

---

# Appeal Decision

Site visit made on 23 March 2015

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 30 April 2015**

---

**Appeal Ref: APP/P4605/W/14/3001961**

**Victory House, 26-28 Ludgate Hill, Birmingham B3 1DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Graftongate Investments Ltd against the decision of Birmingham City Council.
  - The application Ref 2014/06260/PA, dated 22 August 2014, was refused by notice dated 14 October 2014.
  - The development proposed is the refurbishment of existing 3 storey building and with the addition of a pitched roof to create 7 apartments over 3 floors and commercial accommodation on the ground floor.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are whether the proposal would preserve or enhance the character or appearance of the Jewellery Quarter Conservation Area and the setting of a listed building; and its effect on the living conditions of future occupiers of the proposed apartments and the future operation of commercial activities in the area, with particular regard to noise and disturbance.

## Reasons

### *Character or Appearance*

3. The appeal site is a 3 storey Edwardian style building with an ornate parapet and flat roof. It lies within the Jewellery Quarter Conservation Area (CA), is adjacent to a Grade II listed building and stands on the route between Birmingham City Centre and St Paul's Church. It forms part of a row of largely unspoilt, mature red brick buildings of different designs and heights that front the north east side of Ludgate Hill between Water Street and St Paul's Square. This row of buildings makes a positive contribution to the character and appearance of the CA, particularly in views towards the Grade II listed St Paul's Church from the City Centre. The Jewellery Quarter CA Character Appraisal and Management Plan Part 2 recognises in section 1.2 that the historic buildings of the CA are its primary asset, and that many contribute to the settings of listed buildings within the CA or to the group value of the ensemble of buildings. This is the case with the appeal building.
4. In order to preserve the parapet detail, the proposed steep pitched roof on top of the flat roof of the building would be set back behind the parapet and this

- would make it appear as a later addition, rather than an intentional part of the design. At my site visit, I observed that the roof of the appeal building is clearly visible from the opposite side of Ludgate Hill at the corner of Water Street. From this location it would be apparent that the roof extension would be incompatible with the existing varied roofscape along that side of Ludgate Hill, as its overall scale would be excessive, projecting above the existing roofline, and it would be out of keeping with the architecture of that structure.
5. The use of slate tiles, although similar to that used on other pitched roofs in the area, would not overcome the adverse impact of the proposal due to its prominence on the skyline and its failure to sit comfortably within the roofscape of the surrounding buildings. As such, it would not comply with the Jewellery Quarter Design Guide, with regard to its visual relationship with the traditional roofscape in the area. The Guide indicates that the varied roofscape forms an important element in the views into and through the area, and it warns against setback storeys as they introduce a dominant uncharacteristic horizontal element that intrudes on the historic rooflines and local street scene.
  6. The proposal would therefore fail to preserve the character and appearance of the CA and would harm the setting of the adjacent Grade II listed building and St Paul's Church, as it would add an incongruous intrusive feature to an existing reasonably well preserved building in the CA.
  7. I have noted other buildings that the appellant has referred to within the CA, including those fronting Lionel Street. However, they are either generally not as well preserved as the row that includes the appeal building or are sited in less significant locations. As such, I am satisfied that no direct comparisons can be made with the appeal proposal, which I have determined on its own individual planning merits in the light of prevailing policies and guidance.
  8. The appellant has suggested that the proposal would not have a less than substantial effect on the heritage assets. However, this is not one of the statutory tests given in the Planning (Listed Buildings and Conservation Areas) Act 1990 section 66, with regard to preserving the setting of listed buildings, and section 72, with regard to preserving or enhancing the character or appearance of CAs. Furthermore, the advice given in paragraph 134 of the National Planning Policy Framework (Framework) indicates that any harm that is less than substantial to the significance of a heritage asset should be weighed against the public benefits. In this case, insufficient public benefits have been put forward by the appellant to outweigh the harm that I have identified that would be caused to the character and appearance of the CA and the setting of listed buildings.
  9. Taking account of the above, I conclude on this main issue that the proposal would fail to preserve the character and appearance of the Jewellery Quarter CA and the setting of listed buildings.

### **Noise**

10. The proposal would use the building for a garage and commercial units on the ground floor, 3 apartments on both the first and second floors and a further 'penthouse' apartment in the extended roof. The proposed apartments would be close to 4 licensed premises in the area. The rear of the building faces the car park for the 'Jam House', which the operators have suggested stages live music events most nights of the week, and the front faces the 'Actress and

Bishop', which also is an entertainment venue. The use of the building for residential accommodation would require measures to mitigate against night time noise and disturbance from the commercial and entertainment uses in the area and the comings and goings at the premises during unsocial hours.

11. I have taken account of the Council's determination in January 2015 that no prior approval would be required for the change of use of the appeal building from offices (Use Class B1(a)) to residential (Use Class C3) under a prior notice application. The implementation of this change of use, which the appellant has suggested would be for 8 apartments but not include the roof extension, would represent a fall-back position with respect to a residential use.
12. The appellant has submitted noise survey information which indicates a high level of night time noise. However, with noise insulation measures, including acoustic glazing, and a ventilation system to ensure that windows would not need to be opened, the living environment for future occupants of the proposed apartments should not be significantly worse than that for potential residents of the permitted apartments. Also, with such measures, it would be unlikely that noise levels within the apartments would reach a level that would be considered to be a statutory nuisance. Therefore, there should be no substantiated grounds for providing further restrictions on the use of the nearby entertainment and live music venues.
13. I am satisfied that the necessary measures to ensure that the proposal would not have an unacceptable harmful effect on the living conditions of future occupiers of the proposed apartments and the future operation of commercial activities in the area could be secured by appropriate planning conditions. Therefore, with regard to this main issue, I find that the proposal would be acceptable.

### **Conclusions**

14. For the reasons given above, I have found that the proposal would not have an unacceptable effect on the living conditions of future occupiers of the proposed apartments and the future operation of commercial activities in the area. However, the harm that it would cause to the character and appearance of the Jewellery Quarter Conservation Area and the setting of a listed building provide compelling reasons why planning permission should not be granted. The proposal would also fail to comply with Birmingham Unitary Development Plan policies 3.8 and 3.10, as it would have an adverse effect on the quality of the built environment; and policy 3.27, as it would fail to preserve or enhance the character or appearance of the CA. As such, it would not represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

*M J Whitehead*

INSPECTOR

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer Services Department:

Telephone: 0370 333 0607

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: [customers@HistoricEngland.org.uk](mailto:customers@HistoricEngland.org.uk)