



Appeal Decision

Site visit made on 18 July 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2023

Appeal Ref: APP/C3240/C/22/3304248

72 Court Street, Madeley, Telford, Shropshire TF7 5EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Woods against an enforcement notice issued by Telford and Wrekin Council.
- The notice, numbered ENF/2021/0705, was issued on 13 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a 2 storey rear extension, a brick retaining wall and hardstanding area. To the front elevation, installation of UPVC windows, composite door and canopy.
- The requirements of the notice are to:
 1. Demolish 2 storey rear extension.
 2. Reinstate previous rear elevation of dwelling in brick to match remaining parts of rear elevation and reinstate timber windows removed.
 3. Remove composite door, UPVC windows and canopy from the front elevation of the building, and reinstate timber windows, door and frames to match the timber windows and door removed.
 4. Remove brick retaining wall to the rear of the 2 storey rear extension and reinstate land to previous condition.
 5. Remove hardcore stone from rear garden area and reinstate land to its previous condition.
 6. Remove all materials and debris arising from compliance with the above from the land.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Decision

1. It is directed that, in accordance with the requirement of s173(1)(b) of the 1990 Act and as the Notice relates to unauthorised operational development, the reference to 'section 171A(1) of the above Act' in Section 1 of the Notice is deleted and replaced with 'section 171A(1)(a) of the above Act'. Additionally, Section 6 of the Notice is varied by replacing 'six months' with 'nine months' as the relevant period for compliance with the requirements of the Notice.
2. Subject to that correction and variation, the appeal is allowed insofar as it relates to the brick retaining wall and hardcore stone to the rear garden area and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the brick retaining wall and hardcore stone surfacing in the rear garden area to the east of 72 Court Street as shown edged red on the plan attached to the Notice and subject to the following condition:

- 1) Unless within 3 months of the date of this decision a scheme for the finished external hard surfaces within the rear garden and forming the rear parking area is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the materials brought onto the land for the purposes of the external surfacing shall be removed from the rear garden and parking area until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, all external surfacing shall be removed from the rear garden and parking area until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the 2 storey rear extension and the installation of uPVC windows, composite door and canopy to the front elevation, and planning permission is refused in respect of the 2 storey rear extension and the installation of uPVC windows, composite door and canopy to the front elevation at 72 Court Street on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. In December 2019 planning permission Ref. TWC/2019/0570 was granted for the erection of a two-storey side and rear extension at the site. However, the works subject of the Notice materially differ from and extend beyond the scope of the approved development.
5. There is no dispute between the main parties that the requirements of several pre-commencement conditions were not complied with prior to works commencing. Moreover, there is no claim before me that the 2019 permission remains extant such that section 171A(1)(b) of the Act is engaged.
6. As the cases argued by the main parties are submitted in relation to unauthorised development under section 171A(1)(a) of the Act, I find that no injustice to those parties would arise from my consideration of the appeal on that basis, or the correction of the Notice to specifically refer to it. I have proceeded accordingly.
7. On 5 September 2023 the Government published a revised version of the National Planning Policy Framework (the Framework). However, the design and historic environment policies that are relevant to this appeal have not changed and there was no need, therefore, to invite the parties to make further submissions in response to the revisions.

Applications for costs

8. An application for costs was made by Mr John Woods against Telford and Wrekin Council. This application is the subject of a separate Decision.

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

Main issues

9. Pursuant to the stated reasons for issuing the Notice, I consider the main issues to be whether or not the development is in keeping with the character and appearance of the existing dwelling, and whether or not it preserves or enhances the character or appearance of the Severn Gorge Conservation Area and preserves the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site.

Reasons

10. The appeal relates to a residential property within a row of buildings set within part of Madeley District Centre. The site lies within the Severn Gorge Conservation Area (the CA) and the Ironbridge Gorge World Heritage Site (WHS). Within this setting, the building is regarded as a non-designated heritage asset by the Council. This is not disputed by the appellant.
11. The area is also the subject of an Article 4 (2) Direction removing some development rights that would otherwise apply under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO). Amongst other things, this includes restrictions in relation to extensions, external window and door alterations or replacement, means of enclosure and hard surfacing.
12. The site lies at the northern extent of the designated areas. The locality is characterised by individually designed mid-19th century chimneyed 2-storey cottage-style residential buildings set close to or at the back of the pavements either side of Court Street. Despite variations in plan-forms and individual detailing, the buildings show a notable degree of uniformity in the age, alignment, scale and external treatments. Together the group value of the buildings provides a positive contribution to the character and appearance of the area.
13. The site lies close to a local commercial centre and includes examples of premises altered to serve commercial purposes. The appeal property is one example. Within the group, 72 Court Street is distinct on account of its detached nature but, as described above, it integrates with its counterparts. It also has a similar roof pitch, original elevational and roof materials and opening proportions with stone headers and sills to the windows.

