
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/01/17

gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17.02.2017

Appeal Decision

Site visit made on 12/01/17

by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 17.02.2017

Appeal Ref: APP/E6840/C/16/3163182

Site address: Land at The Old Stable, Union Road East, rear of 150 St Helens Road, Abergavenny, NP7 5UU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Mr John Carlsen against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice, reference E16/027, was issued on 30 September 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the conversion of a building to a dwelling.
 - The requirements of the notice are to convert the building in accordance with approved plan 13/109 02 and in compliance with condition 5 of planning consent DC/2014/00041 and subsequent Non Material Amendment reference DC/2016/00764. The doors and windows should be changed to painted timber.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied: by the insertion of "or stained" in the second part of the requirement in Schedule 4 of the notice so that it reads "The windows and doors should be changed to painted or stained timber"; and by the deletion of 3 calendar months and the substitution of 6 calendar months as the time for compliance specified in Schedule 4 of the notice. Subject to these variations 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.

Background Matters

2. The appeal relates to a former 2 storey stables building (originally built as a small brewery) for which planning permission was granted in August 2014 for change of use to residential accommodation. Condition 5 of that permission specified:
"Notwithstanding the approved plans, the brick finish on the south elevation shall be retained as existing and retained as such in perpetuity." The permission for a minor

amendment to the scheme was granted on 20 September 2016 and referred to the retention of replacement brickwork, additional cladding and works to an original painted advertisement, and to revision of plan 13/109 02 with the "*addition of cladding on the north (rear) elevation*".

3. The enforcement action has been taken to address the addition of timber cladding on part of the southern elevation and the use of upvc doors and windows rather than the "*painted or stained timber frames*" specified on the approved plans.

Appeal under Ground (c)

4. This ground of appeal is that there has not been a breach of planning control, and Mr Carlsen submits that, although timber framed doors and windows were specified on the approved plans, no condition was applied to specify the design or type of window or door. He further refers to the Hart Aggregates judgement (*R (oao Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin)*), which he says states that there is no scope for implied conditions in planning permissions. Whilst that is a well-established principle, it does not emanate from the Hart Aggregates judgement, which was concerned with defining the commencement of a planning permission and the application of conditions precedent. It provides no help in this case.
5. The issue in this case is whether the materials to be used for windows and doors have to be specified by means of appropriate conditions or whether they are adequately defined by means of the approved plans. The August 2014 planning permission and the September 2016 non-material amendment approval both stated that "*the Local Planning Authority hereby permits the following development in accordance with the plans and application submitted to the Council, subject to any conditions*", and the approved plans were specified in both permissions. Although the approved plans were not specified in a condition, as nowadays advised as good practice in Welsh Government Circular 016/2014, The Use of Planning Conditions for Development Management, the plans were clearly identified and there was no doubt what development was being approved.
6. The 2014 planning permission predated WG Circular 016/2014, and the previous Circular, Welsh Office Circular 35/95, The Use of Conditions in Planning Permissions, included no such advice on the use of a condition to identify the approved plans. Thus the 2014 permission followed good practice as it was at that time. In any case, even the 2014 Circular does not make the use of such a condition mandatory. It merely advises that a condition of this sort should be applied to make sure there is no doubt over what development should be built and to simplify the process of making minor amendments to planning permissions.
7. In this case, there was no doubt what development was granted permission, and the approved plan 13/109 02 clearly specified "*Windows and Doors: Painted or stained timber frames double glazed*". The development has not been built in accordance with this specification and so amounts to a breach of planning control. Contrary to the Appellant's assertions, it is not necessary to specify such design matters by means of condition, though it is often considered worth doing so for the avoidance of any doubt.
8. Turning to the second matter, Mr Carlsen acknowledges that cladding has been carried out to the southern elevation (in error) but says that this has now been partly removed, apart from a small area in the apex. He says he has submitted an application to the Council to vary condition 5 to allow retention of a small area similar to that permitted on the northern elevation. At the time of my site visit the timber-

clad area extended from eaves level to the apex of the roof, a considerably larger area than on the northern elevation. However, regardless of that, there is no dispute that cladding was applied to the southern elevation of the building in contravention of Condition 5 of the 2014 permission. Thus there was a breach of planning control in respect of that cladding.

