

**TOWN & COUNTRY PLANNING ACT 1990 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990**

**Appeals Against The Decisions of Manchester City Council to Refuse
Applications Made Under Section 73 and Section 19 to Vary
Planning and Listed Building Consent Conditions**

**363 WILMSLOW ROAD
MANCHESTER M14 6XU**

**STATEMENT OF CASE
PLANNING
APPENDICES**

6 JANUARY 2023

140 Denby Lane
Upper Denby
Huddersfield
HD8 8UN

T: 01484 860000
M: 07836 654108
www.alynnicholls.com
akn@alynnicholls.com

APPENDICES

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Appendix 1: Planning Permission reference 127016/FO/2020

Town & Country Planning Act 1990 (as amended)

Planning Permission

Applicant

Feltham Management Limited
20 Aldwych Avenue
Manchester
M14 5NL

Agent (if used)

Alyn Nicholls
Alyn Nicholls & Associates
140 Denby Lane
Upper Denby
Huddersfield
HD8 8UN

Part 1 – Particulars of the application/development

Proposal: Erection of two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Location: 363 Wilmslow Road, Manchester, M14 6XU

Date of application: 3 June 2020

Application number: 127016/FO/2020

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **Approved** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

The application has been considered in a positive and proactive manner as required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 and any problems arising in relation to dealing with the application has been communicated to the applicant.

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363-OD-0102 01 Proposed and Existing site plan - as received on the 28th May 2020

363-OD-0110 Rev 02 Cross Section (As Proposed)
 363-OD-0111 Rev 02 Interior Details (Sheet 1)
 363-OD-0112 Rev 02 Interior Details (Sheet 2)
 363-OD-0113 Rev 02 Window Details (Sheet 1)
 363-OD-0114 Rev 02 Window Details (Sheet 2)
 363-OD-0115 Rev 02 Front Steps Details
 363-OD-0116 Rev 02 External Works Details
 363-OD-0117 Rev 01 Window Details (Sheet 3)
 363-OD-0119 Rev 01 Replacement Window Shutters
 363-OD-0120 Rev 01 Window Shutters (View)
 363-OD-0121 Rev 01 Suspended Ceiling Details
 All as received via email on the 14th September 2020

363-OD-0109 Rev 03 Elevations (As Proposed)
 363-OD-0118 Rev 02 Roof Details - both as received via email on the 17th October 2020

363-OD-0108 Rev 04 Floor Plans (As Proposed)- as received via email on the 20th May 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development shall commence (including any demolition or site set up works) until a method statement for the construction works to be undertaken to implement the approval have been submitted to and approved in writing by the City Council as local planning authority. The submitted statement shall include methods to protect the listed building whilst works are being carried out on the building and at the site. The development shall be subsequently carried out in accordance with the agreed details.

Reason - To ensure works are undertaken to protect designated heritage assets, pursuant to policy EN3 of the Core Strategy and saved policy DC19.1 of the Unitary Development Plan.

4) No development that is hereby approved shall commence unless and until samples and specifications of all materials including mortar specification to be used on all external elevations of the development and including: gate posts; front steps; and, all hard landscaping materials have been submitted to and approved in writing by the City Council as local planning authority. The development shall be subsequently carried out in accordance with the agreed materials.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

5) Within one month of the date of the development hereby approved commencing the detailed scheme for the storage (including segregated waste recycling) and disposal of refuse shall be submitted to the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - To ensure that there is satisfactory provision for the storage of refuse pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC5.

6) Notwithstanding the approved plans, within one month of the commencement of development a hard and soft landscaping treatment scheme including frontage hedgerow planting shall be submitted to and approved in writing by the City Council as local planning authority. The approved scheme shall be implemented not later than 12 months from the date the buildings are first occupied. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.

Reason - To ensure that a satisfactory landscaping scheme for the development is carried out that respects the character and visual amenities of the area, in accordance with policies SP1, EN3, EN9 and DM1 of the Core Strategy and saved UDP policy DC19.

7) The car parking as indicated on the approved site layout drawing, shall be laid out and demarcated prior to the first occupation of the development hereby approved and shall be retained thereafter for sole use by the occupiers of the development.

Reason - To ensure that adequate car parking provision is available for the occupiers of the development pursuant to saved UDP policy DC5 and Core Strategy policy DM1.

8) The bicycle store indicated on the approved plans shall be installed prior to the first occupation of the development hereby approved and shall remain in situ whilst the development is in use.

Reason - To ensure adequate access to secure cycle parking facilities by occupiers of the development pursuant to policy T1 and DM1 of the adopted Core Strategy.

9) The residential use hereby approved shall be used only as private dwellings (which description shall not include serviced properties or similar uses where sleeping accommodation (with or without other services) is provided by way of trade for money or money's worth and occupied by the same person for less than ninety consecutive nights) and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason - In the interests of residential amenity, to safeguard the character of the area and to maintain the sustainability of the local community through provision of accommodation that is suitable for private residential purposes and to ensure the achievement of the public benefit identified pursuant to policies SP1, DM1, EN3, H1, H6 and H11 of the Core Strategy for Manchester and the guidance contained within National Planning Policy Framework including section 16.

