



Appeal Decision

Site visit made on 7 June 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 7 June 2024

Appeal Ref: APP/H4505/C/23/3330644

1-2 Durham Road, Birtley, Chester-le-Street, DH3 1LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Anne Oliver against an enforcement notice issued by Gateshead Council.
- The enforcement notice was issued on 13 September 2023.
- The breach of planning control as alleged in the notice is without planning permission the installation of a new shop front including cement cladding panels to the front and side elevations.
- The requirements of the notice are i) remove the unauthorised shop front from No 1 and No 2 Durham Road, Birtley, Chester-le-Street, DH3 1LE indicated A, B, C, D & E in photograph 1 attached to the notice, ii) remove the cement cladding panels from the north elevation indicated A & B in photograph 2, iii) remove the cement cladding panels from the west elevation indicated C in photograph 3, and iv) remove from the land all materials, rubble and debris arising from compliance with i), ii) and iii) above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments. References hereafter in the decisions to the Framework are to the December 2023 version.

Main Issue

3. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is whether the breach of planning control preserves or enhances the character or appearance of the Birtley Conservation Area.

Reasons

4. The evidence indicates that appeal building originally comprised two separate units. It is located in a prominent position on the corner of Durham Road and Orchard Street and falls within the Birtley Conservation Area (CA). I was able to appreciate the character and appearance of the CA as part of my site visit. Google Street-view images of the appeal site have also been provided by the appellant showing the appearance of the buildings prior to the breach of planning control taking place.
5. Prior to the breach of planning control taking place, No. 1 Durham Road had individual roller shutters to ground floor windows and doors, albeit that pleasingly the lower sections of wall were clearly visible to passers-by. At ground level, the elevations of this building were finished with cream tiles and at first-floor level the building was finished in coursed sandstone including characterful lintels, windowsills, quoins, and corbels. This part of the appeal building also includes a distinctive canted gable at the junction of Durham Road and Orchard Street.
6. Prior to the breach of planning control taking place, No. 2 Durham Road had a traditional Victorian shop front appearance. It included a wooden shop front with decorative pilasters and a separate recessed doorway. It was finished in a light grey colour. The lower section of wall was finished in random stone and the first-floor part of the front elevation had architectural features like No. 1 Durham Road. It included the use of coursed sandstone at first-floor level.
7. The evidence suggests that the properties within this block do not appear to have been historically identical. No. 2 Durham Road has had cream-coloured tiles to its ground floor elevation for many years, although I do not know if this was original. Nonetheless, the evidence is that sandstone elevations and a Welsh blue slate roof have been defining and characterful features of the building block as a whole including the adjoining units on Orchard Street. While the evidence is that there have been some alterations to the buildings over the years, traditional, historic, and characterful architectural features remained intact for many years and until the breach of planning control took place.
8. While I acknowledge that there are some buildings in the CA as a whole which have a more modern appearance (for example the nearby library building), I find that it is the late nineteenth/early twentieth century stone and brick buildings along parts of Durham Road which still possess many of their original architectural details and, in this regard, they add positively and distinctively to the significance of the CA as a whole. Prior to the breach of planning control taking place, I find that the appeal site also contributed positively to this significance.
9. The breach of planning control relates to the installation of one continuous shop front which is positioned across the full ground floor elevation of Nos. 1 and 2 Durham Road. It includes dark colour cement panelled cladding up to first-floor windowsill level. It obscures quoins and unacceptably departs from the predominant use of sandstone within the building block as a whole. In this regard, I consider that the shop front has a jarring impact when experienced from within the CA.
10. Owing to its colour and panelled design, the shop front appears harsh and intrusive in the street-scene and where the materials used on buildings are

mainly of muted tones/shades and of traditional masonry construction. In terms of the more historic buildings in the CA, there is a regularity in terms of the use of rectangular sandstone or brick building materials. The cement panelled cladding is wide and is experienced as a harsh and dominant addition in the street-scene. The single treatment across the former two units adds to its dominance and the door and window openings appear pinched and poorly proportioned in this context.

11. Prior to the breach of planning control taking place, much more of the historic fabric of the buildings was visible to the passer-by. While shutters were in place on No. 1 Durham Road, these did not dominate the building. Indeed, they ensured that most of the walls were still visible to onlookers. The shop front which is the subject of this appeal detracts from the traditional appearance of the building block as a whole. Owing to its colour, extent, and panelled design, it fails to assimilate well with the architecture and window proportions of the other traditional buildings that exists within the CA, and which add positively and distinctively to its significance.
12. I have considered whether the imposition of a planning condition requiring the panelled cladding to be painted in a cream or stone colour, as suggested by the appellant, would overcome my concerns above. While a more muted colour would help to soften the harmful impact of the shop front, it would not overcome the fact that the shop front material and panelled design is not a characteristic of the CA. Furthermore, it would not alter the fact that the shop front obscures important architectural details.
13. I therefore find that breach of planning control does not preserve or enhance the character or appearance of the CA. In the context of paragraph 208 of the Framework, I find that less than substantial harm has been caused to the character and appearance of the CA. This appears to be a position agreed by the appellant who comments in paragraph 3.3. of his statement of case that *'it is agreed that there would be less than substantial harm'* caused to the CA.
14. I acknowledge that use of the appeal site as a hot food take-away as had some positive economic benefits in the context that the evidence indicates that the units were previously vacant for some time. However, there is no evidence before me to suggest that it would not be possible to sympathetically alter the building as part of its use as a hot food take-away, and without harm being caused to the CA. In other words, the evidence does not suggest that it is an imperative of use of the hot food take-away to have the appeal shop front.
15. While I accept that prior to the breach of planning control taking place, the units may have needed some repair or improvement (e.g., painting and/or new glazing), the evidence does not persuade me that re-use of the buildings offered the only option from an improvement or maintenance point of view. While I cannot be certain if there has been deliberate neglect, it is nevertheless noteworthy that paragraph 202 of the Framework states that *'where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision'*.
16. On balance, I find that the harm caused to the CA is not outweighed by the public benefits identified by the appellant. Furthermore, the evidence is not compelling that the shop front is required to secure the optimum viable use of the buildings.

Other Matter

17. The appeal site is close to Birtley war memorial which is a garden containing Grade II listed features including a cenotaph, memorial shutters and a garden wall including gate piers and railings. Considering the position of the Grade II listed features, coupled with screening from existing boundary landscaping, and the position of the shop front, I am satisfied that breach of planning control has preserved the setting of the Grade II listed features. However, this does not alter or outweigh my conclusion in respect of the harm that has been caused to the CA.

Overall Conclusion

18. For the above reasons, I conclude that breach of planning control does not accord with the design and conservation requirements of policy CS15 of the Gateshead Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015, policies MSGP24 and MSGP25 of the Site Allocations and Development Management Policies Local Plan Document for Gateshead 2021, and chapter 16 of the Framework. The development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. The ground (a) appeal does not therefore succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR