



Appeal Decision

Site visit made on 6 November 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/M5450/C/23/3315246

97 West Street, Harrow HA1 3EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Freshbay Limited against an enforcement notice issued by the Council of the London Borough of Harrow.
- The notice was issued on 6 January 2023.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The replacement of a front door along the southern elevation facing West Street.
 2. Removal of door and window above the door along the western elevation facing Nelson Road and covering over of these with render.
 3. The replacement of original single glazed timber windows on the south and west elevations with double glazed windows.
 4. The installation of 7 vents along the western elevation.All the above works will be known as (the unauthorised works)
- The requirements of the notice are to:
 - a) Remove the new windows on the west and south elevations and replace with windows that match the original pre-existing timber windows in all aspects of design and materials.
 - b) Remove the render that has been installed on the west elevation in front of the historic window and door and reinstate the pre-existing door and window to match.
 - c) Remove all extract fans and make good the effected fabric.
 - d) Make good any damage caused to the building as a result of the above step and ensure that all materials used shall match those used in the existing building.
 - e) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is: Tree [sic] (3) 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At paragraph 5b) delete the words 'and door' and 'door and', so that it reads 'Remove the render that has been installed on the west elevation in front of the historic window and reinstate the pre-existing window to match.'
 - At paragraph 5c) delete the words 'all extract fans' and insert 'the 7 vents along the western elevation facing Nelson Road' and delete the word 'effected' and insert 'affected', so that it reads 'Remove the 7 vents along the western elevation facing Nelson Road and make good the affected fabric'.
 - At paragraph 6, delete the words 'Tree (3)' and insert 'Six (6)' as the period for compliance.

2. Subject to the corrections and variations above, 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. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. Although paragraph numbers with respect to conserving and enhancing the historic environment have changed, the document has not raised any new matters which are determinative to this appeal.
4. The enforcement notice alleges, amongst other things, the installation of 7 vents along the western elevation. During my visit, only 6 vents were evident. It appears from the evidence, that the vent in the top window has been removed. Nevertheless, since it is likely there were 7 vents at the time the notice was issued, I consider it is unnecessary to correct the allegation.
5. The notice requires the removal of 'all extract fans'. However, the allegation refers to '7 vents'. For the avoidance of doubt, and since there may be extract fans elsewhere within the building, I consider the requirement should be corrected to refer to the 7 vents along the western elevation facing Nelson Road. This would not make the notice more onerous to comply with, and so I consider such a correction would not cause either party injustice. Since one of the vents has already been removed, in order to comply with the notice, the appellant would need to remove the remaining 6 vents.
6. The enforcement notice alleges the replacement of a front door along the southern elevation facing West Street, however, there is no corresponding requirement to remove the door or reinstate the pre-existing door. Section 173(11) of the Act provides that where an enforcement notice could have required buildings or works to be removed but does not do so, and 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 section 73A.
7. Were I to uphold the notice, once the appellant has complied with it, planning permission would be granted for the replacement of the front door along the southern elevation facing West Street. I have wide powers of correction subject to there being no injustice to either party. I raised with the parties whether it is necessary to correct the notice to address the front door.
8. The Council advises that it found limited harm caused (by the door) and therefore under enforced by not adding a requirement to remove it. Although the Council considers deleting reference to the replacement of the front door would not cause injustice to either party, since the Council is under enforcing, I consider there is no need to correct the notice in this case.
9. The appellant ticked ground (c) on the appeal form. However, the appellant withdrew this ground during the course of the appeal and so I shall not consider it further.

Ground (a)

10. The appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Since planning permission would be granted for the front door were I to uphold the notice, there is no need for me to consider this part of the breach under ground (a).

Main Issues

11. The main issues of the appeal are the effect of the appeal scheme on the character or appearance of the Harrow on the Hill Village Conservation Area and the special interest of the locally listed building and the setting of the nearby locally listed buildings.