10) Before first occupation the windows in the side elevation of the rear extension facing towards 361 Wilmslow Road (north elevation) shall be obscure glazed to a specification of no less than level 5 of the Pilkington Glass Scale or such other alternative equivalent and shall remain so in perpetuity.

Reason - To protect the amenity and living conditions of adjacent residential property from overlooking or perceived overlooking and in accordance with policies SP1 and DM1 of the Core Strategy.

Informatives

Building Regulations 2010

This permission does not grant approval under Building Regulations.

Street Naming & Numbering Requirements

Manchester City Council is responsible for allocating street naming and numbering within Manchester for new developments or property conversions. Individuals or businesses are not permitted to allocate their own property numbers, building or street names.

If your development includes the creation of new dwellings (either new build or conversion of existing buildings), creation of new commercial properties or the subdivision of existing properties you must ensure that you request new or changes to addresses through us so they can be officially allocated and registered in accordance with the Public Health Act 1925 Sections 17-19 & Greater Manchester Act 1981 Section 22.

Failure to do this may result in difficulties for the developer/occupier when requiring services such as connections to utilities, phone lines and postal services and may delay your development.

You can apply online at the following address:

http://www.manchester.gov.uk/info/100011/roads_parking_and_transport/1988/naming_and_numbering_of_houses_buildings_streets_and_roads/2

Date: 4 June 2021

Signed:



Julie Roscoe

Director of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA

Appendix 2: Listed Building Consent reference 127017/LO/2020.

Planning (Listed Building & Conservation Area) Act 1990 (as amended)

Listed Building Consent

Applicant

Feltham Management Limited
20 Aldwych Avenue
Manchester
M14 5NL

Agent (if used)

Alyn Nicholls
Alyn Nicholls & Associates
40 Denby Lane
Upper Denby
Huddersfield
HD8 8UN

Part 1 – Particulars of the application/development

Proposal: Listed building consent for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Location: 363 Wilmslow Road, Manchester, M14 6XU

Date of application: 3 June 2020

Application number: 127017/LO/2020

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **granted** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

The application has been considered in a positive and proactive manner as required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 and any problems arising in relation to dealing with the application has been communicated to the applicant

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363-OD-0102 01 Proposed and Existing site plan - as received on the 28th May 2020

363-OD-0110 Rev 02 Cross Section (As Proposed)
 363-OD-0111 Rev 02 Interior Details (Sheet 1)
 363-OD-0112 Rev 02 Interior Details (Sheet 2)
 363-OD-0113 Rev 02 Window Details (Sheet 1)
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 363-OD-0119 Rev 01 Replacement Window Shutters
 363-OD-0120 Rev 01 Window Shutters (View)
 363-OD-0121 Rev 01 Suspended Ceiling Datasheets
 All as received via email on the 14th September 2020

363-OD-0109 Rev 03 Elevations (As Proposed)
 363-OD-0118 Rev 02 Roof Details - both as received via email on the 17th October 2020

363-OD-0108 Rev 04 Floor Plans (As Proposed)- as received via email on the 20th May 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development shall commence (including any demolition or site set up works) until a method statement for the construction works to be undertaken to implement the approval have been submitted to and approved in writing by the City Council as local planning authority. The submitted statement shall include methods to protect the listed building whilst works are being carried out on the building and at the site. The development shall be subsequently carried out in accordance with the agreed details.

Reason - To ensure that the construction works associated with the development of the extension to this Grade II Listed Building are undertaken in an appropriate manner pursuant to policies EN3, SP1 and DM1 of the Core Strategy, saved Unitary Development Plan policy DC19 and the National Planning Policy Framework.

4) No development that is hereby approved shall commence unless and until samples and specifications of all materials including mortar specification to be used on all external elevations of the development and including: gate posts; front steps; and, all hard landscaping materials have been submitted to and approved in writing by the City Council as local planning authority. The development shall be subsequently carried out in accordance with the agreed materials.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

5) Prior to the installation of the new false ceiling to the ground floor of the property, a detailed method statement for its installation including: details of the types, fixing

method and position of supporting structures and ceiling in relation to existing heritage features; materials and finishes of the ceiling; details of the refurbishment and repair of original fabric to be concealed by the ceiling including a full record of the original fabric to be concealed; together with the details of the new cornicing to be installed to the new ceiling including moulding specifications and design, shall be submitted to and approved in writing by the City Council as local planning authority. The approved details shall be installed in accordance with the agreed details prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity, and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest so careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

6) No rainwater goods nor pipes shall be installed nor affixed other than rainwater goods and pipes constructed of cast iron and coloured black. All such goods shall kept coloured and be in situ prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19; of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

7) No works, to install the timber panelling and shutters to ground floor windows shall commence until details of the work has been submitted to and approved in writing by the City Council as local planning authority. The details shall include method statements for their installation; details of materials and their finishes; and fixtures and fittings required for their installations. The development shall be subsequently carried out in accordance with the agreed details prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

8) The details of the picture rails, moulded skirting boards, acanthus design console brackets within hall, as indicated on the approved drawings shall be installed prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

Informatives

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Failure to do this may result in difficulties for the developer/occupier when requiring services such as connections to utilities, phone lines and postal services and may delay your development.