The rear extension

14. The constructed 2-storey rear extension covers a substantial section of the original main rear elevation of the building. It wraps around an original rear gabled projection to lie flush and continuous with the northern side gable, but is set in a short distance from the southern gable.
15. The rearward dimension is not dissimilar to other examples in the row and appears to project a similar distance to the extension approved under the 2019 permission. However, the combination of the projection, broad width, high

eaves line and spreading rear gable of the extension cause it to appear substantial in the context of more modest rear projections visible on flanking buildings within the row. It lacks the slender proportioning of most 2-storey examples nearby.

16. Even in the context of the variety of the neighbouring building sizes, plot widths and additive building forms, I find the scale of the extension appears overly large. Moreover, it has a limited degree of consolidation with the existing building and forms a prominent feature because of it.
17. The large dimensions give rise to expansive areas of uniformly coloured, smooth-faced brickwork. There is no dispute between the main parties that the brickwork fails to reflect the building's original brickwork, which appears more textured with cumulative brindling to provide a softer appearance. Neither does it reflect the colour or texture variations in the predominant brick types found in the vicinity and that are an important aspect of the group value.
18. The contrast of the bright hue and smooth uniform faces of the brickwork serve to emphasise the scale of the extension and cause it to dominate the open views from Burnt Hall Lane and some principal outward views from properties along it. Although it can only be glimpsed from the Court Street frontage, it also stands out as a prominent contrasting feature when seen from the busy Parkway route to the north – this will be more so when fringing trees lie bare.
19. I note the appellant's contention that the external faces of the brickwork could be treated with a tinting product to change their appearance, painted white or be over-rendered. However, notwithstanding that this would not change the scale of the extension, those solutions would not necessarily resolve the visual effects of the extension.
20. Brick tinting or painting would not change the smooth texture of the facings. Furthermore, there is little to demonstrate that this could be done in a manner to provide a successful integration with the colour and variation of the original brickwork or, even if so, that it would provide a long-term solution that would weather in a manner to retain any such compatibility.
21. I recognise that brick painting and rendering have been applied elsewhere in the locality. However, as examples of a consolidated approach to individual properties, they integrate successfully. There is little to demonstrate that those approaches would successfully integrate with the original materials to achieve a high degree of consolidation or overcome any contrast between the 2 parts. Nor would they lessen the degree of prominence to any significant extent. Accordingly, I do not consider those proposals would overcome the harm identified.
22. For the above reasons, I consider the scale and external elevation materials of the extension fail to respond to the character and scale of the existing building or respects the character of the wider area. The extension thereby conflicts with Policies BE1, BE2, BE3 and BE5 of the Telford and Wrekin Local Plan 2011-2031 (the TWLP) as collectively they require development to be designed to respect and respond positively to its context and enhance the quality of the built environment, be designed to be proportionate and in keeping with the existing building, respect the historic setting of the WHS and preserve or enhance the character or appearance of the CA. For similar reasons, it would conflict with the revised Framework.

Canopy, windows and door

23. In the context of a wide variety of ground-floor openings visible to the rear of the buildings backing on to Burnt Hall Lane, the use of a modern large, glazed opening at ground floor level does not appear out of place. However, the single upper aperture in the new gable lacks the vertical emphasis characteristic of the original building's openings and those visible on upper floors elsewhere in the rear of the row.
24. Despite a greater scope for variation to the rear of the building, as indicated by the Council's advice to the appellant during consideration of the 2019 planning application, the window styling and proportioning reflects neither those of the original building or the predominant style of first-floor openings in the locality. Furthermore, its height on the building causes it to be prominent from surrounding viewpoints.
25. On the frontage, the evidence shows the previous upper floor and the stone-headed ground-floor window to be timber sliding sash windows. As with other examples in the street, a single pane display window was flanked by timber pilasters and a projecting cornice. However, distinct from other surviving examples of converted buildings, the cornice at no.72 extended over the doorway as a continuous feature.
26. Whether or not the replaced sash windows were original is unclear, however, they reflected other examples of original arrangements of lower floor half-split sliding sash windows and shorter upper floor windows of 1/3 split with a smaller upper sash overlying the lower (seen reverse positioned in some photos of the site). Several examples of this arrangement remain in the locality.
27. The new windows incorporate uPVC framing. Contrary to the clear approach set out in the Severn Gorge Conservation Area Management Plan, this introduces a modern material to the primary elevation which has a different appearance and visual texture to painted timber. It generally lacks the slenderness of the traditional material counterparts. The smooth uniform appearance of the frames with integrated stiles, tracking grooves, vents and visible mitred joints results in a patently modern appearance. Moreover, the first-floor windows have changed the proportioning of the sash arrangements.
28. The treatment of the former display window utilises similarly constructed uPVC windows set side by side with trim overlapping the joint. Although reflective of the proposed residential use of the property, their use in the context of the enlarged opening set below the canopy contrive to introduce a visual contradiction between the size of the opening and its glazing treatment. The arrangement would be neither typical of the commercial or residential use, nor provide a clear visual interpretation of the building's history.
29. The inconsistency is compounded by the larger scale of the oversailing canopy. Although the appellant contends that the frontage works replicated the former arrangement, the evidence shows the bracketed canopy to be more substantial in depth and with a greater projection than either the former cornice or others typical of the locality. In conjunction with its longer length, this result in a prominent feature that dominates the frontage of the building. It serves to draw the eye and appears mis-scaled in the context of the surrounding, more understated architectural detailing.

