



Appeal Decisions

Site visit made on 7 January 2008

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Decision date:
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Appeal A: APP/L2820/C/07/2035282

Rothwell House Hotel, 12a Bridge Street, Rothwell NN14 6JW

- 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 by Mark Inman against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2006/00287.
- The notice was issued on 5 December 2006.
- The breach of planning control alleged in the notice is without planning permission the provision of a patio area and associated works in the approximate position edged green on the plan attached to the notice, and as shown in the photographs attached to the Notice marked A to C. (The appearance of the site prior to the unauthorised works being carried out is shown in photographs D and E attached to the notice). The unauthorised development comprises; an increase in height of brick walls to between 1.17 and 1.45 metres and faced in new coloured render; additional obscure glazed screens on top of the walls giving a maximum height of between 2.17 to 2.65 metres measured from the external ground level; the lowering of the enclosed land level and the provision of a hard surface of block paviors; and together with the provision of two large covering umbrellas containing heating and lighting, both fixed and bolted to the ground.
- The requirements of the notice are
 - (1) Take down and permanently remove from the site the obscure glazed screens and supporting framework.
 - (2) Using small hand held tools, and not power tools or sledge hammers, take down the curtilage walls and separate and store on site all original bricks for inspection by the Local Planning Authority. Remove all new bricks and other debris arising from the demolition of the walls from the site.
 - (3) Take up the block paviors, and the umbrellas together with their fixings and mountings and permanently remove them from the site.
 - (4) Following the Local Planning Authority's inspection of the stored original bricks in compliance with step (2) above, reconstruct the curtilage walls to their former height with re-usable stored original bricks, making up any shortfall using matching reclaimed red brick, and finish the top of the walls with stone copings. The reconstruction of the walls shall be in Flemish bond using an hydraulic lime mortar, and their finished appearance shall match as closely as possible their original appearance as shown in photographs A and B attached to the notice.
 - (5) Re-surface the enclosed patio area with natural York stone slabs.
- The period for compliance with requirements (1), (2) & (3) is 3 months. The period for compliance with requirements (4) & (5) is 4 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. Furthermore, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with variations

Appeal B: APP/L2820/F/07/2035288

Rothwell House Hotel, 12a Bridge Street, Rothwell NN14 6JW

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Mark Inman against a listed building enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2006/00287.
- The notice was issued on 5 December 2006.
- The contravention of listed building control alleged in the notice is without listed building consent the partial removal of listed curtilage walls by removing top courses of brick, followed by their reconstruction and increase in height to between 1.17 to 1.45 metres using new red brick and copings, and then finished with new coloured render to the front facing elevations. On top of the new walls new obscure glazed screens approximately 1 to 1.2 metres high with supporting black framework have been added, bringing the total height of the walls and screens to between 2.17 to 2.65 metres high.
- The requirements of the notice are:
 - (1) Take down and permanently remove from the site the obscure glazed screens and supporting framework.
 - (2) Using small hand held tools, and not power tools or sledge hammers, take down the curtilage walls and separate and store on site all original bricks for inspection by the Local Planning Authority. Remove all new bricks and other debris arising from the demolition of the walls from the site.
 - (3) Following the Local Planning Authority's inspection of the stored original bricks in compliance with step (2) above, reconstruct the curtilage walls to their former height with re-usable stored original bricks, making up any shortfall using matching reclaimed red brick, and finish the top of the walls with stone copings. The reconstruction of the walls shall be in Flemish bond using an hydraulic lime mortar, and their finished appearance shall match as closely as possible their original appearance as shown in photographs A and B attached to the notice.
- The period for compliance with requirements (1) & (2) is 3 months. The period for compliance with requirement (3) is 4 months.
- The appeal is made on the grounds set out in section 39(1)(e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the listed building enforcement notice upheld with variations.

Preliminary matters

1. The second requirement of both notices would entail the Council's inspection of the original bricks when removed from the walls, but I note that there is no requirement for the Council to approve those bricks. In the light of the judgment in the case of *Payne v NAW & Caerphilly County Borough Council* I am therefore satisfied that the requirements do not introduce an uncertainty, rendering the notice a nullity that would be incapable of correction. Furthermore, as the Council would not have any power under the notices to approve or reject the bricks, there is no purpose served by including inspection as a requirement, and I shall therefore delete reference to inspection from both notices.

The planning enforcement appeal on ground (a), the deemed planning application and the listed building enforcement appeal on ground (e)

2. Rothwell House Hotel, formerly a vicarage, is a Grade II listed building standing within the Rothwell Conservation Area. I have therefore paid special regard to the desirability of preserving the listed building, its setting and special interest, and of preserving or enhancing the character or appearance of the Conservation Area, as required by Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
3. From my inspection of the appeal site and its surroundings, and from all that I have heard and read I consider the main issue in this appeal to be the effect of the works on the special interest and setting of the listed building, and on the character and appearance of the Conservation Area.
4. The hotel stands in a prominent position on the northern side of Bridge Street. It is an imposing, three-storey early 19th century building with the main front range built of red-brick. The double-hung sash windows are in a symmetrical arrangement disposed around a giant semi-circular headed recess. To the front, photographs show that prior to raising the wall and installing the screens there had been a frontage wall of around 12 or 13 brick courses high. This wall was built of brick, mainly in Flemish bond, and had what appears to be a pre-cast concrete coping. The open area between the wall and the front of the building was grassed to either side of the broad entrance steps up to the front door, and there were a few shrubs planted close to the building. In general the frontage treatment was unobtrusive, with materials sympathetic to the building as a whole, and provided an open setting.
5. The front wall has been raised by some half a metre for much of its length, and faced with smooth render approximating to a stone colour. On top of this is a thin concrete coping to which are bolted metal shoes supporting square timber uprights with horizontal rails between. The uprights are infilled with translucent, horizontally reeded panels of a yellowish/brown colour. The area between the wall and the building has been surfaced in grey concrete paving bricks with red borders to the edges and around the umbrella base plates, to form patio areas to either side of the entrance steps. Approximately central to each patio area is a substantial square umbrella, which, when open covers much of that area.
6. I saw that the rendered walls to the front of the building, surmounted by the translucent screens are of such a height that they obscure much of the ground storey of this handsome building when seen from the street. The glazed screens with their timber uprights are incongruous in terms of their form and materials, and have little sympathy with the proportions and delicate details of the 18th century façade. Furthermore, the colour and texture of the rendered wall contrasts unfavourably with the red-brick of the main building, as do the colour and texture of the paving bricks.
7. The umbrellas are substantial constructions each having a central metal pole some 63 millimetres in diameter held in place by a galvanised steel shoe bolted through a base plate to a concrete foundation. In their furled state the umbrellas do not have a strong impact on the setting of the building. However, it is clearly the intention that they should be used at any time of

- year to shelter customers from inclement weather, and it can be expected they would frequently be open. In the open position they further conceal the front of the building and give a cluttered appearance to the site.
8. The building is highly prominent in the town centre, and as the former vicarage to Holy Trinity Church is clearly an important element in the historical development of the town. Its importance is expressed architecturally in the grand composition of the main façade. Furthermore the building is an important feature in the make up of the Conservation Area.
 9. Overall, I consider each of the elements of the unauthorised works constitutes a conspicuous and intrusive feature in the foreground of the building, quite inconsistent with its architectural character. Furthermore, the front wall constitutes a part of the listed building and the alterations to its height and appearance are harmful to the architectural and historic interest of the building as a whole.
 10. I conclude on the main issue that the unauthorised works cause significant harm to the special interest and setting of the listed building and to the character and appearance of the Rothwell Conservation Area. The development plan includes the Local Plan for Kettering Borough of 1995. Environment Policies 22 and 24 seek to protect conservation area interests and listed building interests respectively. In this case the development does not accord with the aims of either of these policies.
 11. It is argued in both cases that the works to the front of the building create a benefit by providing an outdoor area for common or leisure use, and that it provides customers with an area for smoking, which is essential to the future viability of the property as an hotel in consequence of national legislation on smoking in public places. However, there is very little substantiation for this argument, nor demonstration that a place for customers to smoke could not be provided elsewhere on this quite extensive site. It is also argued that the space to the front of the building previously provided a venue for young people to congregate, and that there had been instances of unruly behaviour. This may be the case, but there are other ways to discourage such occurrences than constructing walls, screens and other works. I cannot accept that either argument gives sufficient justification for causing such harm to listed building and conservation area interests.
 12. In the light of the foregoing I conclude that the planning enforcement appeal on ground (a) and the listed building enforcement appeal on ground (e) should both fail, and that planning permission should be refused on the deemed application.

Other matters

13. It is argued that the requirements of both notices go beyond what is necessary to restore the building and site to its condition before the alleged unauthorised works were carried out. In particular, it is argued that the requirements to use stone copings, to pave the patio areas with York stone, to entirely demolish and reconstruct the walls, and to reconstruct the walls using Flemish bond throughout would result in an unjustified betterment. This amounts to an appeal against the planning enforcement notice under

ground (f) and against the listed building enforcement notice under ground (g).

14. Section 173(4)(a) of the Town and Country Planning Act 1990 as amended says that one of the purposes to be achieved by the requirements of an enforcement notice is to remedy the breach by restoring the land to its condition before the breach took place, amongst other things. Similarly Section 38(2)(a) of the Town and Country (Listed Building & Conservation Areas) Act 1990 sets out that a listed building enforcement notice shall require such steps as may be specified for restoring the building to its former state.
15. In this case the copings seen in the photographs attached to the notices are of a relatively thin section indicating that they are very probably made of pre-cast concrete rather than stone. Furthermore, the land between the frontage walls and the front of the building, to either side of the entrance steps, was previously laid to grass, and not paved. It is also evident from the photographs that the section of wall flanking the vehicular entrance drive is built in stretcher bond, while the remainder, which was built at an earlier time, is in Flemish bond.
16. In the light of this it is clear that the steps required by the notices in respect of the copings, paving, and brickwork bond go further than is necessary to restore the land to its condition before the breach took place, and to restore the building to its former state. In order to achieve these aims I consider the appellant should be required to finish the tops of the walls with pre-cast concrete copings to match those existing before the breach took place; to return the enclosed patio areas to their condition before the breach took place, as areas of grass, and to reconstruct the walls to match the bonding of the original brickwork, which is clearly shown in the photographs. I intend to vary the relevant requirements of the notices accordingly.
17. Looking at the walls themselves, the original brickwork remains visible below the bottom of the render. To this extent at least, the requirement to take down the curtilage walls entirely goes further than is necessary to restore the building to its former state, although cleaning would be required. In order to make this restoration the minimum necessary would be to remove the render, which would establish the extent of the original brickwork remaining, take the walls down as far as the top of the original brickwork, before re-building. In this event there would be no need for separation and storage of the original bricks – which would remain in place. However, it would be necessary for the render to be removed carefully to minimise the possibility of damage to the brickwork, and the requirement to use hand-held tools remains necessary. I consider the relevant requirements of the notices should be varied to reflect these matters.
18. Had appeals been made on ground (f) in the planning enforcement appeal and on ground (g) in the listed building enforcement appeal they would have succeeded insofar as the requirements relate to finishing the tops of the walls, surfacing the patio areas, bonding of brickwork and taking down the curtilage walls in entirety. I intend to vary the relevant requirements of the notices to reflect these factors.