Reasons

12. The appeal site is located within the Harrow on the Hill Conservation Area (HHCA) and comprises a locally listed building which is described on the local list as later 19th century... with central segmental headed entrance door ...(and)... segmental headed sashed windows.... From the evidence before me and my site visit, I consider the significance of the HHCA is derived from the historic buildings with fine architectural detailing and the historic layout of development which is set along an irregular network of ancient highways, bounded by open spaces.
13. There are a number of locally listed buildings in the vicinity of the site, including No 85 West Street, which is located on the adjacent terrace and Nos 70 – 76 (even), which comprise a terrace on the opposite side of West Street to the appeal site. Nos 70 – 74 (even) have fenestration which reflects the design and style of the appeal property, with large panes and delicate frames which follow the curvature of the surround. In my view, given the proximity of the appeal property to Nos 70-74, I consider it is within the setting of these locally listed buildings. Other locally listed buildings, including No 85 are set further away, with intervening buildings and so it does not form part of their setting.
14. Policy HC1 of the London Plan (2021)(the LP), policy CS1 of the Harrow Core Strategy (2012)(the HCS) and policy DM7 of the Development Management Policies (2013)(the DMP) all seek to ensure that development proposals affecting heritage assets, and their settings, conserve their significance and avoid harm. Policy DM1 of the DMP seeks a high standard of design and states that proposals which are detrimental to local character and appearance will be resisted.
15. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the HHCA. Furthermore, paragraph 205 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.
16. Photographs provided by the appellant show that the glazing and the frames of the windows previously followed the curvature of the windows, giving the windows a delicate quality. The windows which have been installed have a more substantial frame, resulting in smaller windowpanes, which do not follow

the curve of the surround, giving them a bulky appearance, which is not characteristic of this style of property.

17. The Harrow on the Hill Village Conservation Area Appraisal and Management Strategy (2008)(CAAMS) advises that replacement (of sash windows) should only be considered when repair is no longer possible and that replacement sash windows should be of the same design as the window being replaced. I acknowledge that windows which are in a poor state of repair may have a detrimental impact on the character of the historic setting. However, while the windows may have been single glazed, it has not been shown that it would not have been possible to repair the windows.
18. The Locally Listed Buildings Supplementary Planning Document (2013)(SPD) advises that original windows and doors are a key part of the architectural composition of most buildings and insensitive replacement can seriously detract from special interest. Although the windows have similar design features to the original windows in terms of colour, glazing bars and openings, the bulky appearance of the windows harms the character and appearance of the HHCA, the locally listed building and the setting of the nearby locally listed buildings.
19. While I saw there are examples in the HHCA where windows have not been replaced with fitments that respect the heritage asset, including uPVC additions, I do not have substantive evidence regarding their insertion. I therefore afford this very limited weight. Indeed, the Council has sought additional controls in the area through the introduction of an Article 4 direction, to help preserve the character and appearance of the HHCA.
20. On the side elevation, the door has been rendered over with what appears to be plywood exposed where the finish is peeling. The appellant advises that the doorway did not contain an opening door and had historically been blocked up, with a fanlight above. Photographs provided by the appellant, dated 2008 and 2014 respectively, support the appellant's assertions in this regard. However, the fanlight window above the boarded-up section of door was present in 2008 and 2014, and is likely to have been an original feature which is characteristic of other properties within the HHCA. The removal of the fan light harms the character and appearance of the HHCA, the locally listed building and the setting of the nearby locally listed buildings.
21. Plastic vents have been installed in the side elevation of the appeal building. The vents are set in the render and brickwork and contrast with the traditional materials used in construction of the building. The SPD recognises that for historic buildings to provide the everyday comforts that occupants need or desire, certain external fixtures, such as vents, may be required. However, it goes on to advise that such external fixtures and fittings can usually be fitted so they are quite unobtrusive, or made available in a range of sizes, designs and styles, offering a choice more suited to the architecture of the locally listed building.
22. While the appellant advises they would be willing to alter the vent covers to a different colour, if necessary, the examples provided would still contrast with the finish of the building and diminish the appearance of the building. Given the use of materials which are not characteristic of this type of property and their prominent location on the western elevation, the vents which have been installed harm the character and appearance of the HHCA, the locally listed building and the setting of the nearby locally listed buildings.