30. The front door replaces a 4-panel timber door with fanlight integrated into the former timber shop front arrangement. Although it reflects the predominant style of doors found along the street, in conjunction with the windows and despite the surface profiling to give a wood-grain effect, the introduction of the modern facing material again introduces a detail that is not consistent with the age of the building. It conflicts with the development plan approach to seeking materials and detailing to preserve and reinforce traditional frontages.
31. In support of the appeal, the appellant directs me to other examples of uPVC/composite mock and non-traditionally styled windows and doors elsewhere in the vicinity. However, in the context of an area where the Council has sought to impose further restrictions through an Article 4(2) Direction as a mechanism to prevent further dilution of traditional elements of the built environment, I do not consider this provides adequate justification for the use of non-traditional materials. I do not find those other examples provide justification for a further retrograde impact on the CA.
32. The appellant asserts that the former windows were rotten and required replacing. I acknowledge that the replacement of timeworn windows may improve the appearance of a building and can be installed to provide greater energy efficiency. Nevertheless, in the context of development within a CA, this is not a matter to be considered in isolation. The use of authentic materials and more faithful reinstatement of windows closer to the originals would have an equal or greater propensity to deliver that benefit. It is not a benefit which is exclusively dependent on the development that has taken place. It is therefore a matter of limited weight in the appeal.
33. The appellant also asserts that the Council has not seen fit to address other examples of non-traditional window and door treatments. However, on the evidence before me it is unclear as to the lawful status, or otherwise, of existing examples, or those that might be subject to existing or pending enforcement proceedings. They are not, therefore, a firm basis on which to seek to justify modern material replacements of the traditional wooden windows and door.
34. I note the appellant's contention that a Council officer accepted the use of uPVC framed windows. However, as a comment limited to the context of development shown in the 2019 permission, it does not necessarily follow that the same conclusion would be reached in relation to the more prominent front façade. It is therefore a matter of limited weight in the appeal.
35. I also note the appellant's reference to modern buildings elsewhere in the CA having been constructed using modern materials. However, those building details are consistent with the time of the building's construction. They are therefore distinct to the case before me and is not necessarily an inconsistent approach by the Council.
36. For the above reasons, I find the design and proportioning of the first-floor rear window, the design and materials of the frontage windows, the material of the door, and the scale and external appearance of the canopy fail to preserve the historic character of the building or the historic character of the wider designated heritage assets. It thereby conflicts with Policies BE1, BE2, BE3 and BE5 of the TWLP as they require development to be designed to respect and respond positively to its context and enhance the quality of the built environment, be designed to be in keeping with the existing building, preserve

traditional frontages, respect the historic setting of the WHS and preserve or enhance the character or appearance of the CA. For similar reasons, it would conflict with the requirements of the Framework.

Rear garden retaining wall and hardstanding

37. A modest retaining wall constructed to the rear of the extension provides for a more usable levelled area immediately to the rear of the dwelling. Due to the local topography, it provides a mechanism to manage the ground levels and, in the context of various walls dividing plots, other retaining structures and means of enclosure, the visual effect from surrounding views into the CA is limited.
38. At my site visit I saw that a hardcore base for an off-street vehicle parking area adjacent to Burnt Hall Lane and a gravelled path leading to the rear of the building had been laid. The vehicle area is similar to the arrangement used in nearby properties in the row. Given the parking restrictions on Court Street, the provision at the rear of the property is a practical alternative. It reflects an area shown on the plans approved in 2019 and subject to Condition 5 of that permission.
39. Subject to suitable finished surfaces, which could be conditioned, the vehicle hardstanding and linking path would be characteristic of garden arrangements in the locality. Those elements could thereby be made acceptable and to comply with the requirements of the development plan.
40. For those reasons, I find those aspects of the development would preserve the character and appearance of the CA and the WHS and the setting of the non-designated heritage asset. They would align with policies BE1, BE3 and BE5 of the TWLP as they require development to integrate with nearby landscaping and access and parking arrangements, avoids harm to the WHS and preserves the character and appearance of the CA.

