



Appeal Decision

Site visit made on 13 August 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2025

Appeal Ref: APP/C2741/C/24/3344000

2A Mill Lane, York YO31 7TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Shaun Yeomans against an enforcement notice issued by the City of York Council.
 - The notice was issued on 21 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission unauthorised material alteration of a three-storey building and basement deviating from planning permissions granted under applications referenced 18/01519/FUL & 22/02641/FUL.
 - The requirements of the notice are to:
 1. Demolish the building situated on the LandOR
 2. Alter the design of the building situated on the Land to bring the scheme in accordance with the approved plans in planning permissions granted in either applications 18/01519/FUL or 22/02641/FUL.
 - The period for compliance with the requirements is six 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).
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Decision

1. It is directed that the enforcement notice is corrected by deleting the text in section three of the notice and replacing it with the following: "Without planning permission the erection of a four-storey building with basement to provide five residential apartments."
2. Subject to the correction, 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. The City of York Council Local Plan 2017 – 2033 Adopted 27 February 2025 (Local Plan) has been adopted since the appeal was made. The parties were given the opportunity to comment on the then emerging policies referred to in the enforcement notice, specifically the implications of any modifications to those policies. Any comments received have been considered.

The Enforcement Notice

4. The notice refers to section 171A(1) namely the carrying out of development without the required planning permission. The requirements are to either demolish the building or alter the building in accordance with either planning permission reference 18/01519/FUL or 22/02641/FUL. Since the development was not carried out in accordance with either planning permission and is materially different, the

development that has occurred is the erection of a four-storey building with basement to provide five residential apartments.

5. The allegation in the notice as issued is inaccurate. It can however be corrected as set out in my decision without prejudice to either of the main parties, since such a correction would neither enlarge nor reduce the scope of the notice or requirements.

The appeal on ground (a) the deemed planning application

Background

6. In 2018, planning permission was conditionally granted for the erection of a three-storey building with basement comprising four residential apartments with associated parking, cycle and bin storage, reference 18/01519/FUL.
7. Planning permission was consequently granted in June 2023, reference 22/02641/FUL for the variation of condition two of the above permission, to raise the front and side roofs of the building, together with the provision of three dormers to the rear elevation.
8. Since the notice gives the appellant the option to either demolish the building or alter it in accordance with either of the previously approved permissions, it is reasonable to assess the appeal development against those previously approved schemes.
9. As identified by the appellant, the main differences between the as-built development and those previously approved are the increase from four to five apartments, the replacement of three dormers with a full-length dormer window on the rear elevation, the provision of a balcony on the top floor and the increase in height and altered roof design of the external staircase.

Main issues

10. The main issues are (i) the effect of the development on the character and appearance of the area, including its effect on the setting of the Heworth/Heworth Green/East Parade Huntingdon Road Conservation Area (Conservation Area) and (ii) the effect of the development on the setting of the Grade II listed building, 1 Mill Lane.

Reasons

11. The appeal site is a roughly triangular shaped parcel of land located close to the junction of Mill Lane with the A1036. It is located outside of but adjacent to the Conservation Area boundary. On the opposite side of Mill Lane is the Grade II listed 1 Mill Lane.
12. As set out in the Conservation Area Appraisal, Heworth Green has the most architecturally significant and the largest of the suburban houses and villas in the Conservation Area. The Council stated and I observed that the Conservation Area comprises a mix of terraces of late Georgian and early Victorian brick-built villas set within modest but well landscaped grounds that line the approach into York along Malton Road, with denser groups of later Victorian artisan housing set behind.
13. It seems to me that the Conservation Area has a visually pleasing and well-maintained historic character and appearance. Although the appeal site and

adjacent terrace are not within the Conservation Area, Mill Lane consists of equally well-maintained traditional properties, such that Mill Lane and the appeal site make a positive contribution to the significance of the Conservation Area.