You can apply online at the following address:

http://www.manchester.gov.uk/info/100011/roads_parking_and_transport/1988/naming_and_numbering_of_houses_buildings_streets_and_roads/2

Date: 4 June 2021

Signed:



Julie Roscoe
Director of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA

Notes

1. This permission refers only to that required under the Planning (Listed Buildings and Conservation Areas) Act 1990 does not include any consent or approval under any other enactment, byelaw, order or regulation.

2 If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State in accordance with sections 20 and 21 of the Act within six months of the date of the notice of the decision.

The Planning Inspectorate have introduced an online appeals service that can be used to make appeals online. This service is available through the gov.uk website – www.gov.uk/planning-inspectorate. The Inspectorate will publish details of your appeal on the internet. Alternatively If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances that excuse the delay in giving notice of appeal.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the City Council (planning@manchester.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

3. The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70(1) and 72(1) of the Act.

4. If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990

5. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to them. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Appendix 3: Officer Delegated Report (133618/JO/2022)



Planning

Growth & Development

Delegated officer report for planning application

Application no. 133618/JO/2022

Date registered valid: 27 April 2022

Proposal: Variation of condition numbers: 2 (specified plans) and 10 (obscure glazing) from planning approval reference 127016/FO/2020 to allow amendments: to the materials and layout of steps to the main entrance, materials to be used in the rainwater goods, alterations to the design of windows in the rear extension, heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; and, to allow the partial occupation prior to the installation of obscure glazing

Address: 363 Wilmslow Road, Manchester, M14 6XU

Ward(s): Withington Ward

Applicant: Feltham Management Limited 20 Aldwych Avenue, Manchester, M14 5NL

Agent (if any): Alyn Nicholls Alyn Nicholls Chartered Town Planner 140 Denby Lane, Upper Denby, Huddersfield, HD8 8UN

Case officer: Robert Griffin
 Tel: 0161 234 4527
 Email: robert.griffin@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 22.07.2022

Application details

Type of application: Variation or Removal of Condition

Development type: Minor Dwellings

Date of site visit: 10th May 2022

Standard consultations:

Printed: 5 May 2022 Expired: 26 May 2022

Neighbour notifications

Printed: 5 May 2022 Expired: 26 May 2022

Site notice

Posted: 10 May 2022 Expired: 31 May 2022

Press advert

Published: 10 May 2022 Expired: 31 May 2022

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Grade II

Conservation area: N/A

Tree Preservation Order: N/A

Description

The application property is a grade II listed building, having been formally designated in 1974, and forms an end property of a short terrace row of three buildings known as 'Norton Place'. The property was originally constructed as a dwellinghouse, along with the other two buildings in the row. Predominately two storey in height, the property benefited from a basement area, two-storey outrigger to the rear and attic accommodation.

The front of the property has two ground floor bay windows with central entrance door way and steps. The bays and doorway have distinctive decorative detailing as do the eaves of the property. The upper floor windows have vertical sash windows, with vertical glazing bars, and a more simple stone surround.

The side gable wall to the property has a similar bay window as the front elevation with decorative features and an upper floor window, which again follows the same style and features as the front elevation.

The rear elevation of the property was once characterised by a two-storey outrigger. This was similar to the outriggers, which remain evident within the remainder of the terrace row at properties 359 and 361 Wilmslow Road known as 'Norton Place'.

A low boundary wall and gate post mark the entrance to the front curtilage of the property which once formed the front garden and now consists of hardstanding for car parking. To the rear of the property is a landscaped garden area with cycle store and clothes drying area.

The list description for the property indicates it was in use in 1974 as offices and the planning history for the property indicates it was used as a medical centre from 1979 to 2010. There appears to have been an education use in the building subsequently prior to it becoming vacant.

The surrounding area is mixed use in nature. The application property, together with the other properties in the terrace that form Norton Place, retain their residential character.

Development Proposals

Planning and Listed Building Consent was granted under application references 127016/FO/2020 and 127017/LO/2020 for the erection of basement and two storey rear extension to create 9no. self-contained flats together with other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store.

In determining those applications supporting statements indicated that the proposals conformed closely to the proposals for the conversion and extension of the property to form 9 no. apartments granted planning and listed building consent in 2015.

The approved scheme subject of this variation comprised: four one-bed duplex apartments on the ground level and basement, two one-bed flats on the first floor, a two-bed flat in the attic and two two-bed flats in the extension to create a total of nine apartments. Each duplex apartment would occupy one of the original rooms on the ground level and the corresponding space in the lower ground floor. The first floor apartments would each occupy two rooms, front to back, while the two-bed apartment would occupy the three existing rooms on the upper level. The rooms located towards the front of the building on the ground and first floor have been refurbished and returned to close to their original size. The applicant indicates that the number of partition walls introduced have been kept to a minimum throughout the existing building. The extension has two storeys and a floorplate of about 60m² per floor. The extension would be constructed traditionally, with loadbearing brick-faced cavity using salvaged bricks, slate roof. Windows and doors are to be of painted timber.