Planning balance and conclusion on the ground (a) appeal

41. Under the duty imposed under s 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In addition, the Framework requires that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. For non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm to the significance of the asset.
42. Notwithstanding my finding in favour of the appellant with regard to the retaining wall and hardstanding, for the reasons set out above, I find that the development causes harm to the character and appearance of the building as a non-designated heritage asset and the designated CA. Furthermore, as an integral part of the built environment associated with the WHS, the effect would fail to conserve a contributing aspect of that designated area's historic environment. Paragraph 199 of the Framework requires me to attribute great weight to the designated assets' conservation.
43. In the context of the Framework, the extent of overall harm of the extension and frontage alterations is less than substantial given the nature of the

development. Paragraph 202 of the Framework advises that such harm should be weighed against the public benefits of the development.

44. I note the public benefits of the development as it would facilitate a reintroduction of active use of the building. The evidence indicates that prior to works taking place, the dwelling was in a poor state and likely unoccupied for some time. Its rejuvenation would bring the building and grounds back into effective use as a residential unit suitable for family living in a sustainable location. Although parts of the building remain boarded up, the works carried out to date have refreshed timeworn elements of the building that suffered from low levels of maintenance prior to its acquisition.
45. However, the development would not necessarily provide a net increase in housing unit numbers. Nor has it been demonstrated that an alternative use or arrangement would be prejudiced should the appeal fail. I acknowledge that the development could be retained without harm to the amenity of others, however, as a requirement of the development plan, this is not a benefit in favour of the development.
46. Taking all of the above together, I find that the public benefits are not necessarily dependent on the development as built and, if I were to allow the appeal on ground (a), would result in harm to the designated and non-designated heritage assets that would persist for substantially longer than the building has previously lain empty. Accordingly, as development designed to last tens of years, I do not find that those benefits, taken individually or together, outweigh the totality of the harm to the heritage assets.
47. For the above reasons, I conclude that the rear extension and the frontage windows, door and canopy conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal on ground (a) fails in relation to the extension and the frontage windows, door and canopy. However, the ground (a) appeal is successful in relation to the retaining wall and hardstanding area.

Conditions in relation to development allowed

48. I have considered the Council's suggested landscaping condition in relation to the parking area and retaining wall, and the appellant's comments in response. I have also had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. As the permission granted would be limited to specified elements of the development described in the Notice, a condition requiring wider landscaping details beyond the defined operational development would be unreasonable.
49. A condition is imposed however, to ensure that the required details of surface finishes are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the works before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

The appeal on ground (f)

50. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to remove those elements of the building that give rise to harm to its character and the character and appearance of the CA and WHS.
51. Pursuant to my findings on the ground (a) appeal and the absence of any other specified scheme to remedy the residual harm identified in the Notice, there is no basis to consider an alternative form of development. This would prejudice one or more parties in the appeal. The appeal on ground (f) therefore fails.
52. However, having regard to the fact that conditional planning permission was previously granted for a 2-storey rear extension under the terms of the Council's existing development plan, there must be a reasonable expectation that a similar or identical development could again achieve the benefit of planning permission. This could provide a fallback position if it were granted and it is also possible that some elements of the existing extension could be incorporated into such an alternative development. I am therefore of the view that an alternative scheme could be found.
53. Having regard to this in the context of my conclusions in relation to the ground (a) and (f) appeals, I find that an extension of the time for compliance with the requirements of the Notice would be reasonable. This would allow time for the appellant to potentially re-engage with the Council or reapply for planning permission with a view to resolving the relevant matters without unduly delaying resolution of the breaches of planning controls.

Other Matters

54. The appellant claims that the Notice could not be complied with as it would require reinstatement of features of such condition that they would conflict with modern regulation requirements. Notwithstanding that there is little to demonstrate that the original features were beyond repair or maintenance, there is nothing within the four corners of the Notice requiring works to replicate the condition of the windows, doors, canopy or rear elevation. The Notice only requires their reinstatement to match the building elements removed and in like materials.
55. I note the appellant's frustration with the level of communication and approach of the Council in relation to the development and service of an earlier enforcement notice. However, these are not matters for this appeal.

Conclusion

56. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant conditional planning permission for the retaining wall and hardstanding, but otherwise I will uphold the notice with a correction and variation and refuse to grant planning permission in respect of the other

matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

R Hitchcock

INSPECTOR