



## Appeal Decision

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by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 19.06.2023

Appeal reference: CAS-02306-S2G0W5

Site address: Vern Cottage, 16 Castle Parade, Usk NP15 1AA

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- 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 Julie and Peter McGowan against an Enforcement Notice (“the Notice”) issued by Monmouthshire County Council.
  - The Notice, numbered E22/210, was issued on 4 October 2022.
  - The breach of planning control as alleged in the Notice is ‘*Removal of chimney in Conservation Area*’.
  - The requirements of the Notice are: ‘*The chimney as shown in Appendix A shall be reinstated to match the photographs as shown in Appendix B prior to demolition. The chimney shall be constructed in materials which must so far as practicable match the appearance of the materials used in the original chimney as shown in Appendix A. The chimney shall be constructed in brick with a projecting stepped brick banded coursing at the head of the chimney. The chimney shall be 2.5m wide and 0.5m long with a height of 2m*’.
  - The period for compliance with the requirements is 10 months from the date the Notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 31 May 2023.
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### Decision

1. The appeal is allowed on ground (a) and the Notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the removal of a chimney in the Conservation Area at Vern Cottage, 16 Castle Parade, Usk NP15 1AA referred to in the Notice.

### The appeal on ground (e)

2. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land, as required by s172 of the Act. Nonetheless, section 176(5) permits failure to serve any person to be disregarded if neither they nor the appellant have been substantially prejudiced by that failure.

3. The appellants argue that as the chimney the subject of the appeal was shared with 14 Castle Parade, the Notice ought to have been served on the owner of this adjoining property.
4. The Council has confirmed that the Notice was served on 4 October 2022 by recorded delivery to all interested parties, including the owner of No 14. However, the Council was subsequently informed by Royal Mail that the correspondence had not been signed for by the owner. Consequently, the Notice could not be delivered.
5. It seems to me that the Council met its requirement to serve the EN on all interested parties. That the owner of No.14 failed to receive the letter sent by recorded delivery, and thus did not fully engage with the process, does not mean that the Council did not make a reasonable attempt to do so.
6. In this context, I must consider whether the owner of No.14 has been substantially prejudiced by the failure to receive the Notice. The appellants state that they had a verbal agreement with the owner of No.14 and that he was happy for the chimney to be removed. Whilst his representations to this appeal substantiate that position, he does not advance the ground (e) appeal or claim that he has been prejudiced in any way by having not received the Notice. Rather, he is clearly aware of its existence and has taken the opportunity to comment on the planning merits that I am already considering under the ground (a) appeal.
7. In any event, there is no evidence from either the appellants or the owner of No.14 that there has been substantial prejudice; only a technical failure to serve the Notice is alleged rather than an indication that other grounds would have been pleaded. Hence the onus of proof has not been discharged. The appeal on ground (e) therefore fails.

#### **The appeal on ground (a) / deemed planning application**

8. An appeal on ground (a) is that planning permission should be granted. The main issue is whether the proposal preserves or enhances the character or appearance of the Usk Conservation Area (CA), with particular regard to the removal of the chimney.

#### *Reasons*

9. The appeal property lies on the north-eastern extremity of the CA, on the main approach into Usk from the A472 highway. I accept that the appeal property is not only the first dwelling in a small, terraced row, but also the first building that one encounters on entering the CA by a main highway. When read in the context of the openness of the side of the plot, together with the set back of the fire station to its north-east, this property could be described as highly visible from a main approach into the CA.
10. Hence, with reference to the '*Usk Conservation Area Appraisal and Management Proposals*' ("the CA Appraisal"), the Council asserts that the removal of the chimney fails to respect the character and distinctiveness of the terrace and the form of the dwelling, such that it represents the loss of a feature that is appropriate to its setting. It argues that as the appeal property is part of a terraced group of a single design, detrimental change not only affects the integrity of the host building but the cohesiveness of the group.
11. From my reading of the CA Appraisal, I understand that the CA is divided into 9 distinct Character Areas, each with its own key attributes. The appeal site lies in Character Area 5: Castle & Castle Parade, with over half of it made up of the Usk Castle Scheduled Monument. In terms of Castle Parade itself, the CA Appraisal states that the houses form a loose group of buildings that are disparate and diverse in their character; it describes houses of a modest two storey scale (with occasional exceptions), a mix of ridge lines parallel to the street and small and large gables. Meanwhile, it states that the houses to

the north-west side are set slightly higher off the street accentuating their scale. The building line varies along Castle Parade with some houses to the back of pavement and others set back in gardens. The houses are predominantly, and unusually for the CA, red brick. Roofs are natural slate, generally seen at low pitches.

12. In that context, and based on my observations at the site visit, I find that the character of this part of the CA varies overall, with commonality mainly found in scale and elements such as external finishes, notwithstanding the anomalous rendered finish of the appeal property in the terraced row. Whilst I do not dispute that this row of terraces is likely to have been of a relatively uniform design originally, there have nonetheless been a number of changes to the individual dwellings, including to the windows, door detailing and decoration. The most significant change to the row, however, is at the appeal site where a large two storey extension is clearly visible from the main approach into the CA. Although I saw that a single chimney remains on the south-westernmost end terrace only, its shape, height and position differs from that which was removed from the appeal property (which is still shown in-situ in the submitted photographs). Similarly, there are no chimneys on two of the red brick, detached properties directly opposite the terrace, which also form part of the approach into the CA. Consequently, I am of the view that in this part of the CA, features such as chimneys, or the part they play in the roofscape, make little contribution to its special character and appearance.
13. I have also had regard to the appellants contention in their grounds of appeal that the removed chimney was not the original, and that the Council's Heritage Officer confirmed this to be the case in the early stages of making a planning application. The Council has not made any written representations on this point and I am therefore uncertain of the basis on which it sought a replacement, non-functioning, replica as part of the previous planning application.
14. Be that as it may, I appreciate that the row of terraced dwellings may have originally benefitted from chimneys, and thus their retention would respect their traditional and historic character. However, there is no substantive evidence before me which convinces me that the chimney the subject of the appeal is one such example or, if it was poorly constructed and added to this property at a later date, that it made any significant contribution to the character and attractiveness of the host building.
15. It is for these reasons that I cannot conclude that the removal of the chimney has compromised a defining feature of this part of the CA or that it has failed to preserve the character and appearance of the CA. Hence, I do not find conflict with Policies HE1 or HE2 of the adopted Monmouthshire Local Development Plan (LDP) 2014, which *inter alia* require development in CAs to have regard to the CA Appraisal for that area, thus preserving the character and appearance of the area, having no serious adverse effect on significant views, vistas and setting, and taking into the account the desirability of retaining historic features and details. It would also meet the requirements of LDP Policy DES1 to respect the local character and distinctiveness of Monmouthshire's historic environment.

### Conditions

16. The Council has indicated in its questionnaire that the condition relating to a standard time limit for the commencement of development is attached to any planning permission granted. Given that the chimney has already been removed it would be neither necessary nor reasonable to do so having regard to the tests outlined in Welsh Government Circular 016/2014 '*The Use of Planning Conditions for Development Management*'.

## Conclusions

17. In conclusion, I am satisfied that the removal of the chimney has not offended the duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA, or conflicted with LDP policies which seek the same. Accordingly, the appeal is allowed, the Notice is quashed and planning permission is granted on the application deemed to have been made.
18. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of making our cities, towns and villages even better places in which to live and work.

*Melissa Hall*

Inspector