The current variation of condition application seeks to change elements of the approved scheme that impacts on the external elevations of the extension building together with changes to elements of internal works approved under the original permission. The amendments that permission is sort for are:

- Staged completion of the building
- Use of aluminium heritage style rainwater goods in lieu of cast iron
- Use of stone effect concrete entrance steps in lieu of natural stone
- Retention of the installed suspended ceiling and omit further works to the concealed original ceiling and cornice together with the omission of a replica cornice below the suspended ceiling
- Design details to the rear extension including removal of swept arch heads to windows, alter the window size, removal of dummy windows, retain concrete sills, change to fenestration pattern.
- Omit the installation

A separate variation to the listed building consent application (reference 133619/JO/2022) has also been submitted.

Relevant Planning History

March 2001 - Application for Planning permission 061665/FO/SOUTH1/01, Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear. Approved June 2001.

March 2001- Application for Listed Building Consent 061666/LO/SOUTH1/01, LISTED BUILDING CONSENT Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear and internal alterations. Approved June 2001.

May 2008 -Planning application 086507/FO/2008/S1 Erection of a part single/part 2 storey extension at rear of property and entrance ramp and new entrance at side of property. Provision of parking spaces in rear garden with associated landscaping. Approved July 2008.

May 2008 - Application for Listed Building Consent 086581/LO/2008/S1 LISTED BUILDING CONSENT for the erection of a part single/part 2 storey rear extension, new access ramp and side entrance, car parking in rear garden and associated landscaping Approved July 2008.

July 2014 - Planning application 106424/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create nine flats, with landscaping and parking Approved September 2014.

July 2014 - Application for Listed Building Consent 106425/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of nine flats, Approved September 2014.

March 2015 -Planning application 107448/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create 9no. self contained flats with landscaping and parking, Approved May 2015.

March 2015- Application for Listed Building Consent 107449/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of 9no. flats, Approved May 2015.

June 2017 Planning application 116773/FO/2017, Change of Use from doctors surgery to create 10no. self contained flats including the erection of a basement and two storey rear extension to existing building together with excavation of rear garden with associated landscaping and parking, Refused August 2017

June 2017 -Application for Listed Building Consent 116774/LO/2017, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking ,Refused August 2017

July 2018 - Planning application 120505/FO/2018, Erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking, Refused October 2018.

July 2018 - Application for Listed Building Consent 120506/LO/2018, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking. Refused October 2018.

Appeal against refusal of Planning permission 120505/FO/2018 and 120506/LO/2018 dismissed following Public Enquiry in July 2019.

June 2020 - Planning application 127016/FO/2020, Erection of basement and two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store, Approved June 2021

June 2020 - Application for Listed building consent 127017/LO/2020 for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Consultations & Notification Responses

Neighbouring properties were notified, a site notice was posted and advertisement was placed in the Manchester Evening News. No responses were received.

Policy

The development plan consists of the:

- Manchester Core Strategy Development Plan Document (Adopted July 2012); and
- The extant Unitary Development for the City of Manchester (Adopted 1995)

The Manchester Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP). The Core Strategy sets out the long term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the development plan unless material considerations indicate otherwise.

The relevant policies to in considering this application are as follows:

Policy SP1 '*Spatial Principles*'

Policy EN1 '*Design principles and strategic character areas*'

Policy EN3 '*Heritage*'.

Policy DM1 '*Development Management*'

The Unitary Development Plan for the City of Manchester was adopted in 1995. However, it has now been largely replaced by the Manchester Core Strategy. There are some saved policies which remain part of the development plan and the starting point for decision making pursuant to section 38 (6) of the Planning and Compulsory Purchase Act. The below saved policies are considered relevant.

Saved policy DC1 '*Residential Extensions*' states that this policy is applicable to extensions to properties in use as flats (part DC1.6).

Saved policy DC1 outlines a number of general criteria which is considered relevant in the determination of residential extensions it provides the considerations when determining

applications including that extensions should not be excessively large or bulky; extensions should not be out of character with the style of development in the area or the surrounding street scene by virtue of design, use of materials or constructional details.

Saved policy DC5 '*Flat conversions*' states at DC5.2 that there will be a general presumption in favour of flat conversions within residential areas, on the upper floors of businesses within commercial areas and in properties on main road frontages, subject to other relevant policies of the Plan.

Saved policy DC19 '*Listed Buildings*' states that in determining applications for listed building consent or planning applications for development involving or having an impact on buildings of Special Architectural or Historic Interest, the Council will have regard to the desirability of securing the retention, restoration, maintenance and continued use of such buildings and to protecting their general setting.

The National Planning Policy Framework (NPPF- 2021) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Relevant sections to this application are contained in Section 12 (Achieving well-designed places) and Section 16 (Conserving and enhancing the historic environment)

The creation of high quality, beautiful and sustainable buildings and places is identified as fundamental to what the planning and development process should achieve.

The NPPF indicates that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The NPPF states that in determining planning applications, local planning authorities should take account of:

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c. the desirability of new development making a positive contribution to local character and distinctiveness.

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.

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a. the nature of the heritage asset prevents all reasonable uses of the site; and b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d. the harm or loss is outweighed by the benefit of bringing the site back into use.

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.

Local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

Issues

Principle – The principle of the conversion of the application property to 9 no. self-contained apartments facilitated by the erection of a rear extension has been accepted through the granting of the principle permission that variations are now sort. In this instance the application proposals seek to omit and alter the permission previously granted permission and further consideration of these matters is required.

Effects on the listed building - The frontage of Norton Place presents a grand and broadly symmetrical Italianate style elevation to Wilmslow Road. The stucco rendering, deep eaves with ornate bracketing, central feature gable, Corinthian pilaster doorways, canted bay windows and stone quoining at either end, serve to create a visually prominent and distinctive local landmark.

Whilst the side gables are less detailed they are considered to have been designed as part of the overall aesthetic of the terrace of properties that forms Norton Place. The rear elevations of the properties on Norton Place are more subservient of stock brick construction and considered utilitarian in appearance, and were more modest in terms of materials and of windows openings but together demonstrate the historic development of the area and the age in which they were built. The principle significance of the Grade II listed building at 363 Wilmslow Road are the front and side elevations with the rear elevation reflecting the character of more modest detailing and finishes.

The Historic England (HE) Listing of Norton Place indicates that an interior inspection of the property was not undertaken at the time of its listing in 1974. The guidance of HE is that listing descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of a building. It is fact that the whole of a listed building is covered by its designation, including its interior. In this instance the internal configuration of the building was previously compromised by small scale unsympathetic alterations and additions that were undertaken in association with its previous usage over a period of time. However, evidence available indicates that prior to the unauthorised works having taken place, there were present within the interior of the building decoration and finishes that contributed towards the appreciation of the original construction of the building. These included flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. It is considered therefore that the interior of the building did contribute to the special

interest and significance of the building and the proposals impacts on the significance of the interior is required.

The proposed extension – In approving the original consent subject of this variation application it was considered that the inclusion of window sizes and styles more reflective of the original rear elevation, together with segmental arch features more closely reflected the rear elevations of the group of properties forming the listed Norton Place. This was an important consideration and that the proposed rear extension reflected the hierarchy of significance of the listed building in continuing to reflect a more modest and subservient built form to the more significant front and side elevations.

The conclusion was that the proposed extension would result in harm to the listed building, as the front and side elevations of the application property would remain largely intact as a result of the proposal the level of harm was considered to be of less than substantial harm. The proposed change to this element of the scheme is considered to erode the quality and authenticity of the design response previously approved.

Other works - In addition to the rear extension the approved proposals incorporated a number of other works to the building that would replace elements installed as part of the unauthorised works to the property these include:

- The replacement of uPVC windows and doors with timber sliding sash windows;
- The installation of three no. rooflights to the front roof plane (instead of the 6 installed) and 4 no rooflights to the rear roof plane (instead of 5 installed)
- The replacement of uPVC rainwater goods with heritage aluminium cast downpipes and guttering
- Removal of boiler vents and alarm boxes from the side gable wall
- Reinstatement of stone gateposts
- Reinstatement of stone flight of steps to front entrance

The re-introduction of traditional timber framed windows to the existing building together with more appropriately sized timber windows to the proposed extension and rear elevation were considered to reduce the degree of harm of the loss of the original windows from the building.

The current proposals seek to reverse a number of these elements of the approved scheme, as set above the cumulative effect of the changes set out is to diminish the approved scheme and erode features that were considered to assist in overcoming the harm identified.

Matters relating to allow the partial occupation of the property prior to the installation of obscure glazing are considered to have been achievable on there own as part of a distinct application, however in this instance other proposed changes are considered to not be acceptable.

Internal works – The proposed conversion of the listed property encompasses a range of works to ensure it is suitable for habitation and provide a safe environment for future occupiers. The approved application proposals were modified to incorporate and replace lost features undertaken as part of the unauthorised works.

The internal works comprised:

- The installation of internal staircases for the duplex apartments,
- The re-instatement of timber panelling to the bay windows to ground floor rooms;
- The provision of replacement ceiling cornicing, picture rails and moulded skirting boards;
- Re-instatement of acanthus design console brackets within hall.
- Raising of part of the ground floor;
- Insertion of suspended ceilings in the ground floor spaces to meet fire and sound insulation requirements.

It was considered that these works, whilst acknowledging that these corrected previous unauthorised works, would benefit the building and that these together with other works, would have modest heritage benefits.

The conclusion of the original approval was that when considering the overall harm to the listed building, the proposal would not lead to 'substantial harm' or the total loss of the significance of the designated heritage asset, that being number 363 Wilmslow Road and the group of Grade II Listed Buildings identified as 'Norton Place'. The erection of the extension was considered to lead to less than substantial harm to the significance of a designated heritage asset. Therefore in accordance with the NPPF *'where a development proposal will lead to a less than significant harm to the significance of a designated heritage asset, this harm should be weighed against the public benefit of the proposal, including securing its optimum viable use'*.

The effect of the proposed changes - The previous approval followed a lengthy public inquiry with the appeal being dismissed. The inspector placed significant weight on the heritage value of the original internal features that had been removed. Lengthy discussions and negotiations were had together with concessions in order to arrive at an approved scheme that could be supported by the Council and followed the principles set out in the appeal Inspectors decision.

It is considered that the current amendments go against the principles and carefully detailed reinstatement works that have been previously agreed. The internal features contribute to the architectural and historic significance of the grade II listed building and there was evidence that these features exist to enable authentic reinstatement. The elevational changes proposed to the rear extension were both a compromise to assist the applicant but also considered to be the correct architectural and heritage approach, the proposed alterations are considered to dilute the design intent previously negotiated and approved.

