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Planning Development

By Email Only

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Kirklees Council
Planning – Development Control

FAO Joshua Merriman

OBJECTION TO PLANNING AND LISTED BUILDING CONSENT FOR REPLACEMENT WINDOWS, DOORS AND FRONT EXTERNAL WALL (RETROSPECTIVE) (WITHIN A CONSERVATION AREA)

8 GILES STREET, NETHERTHONG, HUDDERSFIELD, HD9 3EF

LPA REF: 2025/91763 & 2025/91764

Dear Sir,

Robert Halstead Chartered Surveyors and Town Planners have been instructed to submit an objection letter to Kirklees Council on behalf of some neighbouring residents. Our clients are concerned that the replacement windows and doors do not preserve nor enhance the character and appearance of the listed building or Netherthong Conservation Area. This issue will form the basis of this objection.

Preliminary Matters

It is our understanding that the previous property owners were compelled to apply for retrospective Listed Building Consent for “Installation of replacement windows and aluminium rainwater system, re-pointing and external alterations” in order to replace like for like brown wooden windows to the correct dimensions (LPA ref: 2015/65/91833/W). The support letter stated:

“We are looking to sell the property and need written confirmation that the following changes are also acceptable for Grade II listed buildings: 1. Heritage Slim Line double glazing units of 14mm (confirmation needed prior to submitting formal application); 2. We also re-pointed the front of the property in 1990. In 2007 we then installed a Alumasc Heritage Approved Aluminium Rainwater System as per Grade I listing requirements.we need written confirmation of this for the purposes of dealing with prospective purchaser enquiries.”

It is understood the property was then sold to the current owners, who installed new replacement uPVC windows, doors and guttering without Listed Building Consent. They have also installed new roofing.

In accordance with the Historic England website, the property was listed in 1983 (Listed Entry 1366046). The estate agents' marketing brochure for the property stated that it was Grade II listed, and as stated above, the reason for the previous owners applying for retrospective planning permission was to enable the property's sale. It therefore seems inconceivable that the applicants (the current owners) were unaware of its listed status when they purchased the property in 2015/2016. The applicants themselves also applied for listed building consent for "demolition of outhouse and former coal shed and the formation of off-street parking" in March 2020 (ref: 2020/90813).

The applicants allege that Kirklees Council previously informed them that the building was not listed and as such, planning permission and listed building consent was not required for the replacement windows and doors. Whilst if correct, this is unfortunate, it does not give rise to estoppel.

In *R. (Reprotech (Pebsham) Ltd) v East Sussex CC [2002] UKHL 8*, the House of Lords expressed the conclusion (at para.33 of the Judgment) that it was unhelpful to introduce private law concepts of **estoppel** into planning law. According to Lord Hoffmann (with whom the House agreed):

"33. ... As Lord Scarman pointed out in *Newbury District Council v Secretary of State for the Environment [1981] 578, 616*, **estoppel** bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into 'the public law of planning control, which binds everyone' (see also Dyson J in *R v Leicester City Council, Ex p Powergen UK Ltd [2000] JPL 629, 637*).

34. There is of course an analogy between a private law **estoppel** and the public law concept of a legitimate expectation created by a public authority, and the denial of which may amount to an abuse of power: see *R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213*. But it is no more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote."

In this case, any incorrect information and advice given to the applicants by the Council does not amount to an abuse of power and therefore should not be used as a reason to allow planning permission and listed building consent to be given. Due care and diligence should have been taken by the applicants themselves to check that all information received from Kirklees (or other sources) was indeed correct before carrying out the works.

The applicants have continued to disregard the planning process, subsequently installing a new rainwater system in June 2021; and changing the roofing in June 2024 without the required planning application – both after the submission of the Listed Building Consent application to the LPA in March 2020.

Heritage Impact

Paragraph 207 in the NPPF states:

In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.

Although the applicants' Heritage Impact Assessment / Planning Supporting Statement includes the official listing of the property, it does not provide any other details describing the significance of the

heritage asset or any contribution the building makes within the Netherthong conservation area. It is considered that further details should be requested in this respect before a full assessment of the application is made.

Local Plan Policy LP35 states:

Development proposals affecting a designated heritage asset should preserve or enhance the significance of the asset.

Paragraph 212 in the NPPF also states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance.

The applicants' Heritage Impact Assessment / Planning Supporting Statement states that "the windows required significant repair to such a point repair was disregarded and replacement was the only feasible option."

Whilst the replacement of the windows and doors may have been necessary due to decay / general wear and tear, there is no reason why the applicants could not have replaced them like for like i.e. timber for timber. The previous owners' replacements were like for like and Grade II listed approved.

The fact that other properties in the conservation area have installed uPVC windows and doors (with or without consent) does not provide adequate justification to allow them in this case. Conservation areas are defined as areas of special architectural or historic interest, the character of which is considered worthy of preservation or enhancement. If uPVC is used in abundance in the Netherthong conservation area, the unique characteristics that make it so special will be severely diminished. It is therefore of paramount importance that the uPVC replacement windows and doors in this case are not approved to ensure the preservation of the conservation area.

The applicants' list of example buildings with uPVC windows in Netherthong shows just one on Giles Street – number 15 (the old Post Office) – which is not a Grade II listed building. Numbers 1, 2, 3-5, 4, 6 (which is the former store converted by the applicants under LPA ref: 2019/62/91806/W by the applicants), 7, 10, 11-13 all have wooden windows and can be viewed along the road – 8 out of 10. Therefore, 8 is one of two outliers, when it should be the model of the character in the conservation area, it being the only listed building on the road.

The applicants have taken the remainder of their uPVC image examples mostly from Out Lane, ignoring the 4 Grade II listed properties on this road, which all have wooden windows (5, 7, 15; and Whig Cottage, 11, having upgraded its wooden windows via planning consent on LPA Ref: 2022/65/91383/W "Listed Building Consent for installation of replacement windows (within a Conservation Area)").

Furthermore, there does not appear to be any other planning applications in Kirklees where uPVC has been permitted to replace traditional windows on a listed building. Approval of the uPVC windows and doors could potentially set a dangerous precedent for development of this nature on other listed buildings within the district.

The applicants' Heritage Impact Assessment / Planning Supporting Statement also states that "the original windows were removed by previous property owners" and that "the previous timber windows offered no significant historical features worthy of preservation."

Although the previous timber windows may not have been as high quality as the original windows in terms of design and overall appearance, the previous owners did at least replace the original windows with timber windows. The applicants therefore had an opportunity to improve and enhance the appearance of the listed building by re-installing high quality timber windows that more closely reflected the originals. Instead, grey uPVC windows and doors were installed which has caused harm to the significance of the designated heritage asset.

The applicants Heritage Impact Assessment / Planning Supporting Statement goes on to state that "the current design and materials used on the windows offer greater thermal efficiency of the property." However, it is highly likely that good quality, energy efficient timber windows with a long-life span could have been purchased and installed on the property instead of the current uPVC additions. The applicants have not provided any evidence to the contrary.

Paragraph 215 in the NPPF states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

The applicants have not put forward any public benefits for the use of uPVC windows and doors on the property. In our clients' opinion, there are no public benefits. However, as discussed in the preceding paragraphs, the proposals would cause harm to the significance of both the listed building and the conservation area.

The proposed development is therefore considered to be unacceptable and contrary to Local Plan Policies LP24 and LP35 and the aims of Chapter 16 in the NPPF.

Our clients strongly object to the proposals for the reasons outlined above. It is therefore respectfully requested that planning permission and listed building consent are refused.

Yours faithfully,

Alison Dumville AssocRTPI

Robert Halstead Chartered Surveyors & Town Planners