



Appeal Decision

Site visit made on 25 June 2024

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/A1910/C/23/3316925

85-87 High Street, Berkhamsted HP4 2DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeal is made by Mr Stephen Trigg against an enforcement notice (EN) issued by Dacorum Borough Council.
- The EN was issued on 16 January 2023.
- The breach of planning control as alleged in the EN is: without planning permission, the replacement of a ground floor bay window, ground floor window and entrance door on the principle elevation.
- The requirements of the EN are:
 - 1- Existing door to be removed and replaced with a black painted timber door to match entrance door to number 89 High Street (to the other side of carriage entrance) with timber chevron planking below 2 glazed panes divided by a vertical glazing bar to the upper part.
 - 2 – Existing canted bay window to be removed and replaced with the following:
A canted timber bay window, painted white, comprising –
A central single paned window with transom light above (transom light to be divided by a central mullion). To the canted sides a single pane window with transom light above.
Design to replicate the previous window (photograph enclosed). All timber mullions and transoms to have moulded timber profiles as per section drawing enclosed, to match the dimensions to the ground floor window of number 89.
 - 3 – Replace the 4 single pane main casements (below the transom lights) with split pane casements to replicate original window design as per first floor window directly above.
 - 4 – Remove all the materials from the land in connection with steps 1-3 above.
- The period for compliance with the requirements is: 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 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 1990 Act.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. There is typographical error within the description of the alleged breach as the word '*principle*' has been incorrectly utilised when referring to the main or primary elevation, the word should be principal. I therefore intend to delete the word '*principle*' and substitute it with '*principal*'.

3. The appellant has indicated that he considers that it is not entirely clear that requirement 3 relates to the ground floor window. To ensure clarity I intend to insert the wording '*in the ground floor window*' between the words '*lights*' and '*with*' in requirement 3.
4. All the above are minor errors which have not affected the appellant's understanding or ability to seek planning permission for the matters alleged at section 3 of the notice via his ground (a) appeal. As such, no injustice would result to any party if I corrected these errors using powers available to me under section 176(1) of the 1990 Act. I will therefore do so.

Preliminary Matters

5. The evidence before me indicates that a planning application¹ to retain the replacement fenestration was refused by the Council in January 2023 and that an appeal was lodged against that refusal. That appeal is not before me.

The ground (a) appeal and the deemed planning application

Main Issue

6. The main issue is the effect of the replacement fenestration on the significance of 85-87 High Street, a non-designated heritage asset, and the significance, character or appearance of Berkhamsted Conservation Area (BCA), a designated heritage asset.

Reasons

7. 85-87 High Street is part of 85-89 High Street which is locally listed and is therefore a non-designated heritage asset. The BCA Character Appraisal & Management Proposals (CAMP) document contains descriptions of the locally listed buildings within its appendices. The description for 85-89 High Street states, amongst other things, that '*Nos 85, 87 and 89 High Street are an architect-designed ensemble, part residential part office/retail, built 1865....Integral group framing a cobbled courtyard and entrance with gatepiers, consisting of Nos 85 and 87 together forming a double pile semi-detached pair to left side, and no 89 a detached range at right angles on the corner of High Street and Three Close Lane to the right. Nos 87 and 89 have entrance doors facing each other across the carriage entrance. All windows resemble 'cross-mullions' incorporating 2-paned opening casements below the cross mullion.....Nos 85, 87 and 89 form an ornate and well-balanced, interesting group sited prominently on the corner of the High Street and Three Close Lane.*' Based on this description, the evidence before me and my observations I consider that the significance of this heritage asset is largely derived from its age, form, materials and architectural features.
8. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The appeal site is adjacent to the corner of High Street and Three Close Lane within BCA. The CAMP indicates that the appeal site is within character area High Street East of Area 1. From the evidence before me and my observations I consider that the character, appearance and significance of BCA is mainly drawn from

¹ Ref No: 22/03131/RET

the predominantly town centre character and range of traditional buildings that it contains together with the use of materials, the linear pattern of development, the relationship of buildings to the spaces around them and the variety of commercial, public, leisure and residential uses.