14. 1 Mill Lane comprises a substantial and highly prominent brick-built villa with prominent neo-classical detailing, occupying an end of terrace location close to the appeal site. The Council stated that short and middle-distance views are intrinsic to its setting, being designed to have a visually dominant relationship with the Malton Road and also having a dominant relationship with the alignment of the former railway.
15. There is evidently a close visual relationship between 1 Mill Lane and the historic built environment surrounding, of which the appeal site forms a part, and this setting forms part of its significance.
16. It seems that the site is constrained to some extent by its roughly triangular shape. Nevertheless, as a result of the continuous roofline over the staircase, together with the minimal set back from the front elevation and the exaggerated asymmetrical roof form, the building appears strangely proportioned. This strange form is exacerbated by the oddly positioned window in the side elevation of the staircase and use of render, which contrasts starkly with the red brick in the main part of the building. Moreover, there is an awkward and visually jarring relationship where the large box type dormer and staircase join, as a result of the differing roof forms and height.
17. Whilst there is variety in the roof forms and heights in both previously approved schemes, both would have resulted in a building of more straightforward proportions and appearance.
18. Overall, the building has a significantly incongruous appearance, which is clearly appreciable in public views and is inferior to the approved schemes.
19. Under ground (f) the appellant suggested the requirements be varied to, in effect, grant permission for those parts of the development which may be acceptable. However, whilst it is open to me to grant permission for any part of the matters stated in the notice, there are no specific details and therefore an obvious alternative before me to consider.
20. The appellant suggested, as an example, altering the design to accord with planning permission 22/02641/FUL but to include retention of the render. Whilst I acknowledge the use of render was previously approved in permission 18/01519/FUL, the staircase extension in permission 22/02641/FUL has a more traditional appearance, designed to harmonise with the main building. The use of render in that design would have appeared incongruous.
21. The setting of a heritage asset is not a fixed concept; it is concerned with the way the heritage asset is experienced. Because of the proximity to 1 Mill Lane and the Conservation Area, I consider the building as a result of its incongruous appearance, weakens the appreciation of the assets by acting as a visual distraction from them, detracting from the prominence of 1 Mill Lane and eroding the appearance of the historic environment surrounding 1 Mill Lane, thus causing harm to the setting of the listed building and Conservation Area.

22. Given the scale of the development, I consider the harm to be less than substantial. Nevertheless, I am mindful that the National Planning Policy Framework (the Framework) says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
23. Moreover, that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the proposal.
24. There are modest benefits associated with the use of previously developed land to contribute five additional dwellings (one more than previously approved), to the supply of housing in a sustainable location. And short-term economic advantages would also arise from the construction of the building. Further modest benefits would result from the additional support to the vitality of the local community from future occupiers.
25. However, such modest public benefits do not outweigh the great weight that I am required to attach to the heritage assets conservation. I conclude that the development does not accord with the design and heritage protection aims of policies D1, D4 and D5 of the Local Plan which together require that development preserves or enhances those elements which contribute to the character or appearance of the conservation area and preserve, enhance or better reveal those elements which contribute to the setting of a listed building, unless any harm is outweighed by the public benefits of the development. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Other Matters

26. The appellant provided a decision¹ relating to a development of 300 dwellings. That decision is not comparable given the proposed scale and provision of both market and affordable homes. It is therefore a matter of little weight.
27. The appellant referred to a number of policies from the then emerging Local Plan however, since there is no in principle policy objection to the development of the site for housing, I have had regard to those policies referred to in the notice, which are most relevant to the detailed considerations in this case.

Overall conclusion on ground (a) the deemed planning application

28. There is no dispute that a failure to demonstrate a five-year supply of deliverable housing sites renders policies relevant to the supply of housing not being up to date. Paragraph 11 therefore applies which requires granting permission unless specific policies in the Framework provide a strong reason for refusing the development. Footnote 7 to paragraph 11 makes clear that designated heritage assets is such a specific policy.
29. Given the conflict with those heritage protection policies of the Framework and policies D4 and D5 of the Local Plan, the development cannot therefore be considered sustainable development for which the Framework presumes in favour.

¹ APP/C2741/W/21/3282598

The appeal on ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
31. Section 173(4)(a) of the Act sets out that a breach of planning control can be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, or by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
32. The notice requires that the building be *either* [my emphasis] demolished *or* altered in accordance with one of two planning permissions. Its purpose is therefore to remedy the breach of planning control.
33. Since the requirements would do no more than to seek to achieve the purpose of the notice, they are not excessive. The ground (f) appeal fails.

The appeal on ground (g)

34. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant requested a period of 12 months based on the time needed to appoint contractors and tradesmen, and source materials.
35. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be carried out. The appellant's submission largely relates to the time before works can commence.
36. Whilst the appellant's concerns are understandable, in the absence of substantive explanation about the availability of contractors and materials, I consider the period of six months as specified in the notice, is proportionate to the breach of planning control that has occurred. The appeal on ground (g) fails.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR