

Report to Planning applications committee
16 May 2013

Item

Report of Head of planning services

5(8)

Subject Enforcement Case 12/00070/CONSRV/ENF – 124
Earlham Road, Norwich, NR2 3RF.

SUMMARY

Description: Unauthorised installation of uPVC casement Windows at 124 Earlham Road, Norwich, NR2 3RF which is locally listed and located in the Heigham Grove Conservation Area. The premises are subject to an Article 4 direction that requires any replacement windows on the principal elevation to have planning permission which this premises does not have.

Reason for consideration at Committee: Enforcement Action recommended.

Recommendation: Authorise enforcement action up to and including prosecution in order to secure the removal of the unlawful uPVC casement windows.

Ward: Nelson

Contact Officer: Ali A N J Pridmore

INTRODUCTION

The Site

1. The site is on Earlham Road and is a detached two-storey dwelling house at the corner of Earlham Road and Caernarvon Road, opposite the junction to Edinburgh Road.
2. The dwelling is located within the Heigham Grove Conservation Area and is a locally listed building. Dwellings to the East and West, and St Thomas' Church and the former Mitre public house opposite, are also locally listed. The property was also made subject to an Article 4 direction on 6th June 2011, which was confirmed by Cabinet on 22 July 2011. The installed windows require planning permission as the site does not have the same permitted development rights as a normal dwelling. The Heigham Grove conservation area appraisal summarises the character and appearance of the Heigham Grove conservation area as being "predominantly an area of 19th century residential development, ranging from streets of small Victorian terraced houses to more substantial villas set within leafy surroundings." 124 Earlham Road is in sub area I, which is characterised by larger villas, many of which are double fronted.

3. The house is typical of mid to late C19 development of Earlham Road, being detached, double-fronted, with double height bay windows. It is also typically constructed in white brick, slate roof, and prior to the unauthorised alterations, five original 19th century sliding sash windows on the ground and first floors. There are small gardens to both the front and rear. The dwelling has more similarities in design and construction to the dwellings to the west further along Earlham Road rather than the adjacent properties to the East, which although also similar, are smaller in their size and scale. Being a substantial double fronted dwelling on the street corner with two double height bay windows, the building is very prominent in views along Earlham Road and Caernarvon Road at its North end. Prior to the unauthorised alterations taking place, the dwelling was considered to make a positive contribution to the character and appearance of the Heigham Grove conservation area.
4. The impact of the installed uPVC casement windows is significant resulting in considerable harm to the appearance of this locally listed building and the positive contribution that it makes to the character and appearance of the Heigham Conservation Area.

Planning History

5. There is no relevant planning history.

Purpose

6. This report relates to the unauthorised installation of uPVC double glazing at 124 Earlham Road which was made subject to an Article 4 direction on the 6th June 2011, which was confirmed by Cabinet on the 22nd July 2011. The installed windows require planning permission as the premises does not have the same permitted development rights as a normal dwelling.
7. As the replacement uPVC windows do not have planning permission and the installation has occurred within the last four years, it is therefore not immune from enforcement action. The installation of the uPVC casement windows is classed as operational development for which planning permission would be required under section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). Therefore the installation of the windows is a breach of planning control and is therefore considered unlawful.
8. The owner of 124 Earlham Road has been informed in writing on a number of occasions that the replacement uPVC casement windows are unsuitable due to their type, design and fitting. These windows are considered to be detrimental to the appearance of this locally listed building and consequently harm the positive contribution that it makes to the character and appearance of the Heigham Grove Conservation Area. The unauthorised uPVC casement windows have not yet been removed and there is no expectation that the owner of 124 Earlham Road will voluntarily replace the uPVC casement windows with suitable

designed windows to match the original windows as closely as possible, as advised in the Heigham Grove Article 4 Guidance Note, or to reinstate the original sliding sash windows.

9. Authority is sought from the Planning Applications Committee for enforcement action to secure the replacement of the uPVC casement windows with windows having a similar design and appearance to the sliding sash windows that were replaced in 2012. Enforcement action is to include direct action and prosecution if necessary.

Breach

10. Replacement of the original sliding sash windows with uPVC casement style windows is operational development for which planning permission would be required under section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). The replacement of windows on the principal elevation falls outside of The Town and Country Planning (General Permitted Development) Order 2005 (as amended) because 124 Earlham Road is subject to an Article 4 direction as laid out in the above Order.
11. It appears to Norwich City Council that the above breach of planning control has occurred within the last four years and is not therefore immune from enforcement action. The current unauthorised development is poor design and unsympathetically installed and is therefore considered detrimental to the appearance of the locally listed building and the positive contribution that it made to the character and appearance of the Heigham Grove conservation area. The Council does not consider that planning permission should be given because planning conditions could not overcome these objections.