9. Traditional fenestration is often one of the most prominent features and an integral part of the design of historic buildings. Its design, materials and details of construction are all important to the architectural and historic interest of an individual building. As such, it contributes to the significance of heritage assets. In this case the replaced fenestration appears to have been part of the architect designed ensemble. The removal of the traditional fenestration has therefore eroded the architectural and historic interest of that ensemble.
10. Furthermore, the design of the canted bay window, ground floor window and the glazed door, as currently installed, does not reflect the design of that replaced. This is because the canted bay window has been formed of single panes of glass to the front and the canted sides. The transom and small lights above it that formed part of the 'cross-mullion' design of this window have not been replicated. This has resulted in the vertical proportions and emphasis of that window being exaggerated and it appears incongruous when compared to the other windows within this ensemble. Because of its prominence on the principal elevation that incongruity erodes the architectural interest of the ensemble. The casements, below the cross mullion, within the ground floor window do not include a horizontal glazing bar. Again, this exaggerates the vertical proportions and emphasis of this window, and it also appears incongruous. The material used for the window frames is not painted timber however, it has a matt finish and appears similar to painted timber from a distance.
11. The replacement entrance door has a painted timber frame but most of it consists of a single glazed sheet. At the time of my visit that glazing had an obscured/etched finish and has applied writing on it. The design of the door that it replaced was significantly different and that design is reflected in the remaining doors that are within the main elevations of the ensemble. This is because those doors have timber panels with chevron planking at the bottom and 2 relatively small, glazed panels at the top with a dividing vertical bar. The amount of glazing in the replacement door exaggerates its vertical proportions, its reflective qualities and the writing on it draw the eye. Therefore, it appears in stark contrast to the remainder of the ensemble.
12. I acknowledge that the High Street elevation of the ensemble is asymmetrical. However, the use of common materials and consistent design detailing to the previous fenestration ensured that the ensemble was well-balanced and attractive. Overall, the replacement fenestration has eroded the significance of the non-designated heritage asset. Consequently, the contribution that this traditional building in a prominent location makes to the significance, character or appearance of BCA has also been eroded. Therefore, the significance, character or appearance of BCA has not been preserved. In this case I conclude that limited harm has been caused to the designated heritage asset in the context of the significance of the asset as a whole. Nevertheless, in the language of the National Planning Policy Framework (the Framework), that harm is less than substantial. In these circumstances, paragraph 208 of the Framework says that this harm should be weighed against the public benefits of the development proposal.

13. The appellant has stated that he has spent considerable monies on the building to bring it up to modern day standards supporting its continued use for the future. He goes on to state that the appeal building now provides a high-quality commercial building that he considers will endure for the future. As the appellant suggests, it may be the case that these improvements increase the vitality and viability of the eastern end of the town centre by providing a high-quality retail unit which supports increased footfall to the area. It may also be the case that the replacement fenestration may be as energy efficient as possible and be of sustainable design. Whilst these matters can reasonably be considered public benefits, in my judgement, similar public benefits could be achieved through alternative designs so avoiding the harm identified to the designated heritage asset. As such, I consider that little weight can be given to these appreciable public benefits.
14. Even though I have found that the harm to BCA is less than substantial it is not to be treated as a less than substantial objection to the development. The public benefits attributable to the development do not outweigh the great weight to be given to the harm to the designated heritage asset. As such, the existing development does not comply with paragraph 208 of the Framework. The harm to the significance of the non-designated heritage asset also weighs against that development. It follows that it does not comply with Policies CS11, CS12 and CS27 of the Core Strategy (CS) which, amongst other things, state that development should preserve attractive streetscapes, integrate with the streetscape character and development will positively conserve and enhance the appearance and character of conservation areas. CS Policy CS27 does not refer to a balancing exercise with the public benefits therefore it is not fully compliant with the Framework. The weight to be given to the conflict with that CS Policy is nevertheless still considerable. I acknowledge that the development appears to comply with CS Policies CS14 and CS16 with regards to supporting the economy and retaining existing shops in Berkhamsted. However, the conflict with the CS Policies cited above means that it conflicts with the development plan as a whole.
15. The appellant has suggested as part of his ground (f) appeal that the replacement entrance door could be altered to create / introduce a timber (chevron pattern if considered necessary) panel across the lower part, black painted to match the original. Furthermore, he has stated that the canted bay window and ground floor window could be altered by inserting glazing bars to create transom lights in the upper section of the canted bay window and horizontal glazing bars in the casements of the other window. In my opinion the alteration of the door, if possible, to include timber chevron panelling to the same design as that existed previously would overcome its harm to the significance of the heritage assets. The introduction of horizontal glazing bars to the ground floor window casements would also overcome the harm to the significance of the heritage assets in that respect.
16. With regards to the canted bay window the introduction of a transom and small lights above that transom would minimise the incongruity of that window. I acknowledge that the transom that exists on the traditional windows is moulded and projects noticeably forward of the casements. However, the transom on the replacement windows in the remainder of the appeal building is not moulded and does not project noticeably. There is no evidence before me to indicate that the Council considers that the installation of those replacement windows constitutes a breach of planning control. To ensure that there is a