Public Benefit - The improvements to the front and side elevation of the property together with the proposed works to replace the stone steps and gate posts, together with the renewal of the front forecourt parking area were considered to derive a direct and visible public benefit given the significance of these elevations within the immediate area. The amendments proposed dilute this benefit.

The proposals would result in the re-use of a designated heritage asset and secure its long term use whilst contributing to the overall stock of residential dwellings in a highly sustainable location. This was considered to be of a major public benefit. Whilst acknowledging the submitted information to support this application, unauthorised and illegal removal of features and the difficulty of potential reinstatements cannot be used to justify a dilution of the approved scheme as set out in the NPPF.

In this instance it is considered that the proposed amendments would dilute the public benefits that derived from the originally approved proposals and as such cannot be supported.

Conclusion – As set out within this report, the original approval provided further improvements including to the sizes and design of the windows to be incorporated into the extension together with further internal works to replicate some of the historic features lost as part of the unauthorised works, including timber panelling and shutters to the ground floor front rooms. As such the amended proposals that impact on the original approved scheme are not considered to be acceptable.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Article 35 Declaration

In this instance concerns with the application were expressed to the applicant's agent, the proposal do not comply with the development plan and there are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

Reasons for recommendation to refuse

- 1) The proposed elevational alterations to: the materials and layout of steps to the main entrance; materials to be used in the rainwater goods; alterations to the design of windows in the rear extension; heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; subject of this application fail to preserve or enhance the Grade II designated heritage asset causing harm that cannot and has not been justified by public benefit, and is therefore considered to be contrary to Sections 16(2) and 66 of (Listed Buildings and Conservation Areas) Act 1990, Sections 12 (Achieving well designed places) and 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework, The Core Strategy for the City of Manchester, in particular Policies SP1, DM1 and EN3 and saved policy DC19.1 (Listed Buildings) of the Unitary Development Plan for the City of Manchester.

Appendix 1 – List of consultees & neighbours notified

Urban Design & Conservation
 Withington Civic Society
 Rusholme, Fallowfield & Moss Side Civic Society
 South East Fallowfield Residents Association

2A Egerton Road, , Manchester, , M14 6XW
 Flat 10, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 9, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 8, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 7, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 6, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 5, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 4, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 3, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 2, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 1, 363 Wilmslow Road, Manchester, M14 6XU
 4 Besford Close, Manchester, M14 6NF
 13 Besford Close, Manchester, M14 6NF
 11 Besford Close, Manchester, M14 6NF
 Flat 12, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 McDonald's, 336 Wilmslow Road, Manchester, M14 6XQ
 Willowbank Hotel, 340 - 342 Wilmslow Road, Manchester, M14 6AF
 Flat 2, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 3, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 1, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 6, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 7, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 8, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 4, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 5, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 9, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 11, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 10, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 361 Wilmslow Road, Manchester, M14 6XU
 359 Wilmslow Road, Manchester, M14 6XU
 Flat 16, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 14, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 11, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 9, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 6, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 359A Wilmslow Road, Manchester, M14 6XU
 Flat 18, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 17, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 15, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 13, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 12, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 10, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 8, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 7, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 5, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 4, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 1, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Flat 3, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 2, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Egerton Road)

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH

Appendix 4: Officer Delegated Report (133619/JO/2022)



Planning

Growth & Development

Delegated officer report for planning application

Application no.	133619/JO/2022
Date registered valid:	27 April 2022
Proposal:	Variation of condition numbers: 2 (specified plans), 5 (false ceiling), 6 (rainwater goods), 7 (timber panelling) and 8 (internal decoration details) from Listed Building Consent reference 127017/LO/2020 to allow amendments: to the materials and layout of steps to the main entrance, materials to be used in the rainwater goods, alterations to the design of windows in the rear extension, heads of windows in the rear elevation of the original building and rear extension treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension, an alternative treatment of the ceilings of the principal rooms on the ground floor; and, omit replica window shutters and associated skirting and architrave to ground floor flats
Address:	363 Wilmslow Road, Manchester, M14 6XU
Ward(s):	Withington Ward
Applicant:	Feltham Management Limited 20 Aldwych Avenue, Manchester, M14 5NL
Agent (if any):	Alyn Nicholls Alyn Nicholls Chartered Town Planner 140 Denby Lane, Upper Denby, Huddersfield, HD8 8UN
Case officer:	Robert Griffin Tel: 0161 234 4527 Email: robert.griffin@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	22.07.2022

Application details

Type of application: Variation or Removal of Condition

Development type: Listed building alteration

Date of site visit: 10th May 2022

Standard consultations:

Printed: 6 May 2022 Expired: 27 May 2022

Neighbour notifications

Printed: 6 May 2022 Expired: 27 May 2022

Site notice

Posted: 10 May 2022 Expired: 31 May 2022

Press advert

Published: 10 May 2022 Expired: 31 May 2022

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Grade II

Conservation area: N/A

Tree Preservation Order: N/A

Description

The application property is a grade II listed building, having been formally designated in 1974, and forms an end property of a short terrace row of three buildings known as 'Norton Place'. The property was originally constructed as a dwellinghouse, along with the other two buildings in the row. Predominately two storey in height, the property benefited from a basement area, two-storey outrigger to the rear and attic accommodation.

