

Report to Planning Committee

PLANNING ENFORCEMENT REPORT

Reference; 0009/2015

Location; The Tower House Newstead Abbey Park
Station Avenue Newstead

Breach of Planning Control; Unauthorised works to a listed building.

1 Background

- 1.1 The Tower House is part of a former stable range c1862 situated to the north west of Newstead Abbey and was first listed (Grade II) on 27th April 1987. The stables were designed by M.E. Hadfield in the Gothic Revival Style for the then owner of the Abbey, F.W. Webb. The building also has group value with the grade 1 listed Newstead Abbey, its attached Abbey Church which is a Scheduled Ancient Monument and other grade II listed buildings nearby. The stable block is also located within the grade II* Park and Garden.
- 1.2 Historic planning permission was granted for the conversion of the stable block at Newstead Abbey into a number of separate residential dwellings.
- 1.3 Following recent investigations about potential unauthorised works at the stable block, it was found that works had been carried out without the benefit of Listed Building Consent to the part of the stable block known as the Tower House which is positioned on the prominent north east corner. The works include:
- i) a replacement white painted dormer window to the front façade of the property
 - ii) a rear dormer window altered to a modern casement style with a bulky frame and the finial removed.
 - iii) the first floor side window over the ground floor canted bay window converted to a modern style double door.
- 1.4 Photographs taken by Nottinghamshire County Council on the 7th August 1990 which are kept on the Nottinghamshire County Heritage Environment Record shows the two dormer windows prior to the work taking place and a later photo taken in 2012 shows the changes to the dormer windows were carried out after

this time. In addition, the photographs taken in August 1990 show the first floor side window prior to the installation of the double doors. The photographs demonstrate that the works to the dormer windows took place sometime between 2012 and 2017 and the alterations to the side window took place between 1990 and 2017.

- 1.5 Several letters and emails were sent to the owners in autumn 2017 asking them to make contact with the Council to arrange a meeting to discuss the issues. Eventually a meeting was arranged for the 10th January 2018 at the property with one of the landlord owners who admitted they had undertaken works to the front gable dormer window to repair and improve it because the tenant had complained the original window was falling apart. They agreed they were responsible for the work and it took place after 2012 and before 2017.
- 1.6 However, more recently the Council has received notification from the owners that the work to the first floor side window was not undertaken by them. They say they only re-painted the door but it was installed prior to 2006 before they were the owners of the property.
- 1.7 A letter with an attached report about the works was sent to the owners on the 29th January 2018 confirming the advice given on site. The letter specified the work required to rectify the matter and gave details of the listed building applications required to be submitted before any further work was carried out. The letter stated the Council was prepared to allow the owners until the 31st August 2018 to submit the required applications and complete the work.
- 1.8 Between the end of January 2018 and the current time, officers have kept in contact with the owners by letter, telephone and by meeting at the site to assist and encourage the owners with the application and the required works.
- 1.9 Despite the owners being advised that an application to retain the double doors on the side elevation at first floor level was unlikely to receive officer support and be granted permission, they submitted a retrospective listed building application on the 14th August 2018 to regularise the existing doors. However, the information provided is inadequate to allow officers to validate and determine the application. The applicant was advised on the 28th August 2018 that further information is required in order to proceed with the application but there has been no further contact from the applicant
- 1.10 Contact was first made with the owners almost 12 months ago and no other applications have been received and no progress has been made towards carrying out work to alleviate the harm caused to the building.

2 Site Description

2.1 The Tower House forms the eastern corner of the stable range situated to the north west of Newstead Abbey. The stable range, built in the Gothic Revival architectural style is grade II listed and is built in a rectangular plan around a courtyard.

3 Planning History

3.1

Reference	Proposal	Decision	Date
2005/1026	Listed Building Consent to erect single storey extension & internal alterations.	Granted	28.11.2005
2005/1027	Planning permission to erect single storey extension.	Granted	28.11.2005
2018/0819	Consent is applied in respect of the door leading from the master bedroom onto the balcony, from a dark wood stain to a matt black paint. Insufficient information has been submitted to validate the application.	Invalid	

4 Assessment

4.1 The stable block at Newstead Abbey is grade II listed. It is positioned in a Registered Park and Garden which is grade II* and close to and within the setting of the nationally important grade I listed Newstead Abbey and scheduled priory church.

4.2 The effect of a building being listed is that it is identified by the Secretary of State as being part of a list of buildings of special architectural or historic interest under the Planning (Listed Buildings and Conservation Areas) Act (1990) ("the Act").

4.3 The carrying out of works to a listed building without listed building consent is a criminal offence pursuant to section 9 (1) of the Act No application for Listed Building Consent has been submitted and approved for the works undertaken and described at 1.3 above.

Planning considerations

4.4 The main planning considerations in this matter are:-

1. Whether or not the alterations materially affect the character or appearance of a listed building.
2. Whether or not the works are authorised.
3. Whether or not the alterations preserve the architectural or historic interest of the building.

4.5 In determining planning applications and applications for Listed Building Consent the following policies are relevant.

The National Planning Policy Framework (NPPF)

- Part 16 - Conserving and enhancing the historic environment

4.6 At a local level;-

The Aligned Core Strategy (ACS) for Gedling Borough (September 2014) provides a strategic policy framework and is now part of the development plan for the area:

- ACS Policy 11: The Historic Environment

4.7 The Gedling Borough Council Local Planning Document (LPD) (adopted July 2018) provides the local policy framework.

- LPD 26 – Heritage Assets
- LPD 27 – Listed Buildings
- LPD 29 Historic Landscapes, Parks and gardens

4.8 Heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 184 NPPF)

4.9 Paragraphs 193 – 194 of the NPPF 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. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification”.

4.10 If there would be any harm to the asset and/or its setting, policy LDP 26 supports the advice given in the NPPF and requires that a clear justification for the proposal is given so that the harm can be weighed against public benefit. It states that only development proposals that would conserve and/or enhance the significance of a heritage asset will be supported and that development proposals that would cause harm to the significance of a heritage asset will be refused permission unless there are overriding public benefits and mitigation measures are secured.

4.11 LPD27 requires proposals including alterations, extensions or changes of use to Listed Buildings to protect the significance of the heritage asset including its setting.

4.12 It also advises that proposals which conserve and/or enhance the architectural character, historic fabric and detailing of the original building including the retention of the original structure, features, materials and layout/plan-form will be supported but that alterations, extensions and development to or within the setting of a Listed Building should consider scale, form, mass, design, siting, detailing and materials.

4.13 Policy LPD 29 – requires proposals affecting Registered Parks and Gardens (as shown on the Policies Map) to seek to conserve and/or enhance features

which form part of the significance of the asset and ensure that development does not detract from the enjoyment, layout, design, character, appearance or setting of the Registered Park or Garden including key views or prejudice its future restoration.

- 4.14 The unauthorised works to the Tower House consist of the following;

Gabled Dormer window to front façade

- 4.15 The original window design of the dormer window by the architect Hadfield was a two light window with a central mullion. It is considered it would have been timber framed and single glazed. Photographic evidence taken by Nottinghamshire County Council in 1990 and then a later photo taken in 2012 shows the dormer window on the front façade of the property had been changed at some time to a black timber painted single glazed window with a cross casement having a central mullion and upper transom section.
- 4.16 A more recent inspection shows the window was changed again after 2012 to a bulky white painted visually dominant style and the finial (a vertical projecting architectural feature to the apex of a roof) has been removed. It is considered that the alterations affect the character of the building and that the work harms the architectural and historic interest of the building because it is not appropriate to the age and architecture of the building.

Rear dormer window

- 4.17 Photographic evidence shows that in 1990 the window was single glazed timber window with a central mullion and six lights.
- 4.18 The rear dormer window has been altered without consent to a modern casement style with a bulky frame. Once again the finial has been removed. The current window is considered to be inappropriate for the age and architecture of the building. The window materially affects the character and harms the architectural and historic interest of the listed building.

First floor side window over ground floor canted bay window.

- 4.19 The original Hadfield plan of 1862 indicates a two light window at first floor level over the bay window on the side elevation of the property. A photograph taken by Nottinghamshire County Council in 1990 shows the window to be a two light window with a slender central mullion. Given the use of stone in the ground floor bay window and other similar windows in the building and the original Hadfield plan, it is considered that this window would have been stone. The castellation's of the stone parapet over the bay window obscure the lower part of the window however surrounding stone jambs indicate that the window is at full door height.
- 4.20 The inspection carried out at the end of 2017 showed the first floor window has been converted into a modern style double door. The door has a modern bulky form in a stained timber and is inappropriate for the age and architecture of the listed building. The works affect the character of the listed building and harm its architectural and historic interest.

- 4.21 The Tower House is a grade II listed building located in a prominent location within the grade II* Registered Garden of Newstead Abbey. A clear view of the dwelling can be seen from the front of the Grade 1 listed Newstead Abbey and attached scheduled priory church. The white dormer window on the front façade is particularly conspicuous and looks incongruous with the rest of the stable block.
- 4.22 It is considered that the level of harm to the listed building (Tower House) is substantial and that had Listed Building Consent been applied for the work described and which affects the character of the building its setting and setting of nearby listed buildings and the listed registered Park and Garden, permission would have been refused. The alterations are in conflict with the above national and local planning policies.

Time Limits

- 4.23 There is no statutory time limit for taking action for unauthorised work to a listed building. It is clear that the alterations to the dormer windows have taken place between 2012 and 2017 and the alteration to the first floor side window has taken place between 1990 and 2017. The Council is within time to commence enforcement proceedings.

Action available

- 4.24 The carrying out of unauthorised works to a listed building is an offence of strict liability and the local planning authority may prosecute for the offence in the Magistrates Court. The Local Planning Authority also has discretion to issue a Listed Building Planning Enforcement Notice to the owners requiring works to rectify the harm caused even if the works were carried out by a previous owner. Alternatively, the Local Authority may issue an enforcement notice **and** also prosecute for the offence.

Human Rights

- 4.25 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 4.26 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control is in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice, or pursuing formal proceedings in the Magistrates Court if the notice is not

complied with, will result in interference with the recipients' rights. However, it is considered that issuing a listed building enforcement notice in the first instance followed by proceedings in the magistrates Court if the notice is not complied with would be a proportionate response to the breach of planning control.

Equalities

- 4.27 The Council's Planning Enforcement team operates in accordance with the Council's Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 4.28 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 4.29 The Crime and Disorder Act 1998 places a duty on the Local Planning Authority to do all that it reasonably can to prevent crime and disorder in its area. As stated earlier it is a criminal offence under the Planning (listed building and conservation area) Act 1990 to carry out works to a listed building without consent. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 4.30 It is therefore considered expedient to now serve a listed building enforcement notice requiring the owners to;
- i) reinstate to the front a two light single glazed timber framed window painted black frame with a central timber mullion as per Hadfields drawing and a timber finial to the apex of the roof of the dormer window; These to be reinstated in place of the white painted dormer window on the front façade and the missing finial.
 - ii) reinstate the rear dormer window to its design of 1990 but painted black, a colour often used at the time the building was first erected and which would complement the roof slates. The finial should also be reinstated.
 - iii) reinstate a two light window with a central stone mullion as per the original plan of 1860 and the 1990 photo. It should be single glazed and may be with leaded lights in a diamond pattern to match others in the building.

The windows may all be secondary glazed to improve thermal efficiency and should comply with relevant Building Regulations.

5 Conclusion

- 5.1 A breach of planning control has been identified which is contrary to national and local planning policies intended to preserve the historic environment and heritage assets.
- 5.2 The works are unauthorised and although some of the works may have been carried out by a previous owner, the current owners can still be required to correct the harm caused by the work. In any case the current owners admit carrying out some of the works after 2012.
- 5.3 Negotiations with the owners have failed to rectify the breach and failure of the Council to act in these circumstances will result in the character of the listed building continuing to be adversely affected by these unauthorised works in a prominent location and on full view to visitors to the Abbey and its grounds.
- 5.4 The Council should now commence enforcement action without delay by issuing a listed building enforcement notice in the terms advised above and if the notice is not complied with proceedings should be taken in the courts as necessary.

6 Recommendation

- 6.1 That the Service Manager, Development Services, in conjunction with the Director of Organisational Development & Democratic Services, be authorised to take all necessary planning enforcement action including the service of a listed building enforcement notice and proceedings through the courts if required to ensure improvement works are carried out to negate the impact of the existing unauthorised works to the two dormer windows and the first floor side window at the Tower House, Newstead Abbey Park, Station Avenue, Newstead.**