19. It was also submitted that the umbrellas, like the benches below, can be removed or furled up. They cannot be regarded as structures, and cannot therefore be subject to enforcement action. This is effectively an appeal against the planning enforcement notice on ground (c) – that there has not been a breach of planning control in respect of the umbrellas.
20. In the case of *Cardiff Rating Authority v. Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1 QB 385* the judge identified 3 principal factors as being relevant to the question of what a building is, namely size, permanence and physical attachment. Furthermore, he stated:

'A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of its parts may be moveable'.
21. In this case the umbrellas are clearly built up from a number of components comprising foundations, bolted metal shoes, and the pole and umbrella itself. Although the umbrellas were not open at the time of my visit I understand they have lighting and heating devices incorporated, and cabling and fitments are clearly shown in the photographs. The umbrellas are clearly of considerable size and weight – each being roughly a third of the width of the main façade of the building. While the pole and umbrella are moveable, this would only be with some difficulty, and entail disconnecting the supplies to the heating and lighting devices, removing the main pole and umbrella from its socket – for which probably more than one person would be needed - and unbolting the metal shoes. There is little similarity to the relative ease with which a bench could be moved.
22. Furthermore, it is evident that the umbrellas are there in order to shelter customers from inclement weather at any time of year, and the intention appears to be that that they should be on site more or less permanently. In the light of these observations I consider the umbrellas are of such size, permanence and physical attachment to the ground that as a matter of fact and degree they must be considered as structures that come within the meaning of development for which planning permission would be necessary. It follows that there has been a breach of planning control, and had an appeal been made against the planning enforcement notice on ground (c) it would have failed.

Conclusions

23. For the reasons given above and having regard to all other matters raised, I consider that neither appeal should succeed. I intend to uphold both the notices with variations, and to refuse planning permission on the deemed application.

Formal Decisions

24. For purposes of clarity, and consistency with the form of the notices, I have recited the compliance period where a new requirement has been substituted for an original requirement.

Appeal A: APP/L2820/C/07/2035282

25. I direct that the planning enforcement notice be varied by:

- a. OMISSION of requirement (2) from section 5 of the notice and SUBSTITUTION of the following requirement:

'Using small hand held tools, and not power tools or sledge hammers, remove the render from the faces of the curtilage walls, and take down the recently constructed parts of the walls to the level of the top of the original brickwork. Remove all new bricks and other debris arising from the demolition of the walls from the site'.

Time for compliance: 3 months from the date of this decision.

- b. OMISSION of requirement (4) from section 5 of the notice and SUBSTITUTION of the following requirement:

'Reconstruct the curtilage walls to their former height, making up any shortfall of bricks using matching reclaimed red brick, and finish the top of the walls with pre-cast concrete copings to match those existing before the breach took place. The reconstruction of the walls shall be in a bond to match that of the original brickwork in each section of the wall using an hydraulic lime mortar, and their finished appearance shall match as closely as possible their original appearance as shown in photographs A and B attached to the notice'.

Time for compliance: 4 months from the date of this decision.

- c. OMISSION of requirement (5) from section 5 of the notice and SUBSTITUTION of the following requirement:

'Return the enclosed patio areas to their condition before the breach took place, as areas of grass'.

Time for compliance: 4 months from the date of this decision.

26. Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/L2820/F/07/2035288

27. I direct that the listed building enforcement notice be varied by:

- a. OMISSION of requirement (2) from section 4 of the notice and SUBSTITUTION of the following requirement:

'Using small hand held tools, and not power tools or sledge hammers, remove the render and from the faces of the curtilage walls and take down the recently constructed parts of the walls to the level of the top of the original brickwork. Remove all new bricks and other debris arising from the demolition of the walls from the site'.

Time for compliance: 3 months from the date of this decision.

- b. OMISSION of requirement (3) from section 4 of the notice and SUBSTITUTION of the following requirement:

'Reconstruct the curtilage walls to their former height, making up any shortfall of bricks using matching reclaimed red brick, and finish the top of the walls with pre-cast concrete copings to match those existing before the breach took place. The reconstruction of the walls shall be in a bond to match that of the original brickwork in each section of the wall using an hydraulic lime mortar, and their finished appearance shall match as closely as possible their original appearance as shown in photographs A and B attached to the notice'.

Time for compliance: 3 months from the date of this decision.

28. Subject to these variations I dismiss the appeal and uphold the listed building enforcement notice.

Stephen Brown

INSPECTOR