consistency in the design of the fenestration within the appeal building I consider that the transom design for the bay window would need to match that of those replacement windows.

17. There are no plans or specification to accompany the appellant's suggestions. However, I consider that the imposition of a planning condition would ensure that a scheme can be required to be submitted for the written approval of the Council within 3 months of the date of this decision. Both main parties have had the chance to comment on the wording of a planning condition. In my experience, it is more likely than not that the windows can be altered in the ways suggested. However, I am not convinced that the door can be altered in the way suggested and it may need to be replaced. Therefore, the wording of the condition would need to cover that possibility. The imposition of the planning condition would be necessary to overcome the harm to the heritage assets that has been caused by the development. The proposed alterations to the fenestration would ensure that the development would preserve the significance of the non-designated heritage asset and the significance, character or appearance of BCA. As such, the development as proposed would comply with CS Policies CS11, CS12 and CS27 and the development plan as a whole. With regards to the conservation area the expectations of the LBCA Act would be met.

Other Matters

18. The evidence before me indicates that some of the nearby buildings are listed buildings. Whilst the Council's reasons for issuing the EN make no reference to the effect of the development on the settings of nearby listed buildings section 66(1) of the LBCA Act requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The nearby listed buildings are experienced from High Street and the elements of setting that contribute to their significance, include their relationships with their street frontages, and their immediate plots rather than their extended settings. In that context, I consider that the appeal site contributes little, if anything, to the significance of those heritage assets, or their settings. As a consequence, I find that the special interest and significance of the nearby listed buildings and their settings would be preserved.

Conclusion

19. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall subject to the imposition of a planning condition grant planning permission for the development as described in the notice as corrected. The enforcement notice will be corrected and quashed.
20. In these circumstances the appeal on ground (f) does not fall to be considered.

Formal Decision

21. It is directed that the enforcement notice is corrected by:
- the deletion of the word '*principle*' and its substitution with the word '*principal*' in the description of the alleged breach of planning control; and
 - the insertion of the wording '*in the ground floor window*' between the words '*lights*)' and '*with*' in requirement 3.

22. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the replacement of a ground floor bay window, ground floor window and entrance door on the principal elevation at 85-87 High Street, Berkhamsted HP4 2DF as shown on the plan attached to the notice and subject to the following condition:

- Within 3 months of the date of this decision a scheme for;
 - o the alteration of the ground floor window to introduce horizontal glazing bars to the casements;
 - o the alteration of the canted bay window to introduce a transom and small lights above that transom;
 - o the alteration or replacement of the entrance door to include timber chevron panelling;

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The approved scheme shall be carried out and completed in accordance with the approved timetable and shall thereafter be retained.

D Boffin

INSPECTOR