Policies and Planning Assessment

Relevant Planning Policies

National Planning Policy Framework

Section 7 – Requiring Good Design

Section 12 – Conserving and Enhancing the Historic Environment

Relevant policies of the Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011)

Policy 2 – Promoting good design

Relevant policies of the City of Norwich Replacement Local Plan – saved policies (Adopted November 2004)

HBE8 – Development in Conservation Areas

HBE12 – High quality of design in new developments

Other Material Considerations

Heigham Grove Conservation Area Appraisal Adopted 16 March 2011

Heigham Grove Article 4 Direction Guidance Note

Emerging policies of the forthcoming new Local Plan (submission document for examination, April 2013):

Development Management Policies Development Plan Document – Pre-submission policies (April 2013).

DM3 – Delivering High Quality Design

DM9 – Safeguarding Norwich's heritage

Procedural Matters Relating to the Development Plan and the NPPF

The Joint Core Strategy and Replacement Local Plan (RLP) have been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), both sets of policies have been subjected to a test of compliance with the NPPF. The 2011 JCS policies are considered compliant, but some of the 2004 RLP policies are considered to be only partially compliant with the NPPF, the policies referred to in this case are considered to be compliant with the NPPF. The Council has also reached submission stage of the emerging new Local Plan policies, and considers most of these to be wholly consistent with the NPPF.

12. As detailed in the sections above the alteration is considered to result in an unacceptable degree of harm to the appearance of the locally listed building and its positive contribution to the character and appearance of the Heigham Grove Conservation Area contrary to policy 2 of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk, saved policies HBE8 and HBE12 of the adopted City of Norwich Replacement Local Plan, the objectives of the National Planning Policy Framework and other material considerations.

Justification for Enforcement

13. The current unauthorised development is poorly and unsympathetically installed and is incongruous and out of keeping with other similar properties in the area. The installed windows are therefore considered to result in harm to the character and appearance of the Heigham Grove Conservation Area.
14. A number of attempts have been made by Environmental Protection in negotiating with the owner of 124 Earlham Road but without any success. The owner was contacted and asked to contact the Design and Conservation Team so that they could discuss suitable replacement windows. The owner of 124 Earlham Road has not contacted Norwich City Council about this matter.
15. Norwich City Council has not invited a planning application for the current uPVC casement windows because the Council does not consider the application would be supported and the application would be recommended for refusal.

Equality and Diversity Issues

16. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
- a. Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the removal of the unauthorised building works in the interests of amenity is proportionate to the breach in question.
 - b. Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

Conclusions

17. This report concludes that the five installed windows at the front elevation of the property require planning permission and that their design does not take into account the requirement to preserve or enhance the character and appearance of the Heigham Grove conservation area (Section 72 Planning (Listed building and Conservation Areas) Act 1990. Guidance has been issued to assist owners and occupiers in choosing a design of window that would preserve the character and appearance of the conservation area, and this has not been taken into account by the owner. The alteration is considered to result in an unacceptable degree of harm to the appearance of the locally listed building and its positive contribution to the character and appearance of the Heigham Grove Conservation Area.
18. In recommending the authorisation of enforcement action it is also necessary to consider the merits of taking enforcement action against the unauthorised installation of the windows. It would be possible to require the recently installed windows to be removed and the old ones reinstated. However, it is unlikely that the sliding sash windows that were removed would be reinstated by the owner as they have probably been disposed of. This option should be offered to the owner of the premises as a way of demonstrating that this option is available. Alternatively double glazed sliding sash windows can be installed which closely match the original windows in design.
19. It is therefore necessary to ask for authorisation from the Planning Applications Committee to ensure the removal of the unauthorised windows and therefore remedy the breach of planning control.

Recommendations

20. Authorise enforcement action to ensure the replacement of the installed uPVC casement windows. The replacement windows must be appropriately designed and installed windows such that they are similar in appearance to the sliding sash windows that the existing windows replaced. We ask that Planning Applications Committee also authorise the taking of direct action and / or prosecution to ensure the

windows are replaced by ones more appropriate to the setting of the locally listed building and the Heigham Grove Conservation Area.

Background Documents

National Planning Policy Framework

Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011)

City of Norwich Replacement Local Plan (Adopted Version, November 2004)

Heigham Grove Conservation Area Appraisal Adopted 16 March 2011

Heigham Grove Article 4 Direction Guidance Note

Development Management Policies Development Plan Document – Pre-submission policies (April 2013).

Relevant correspondence – Uniform Enforcement File –
12/00070/CONSRV/ENF and Civica file EH12/11162



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Site Address 124 Earlam Road
 Scale 1:750



NORWICH
City Council

PLANNING SERVICES