23. For the reasons given above, I find the windows, door and vents harm the character and appearance of the HHCA, the locally listed building and the setting of the nearby locally listed buildings, contrary to policies HC1 of the LP, CS1 of the HCS and DM1 and DM7 of the DMP and the advice contained in the SPD and CAAMS, the requirements of which are set out above.
24. Paragraph 195 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. The building occupies a prominent location along West Street. Given the limited size of the property relative to the HHCA as a whole, I consider the harm to be less than substantial harm to the significance of the HHCA.
25. Paragraph 208 of the Framework advises 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.
26. Although the installation of double glazed windows reduces energy demand, which has both an environmental benefit and cost benefit to its occupants, I consider it unlikely the appeal scheme is the only means of securing such benefits. I see no reason why it would not be possible to install windows which follow the curvature of the surround, reflecting the design of the original windows. I therefore afford this matter very limited weight.
27. The vents may help address condensation and mould growth, which has health benefits for the occupants of the appeal property. However, I consider it unlikely that the plastic vents which have been installed are the only means of addressing such issues. I therefore afford this matter very limited weight. Overall, the benefits advanced by the appellant do not, in my view, outweigh the harm to the HHCA, the conservation of which I attribute great weight to.

Other Matters

28. The Council has referred to Historic England Making Changes to Heritage Assets Historic England Advice Note 2 and Historic England The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), which both provide advice on works to heritage assets. These documents do not constitute policy and so are not determinative in my consideration of this appeal.

Ground (a) conclusion

29. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

30. An appeal under ground (f) is made on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

31. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, 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. It is clear from the wording of the notice, that its purpose is to remedy the breach.
32. The Council has drawn my attention to *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784. However, the main question in *Kestrel Hydro* concerned in what circumstances may an enforcement notice against an unlawful change of use require the removal of structures connected with that unlawful use.
33. Although it appears that a material change of use of the property has occurred, from a dwellinghouse to a house in multiple occupation, the enforcement notice does not allege a material change of use. Indeed, the Council has issued a lawful development certificate, reference P/1531/20, confirming that the material change of use was lawful development and planning permission was not required.
34. The appellant has effectively repeated their argument under ground (a) that the windows are like-for-like replacements and should be allowed. I acknowledge that the enforcement regime is intended to be remedial rather than punitive. However, as set out above, I have found that the windows are not like-for-like replacements and that they harm the character and appearance of the HHCA and the appearance of the locally listed building.
35. The appellant suggests that requiring the pre-existing window is reinstalled is unfeasible and impractical given its single glazed nature and dilapidated state. However, the enforcement notice does not require the installation of the pre-existing window, but rather requires they are replaced with windows that match the original pre-existing timber windows in all aspects of design and materials. Allowing the windows which have been inserted to remain would not remedy the breach and so cannot be accepted through ground (f).
36. The appellant advises that the original door opening on the west elevation has been historically boarded up. As set out above, dated photographs provided by the appellant show it was boarded up as early as July 2008. The appellant suggests varying the notice so that it requires the removal of the render in front of the historic window and reinstatement of a window to match that pre-existing window.
37. There is no scope for an enforcement notice to require some improvements to the land. The most that can be achieved in this case is restoration of the land to its previous condition. I consider varying the notice as suggested by the appellant would restore the door to its condition before the breach took place and so I shall vary the notice accordingly. Thus, the appeal under ground (f) succeeds to that extent.

Ground (g)

38. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant requests that the compliance period is extended to nine months as they would need to employ a competent and qualified company to carry out the works required by the enforcement notice

and suggests industry lead in times are in excess of 20 weeks due to material shortages and volume of work.

39. Although the enforcement notice was issued some time ago, an appellant is entitled to assume success on any ground. I would not, therefore, expect the appellant to have made arrangements to carry out the works required by the notice. The Act affords powers to the Council under section 173A(1)(b) to extend any period for compliance, however, the exercise of the powers is entirely for the Council's discretion. Since the appellant has appealed under ground (g), I have a duty to reach a view on the evidence to what period for compliance is reasonable.
40. While the actual works may take no longer than a week, I agree that procuring the services of a suitably qualified company is likely to take some time. While nine months is, in my view, likely to be excessive, I consider it reasonable and proportionate to extend the compliance period to six months, to give the appellant sufficient time to make the necessary arrangements for the works to be carried out. I shall therefore vary the notice to extend the compliance period to six months. The appeal under ground (g) succeeds to that extent.

Conclusion

41. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on grounds (f) and (g) succeed to that extent.

M Savage

INSPECTOR