its capacity for growth and Policy D4 of the LP21 relates to masterplans and design codes and Policy D6 of the LP21 relates mostly to housing quality and standards. In these circumstances, their relevance is limited.

Conclusion on Ground (a) and the Deemed Planning Application

17. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and I refuse to grant planning permission on the deemed application.

Ground (f)

18. An appeal on ground (f) is that the requirements of the notice are excessive. The notice requires the removal of the paint from the brickwork. On that basis, the purpose of the notice under s173(4)(a) of the Act is to remedy the breach of planning control by restoring the land to its condition before the breach took place. For an appeal on ground (f) to succeed the appellant must show that the requirements of the notice are excessive and that 'lesser steps' would achieve the same end. The appellant argues that as the removal of the paint is likely to damage the brickwork, painting over the black paint with a different colour would be an appropriate lesser step. However, no evidence has been provided to persuade me that removing the paint from the brickwork would cause irreparable damage.
19. In terms of an alternative colour, similarly, the extent of the paint on the entire elevation would be out of keeping with the historic characteristics of the property. While the adjoining property is painted in a muted colour on two lower levels, this is more than that which is considered to reflect the period. There is also no record of whether permission was granted for such works or whether the development occurred prior to the A4D. Nevertheless, although a more muted colour would reduce the level of harm to a degree, harm would remain due to concealing the natural colour and texture of the brickwork. This would be the only example of the entire rear elevation on the terrace being painted, and this would be out of keeping with one of the main characteristics of the CA. Furthermore, I note that the proposed repainting of the elevation in white/off-white has been considered under application ref. 2021/1719. The application was refused, and I am not aware that the decision has been appealed.
20. In any event, retention of the paint on the brickwork, no matter its colour, would not remedy the breach of planning. Therefore, I find that no 'lesser' steps have been put forward that would remedy the breach and restore the building to its condition before the breach took place. To that end, it is essential and not excessive to require that the paintwork is removed from the brickwork and the property made good.
21. The appeals on ground (f) therefore fail.

S A Hanson

INSPECTOR