9. I conclude that both the upvc windows and doors and the timber cladding on the southern elevation were not in accordance with the planning permission (and amendment) previously granted and so amount to breaches of planning control. The appeal under ground (c) fails on both matters.

Appeal under Ground (a) and Deemed Application for Planning Permission

10. I turn now to consider the ground (a) appeal and the deemed application for planning permission for the retention of the matters alleged in the notice, and the main issue in these considerations is the effect on the character and appearance of the Abergavenny Conservation Area, in which the property lies. For the avoidance of doubt, the Appellant's recent application to the Council for a minor amendment to the planning permission to allow some of the cladding on the southern elevation to be retained is not a matter that is before me in this appeal.
11. The Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise of planning functions in Conservation Areas special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area, and that legislation is supported by further advice in Welsh Office Circular 61/96, Planning and the Historic Environment: Historic Buildings and Conservation Areas. The Monmouthshire County Council Adopted Local Development Plan includes Policy HE1 which says that development in a Conservation Area should have regard to the Conservation Area Appraisal and should preserve or enhance the character or appearance of the area, and more general policies DES1 and EP1 provide support for high quality design which incorporates existing historical features and avoids unacceptable harm to built heritage interests.
12. In this case the appeal building is of some historical interest, and a photograph of it is included in the Conservation Area Appraisal and Management Proposals published by the Council in March 2016. The corresponding text describes the importance of the survival of original materials and features, including brickwork patterns and windows and doors, in this considerably altered part of the Conservation Area and says that, although the loss of original windows, doors and roof coverings has had a significant adverse effect on the character and appearance of the Conservation Area, the changes are reversible.
13. In that context, the sensitive conversion of the appeal building is of considerable importance to this part of the Conservation Area, and the design changes carried out have undoubtedly been detrimental. Mr Carlsen argues that the upvc windows have a wood-effect appearance that looks realistic from a distance and that many of the surrounding terraced houses have white or wood-effect upvc windows. I certainly observed the latter when I visited the site. However, the existence of upvc windows in other houses in the area does not justify their use at the appeal property, particularly on account of its unique character and history and the contribution it makes towards the character and appearance of this part of the Conservation Area.
14. Although the appearance of upvc windows and doors has improved considerably in recent years, they still appear out of place in this unique Conservation Area building

and are unacceptably harmful to its traditional character. Similarly the timber cladding of the southern elevation also detracts from that character by covering the traditional brickwork. The Conservation Area Appraisal identified the importance of retaining the traditional materials and features, and the use of upvc windows and doors and timber cladding is contrary to that aim.

15. Overall, I conclude that the upvc windows and doors and the timber cladding of the southern elevation are unacceptably harmful to the character of the appeal building, detract from its heritage importance and are detrimental to the character and appearance of this part of the Conservation Area. They fail to meet the statutory requirement to have regard to the character or appearance of the Conservation Area and are contrary to LDP policies HE1, DES1 and EP1.
16. For the reasons given above I conclude that the appeal on this ground should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal under Ground (g)

17. Finally, I turn to the ground (g) appeal, which is that the time given to comply with the notice is too short, and Mr Carlsen says that a longer period should be allowed as it will take some time for replacement timber-framed windows to be made and fitted. They are not of a standard size and will require bespoke joinery.
18. This is a reasonable argument, as specialised work of this nature can be subject to delays and longer lead-in periods, and 3 months is insufficient. Consequently, I consider 6 months would be a more reasonable period, and I am varying the notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Overall Conclusion

19. As explained above, the appeal is unsuccessful on grounds (c) and (a) but succeeds on ground (g).
20. It is also appropriate at this point to address the requirements of the notice which include "*The windows and doors should be changed to painted timber.*" This is not consistent with the approved plans which specify that they be "*painted or stained timber frames*", and it would be unreasonable not to allow this. I shall use the powers transferred to me under Section 176(1) of the Act to vary the notice appropriately.
21. In considering this appeal I have taken into account the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this decision, I have taken into account the ways of working set out in section 5 of the WCFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.

Clive Nield

Inspector