The front of the property has two ground floor bay windows with central entrance door way and steps. The bays and doorway have distinctive decorative detailing as do the eaves of the property. The upper floor windows have vertical sash windows, with vertical glazing bars, and a more simple stone surround.

The side gable wall to the property has a similar bay window as the front elevation with decorative features and an upper floor window, which again follows the same style and features as the front elevation.

The rear elevation of the property was once characterised by a two-storey outrigger. This was similar to the outriggers, which remain evident within the remainder of the terrace row at properties 359 and 361 Wilmslow Road known as 'Norton Place'.

A low boundary wall and gate post mark the entrance to the front curtilage of the property which once formed the front garden and now consists of hardstanding for car parking. To the rear of the property is a landscaped garden area with cycle store and clothes drying area.

The list description for the property indicates it was in use in 1974 as offices and the planning history for the property indicates it was used as a medical centre from 1979 to 2010. There appears to have been an education use in the building subsequently prior to it becoming vacant.

The surrounding area is mixed use in nature. The application property, together with the other properties in the terrace that form Norton Place, retain their residential character.

Development Proposals

Planning and Listed Building Consent was granted under application references 127016/FO/2020 and 127017/LO/2020 for the erection of basement and two storey rear extension to create 9no. self-contained flats together with other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store.

In determining those applications supporting statements indicated that the proposals conformed closely to the proposals for the conversion and extension of the property to form 9 no. apartments granted planning and listed building consent in 2015.

The approved scheme subject of this variation comprised: four one-bed duplex apartments on the ground level and basement, two one-bed flats on the first floor, a two-bed flat in the attic and two two-bed flats in the extension to create a total of nine apartments. Each duplex apartment would occupy one of the original rooms on the ground level and the corresponding space in the lower ground floor. The first floor apartments would each occupy two rooms, front to back, while the two-bed apartment would occupy the three existing rooms on the upper level. The rooms located towards the front of the building on the ground and first floor have been refurbished and returned to close to their original size. The applicant indicates that the number of partition walls introduced have been kept to a minimum throughout the existing building. The extension has two storeys and a floorplate of about 60m² per floor. The extension would be constructed traditionally, with loadbearing brick-faced cavity using salvaged bricks, slate roof. Windows and doors are to be of painted timber.

The current variation of condition application seeks to change elements of the approved scheme that impacts on the external elevations of the extension building together with changes to elements of internal works approved under the original permission. The amendments that permission is sort for are:

- Staged completion of the building
- Use of aluminium heritage style rainwater goods in lieu of cast iron
- Use of stone effect concrete entrance steps in lieu of natural stone
- Retention of the installed suspended ceiling and omit further works to the concealed original ceiling and cornice together with the omission of a replica cornice below the suspended ceiling
- Design details to the rear extension including removal of swept arch heads to windows, alter the window size, removal of dummy windows, retain concrete sills, change to fenestration pattern.
- Omit the installation

A separate variation to the planning consent application (reference 133618/JO/2022) has also been submitted.

Relevant Planning History

March 2001 - Application for Planning permission 061665/FO/SOUTH1/01, Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear. Approved June 2001.

March 2001- Application for Listed Building Consent 061666/LO/SOUTH1/01, LISTED BUILDING CONSENT Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear and internal alterations. Approved June 2001.

May 2008 -Planning application 086507/FO/2008/S1 Erection of a part single/part 2 storey extension at rear of property and entrance ramp and new entrance at side of property. Provision of parking spaces in rear garden with associated landscaping. Approved July 2008.

May 2008 - Application for Listed Building Consent 086581/LO/2008/S1 LISTED BUILDING CONSENT for the erection of a part single/part 2 storey rear extension, new access ramp and side entrance, car parking in rear garden and associated landscaping Approved July 2008.

July 2014 - Planning application 106424/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create nine flats, with landscaping and parking Approved September 2014.

July 2014 - Application for Listed Building Consent 106425/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of nine flats, Approved September 2014.

March 2015 -Planning application 107448/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create 9no. self contained flats with landscaping and parking, Approved May 2015.

March 2015- Application for Listed Building Consent 107449/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of 9no. flats, Approved May 2015.

June 2017 Planning application 116773/FO/2017, Change of Use from doctors surgery to create 10no. self contained flats including the erection of a basement and two storey rear extension to existing building together with excavation of rear garden with associated landscaping and parking, Refused August 2017

June 2017 -Application for Listed Building Consent 116774/LO/2017, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking ,Refused August 2017

July 2018 - Planning application 120505/FO/2018, Erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking, Refused October 2018.

July 2018 - Application for Listed Building Consent 120506/LO/2018, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking. Refused October 2018.

Appeal against refusal of Planning permission 120505/FO/2018 and 120506/LO/2018 dismissed following Public Enquiry in July 2019.

June 2020 - Planning application 127016/FO/2020, Erection of basement and two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store, Approved June 2021

June 2020 - Application for Listed building consent 127017/LO/2020 for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Consultations & Notification Responses

Neighbouring properties were notified, a site notice was posted and advertisement was placed in the Manchester Evening News. No responses were received.

Policy

The development plan consists of the:

- Manchester Core Strategy Development Plan Document (Adopted July 2012); and
- The extant Unitary Development for the City of Manchester (Adopted 1995)

The Manchester Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP). The Core Strategy sets out the long term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the development plan unless material considerations indicate otherwise.

The relevant policies to in considering this application are as follows:

Policy SP1 '*Spatial Principles*'

Policy EN1 '*Design principles and strategic character areas*'

Policy EN3 '*Heritage*'.

Policy DM1 '*Development Management*'

The Unitary Development Plan for the City of Manchester was adopted in 1995. However, it has now been largely replaced by the Manchester Core Strategy. There are some saved policies which remain part of the development plan and the starting point for decision making pursuant to section 38 (6) of the Planning and Compulsory Purchase Act. The below saved policy is considered relevant.

Saved policy DC19 '*Listed Buildings*' states that in determining applications for listed building consent or planning applications for development involving or having an impact on buildings of Special Architectural or Historic Interest, the Council will have regard to the desirability of

securing the retention, restoration, maintenance and continued use of such buildings and to protecting their general setting.

The National Planning Policy Framework (NPPF- 2021) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Relevant sections to this application are contained in Section 12 (Achieving well-designed places) and Section 16 (Conserving and enhancing the historic environment)

The creation of high quality, beautiful and sustainable buildings and places is identified as fundamental to what the planning and development process should achieve.

The NPPF indicates that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The NPPF states that in determining planning applications, local planning authorities should take account of:

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c. the desirability of new development making a positive contribution to local character and distinctiveness.

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.

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a. the nature of the heritage asset prevents all reasonable uses of the site; and b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d. the harm or loss is outweighed by the benefit of bringing the site back into use.

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.

Local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

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Principle – The principle of the conversion of the application property to 9 no. self-contained apartments facilitated by the erection of a rear extension has been accepted through the granting of the principle permission that variations are now sort. In this instance the application proposals seek to omit and alter the permission previously granted permission and further consideration of these matters is required.

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Whilst the side gables are less detailed they are considered to have been designed as part of the overall aesthetic of the terrace of properties that forms Norton Place. The rear elevations of the properties on Norton Place are more subservient of stock brick construction and considered utilitarian in appearance, and were more modest in terms of materials and of windows openings but together demonstrate the historic development of the area and the age in which they were built. The principle significance of the Grade II listed building at 363 Wilmslow Road are the front and side elevations with the rear elevation reflecting the character of more modest detailing and finishes.

The Historic England (HE) Listing of Norton Place indicates that an interior inspection of the property was not undertaken at the time of its listing in 1974. The guidance of HE is that listing descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of a building. It is fact that the whole of a listed building is covered by its designation, including its interior. In this instance the internal configuration of the building was previously compromised by small scale unsympathetic alterations and additions that were undertaken in association with its previous usage over a period of time. However, evidence available indicates that prior to the unauthorised works having taken place, there were present within the interior of the building decoration and finishes that contributed towards the appreciation of the original construction of the building. These included flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. It is considered therefore that the interior of the building did contribute to the special interest and significance of the building and the proposals impacts on the significance of the interior is required.

The proposed extension – In approving the original consent subject of this variation application it was considered that the inclusion of window sizes and styles more reflective of the original rear elevation, together with segmental arch features more closely reflected the rear elevations of the group of properties forming the listed Norton Place. This was an important consideration and that the proposed rear extension reflected the hierarchy of significance of the listed building in continuing to reflect a more modest and subservient built form to the more significant front and side elevations.

The conclusion was that the proposed extension would result in harm to the listed building, as the front and side elevations of the application property would remain largely intact as a result of the proposal the level of harm was considered to be of less than substantial harm. The

proposed change to this element of the scheme is considered to erode the quality and authenticity of the design response previously approved.

Other works - In addition to the rear extension the approved proposals incorporated a number of other works to the building that would replace elements installed as part of the unauthorised works to the property these include:

- The replacement of uPVC windows and doors with timber sliding sash windows;
- The installation of three no. rooflights to the front roof plane (instead of the 6 installed) and 4 no rooflights to the rear roof plane (instead of 5 installed)
- The replacement of uPVC rainwater goods with heritage aluminium cast downpipes and guttering
- Removal of boiler vents and alarm boxes from the side gable wall
- Reinstatement of stone gateposts
- Reinstatement of stone flight of steps to front entrance

The re-introduction of traditional timber framed windows to the existing building together with more appropriately sized timber windows to the proposed extension and rear elevation were considered to reduce the degree of harm of the loss of the original windows from the building.

The current proposals seek to reverse a number of these elements of the approved scheme, as set above the cumulative effect of the changes set out is to diminish the approved scheme and erode features that were considered to assist in overcoming the harm identified.

Matters relating to allow the partial occupation of the property prior to the installation of obscure glazing are considered to have been achievable on there own as part of a distinct application, however in this instance other proposed changes are considered to not be acceptable.

Internal works – The proposed conversion of the listed property encompasses a range of works to ensure it is suitable for habitation and provide a safe environment for future occupiers. The approved application proposals were modified to incorporate and replace lost features undertaken as part of the unauthorised works.

The internal works comprised:

- The installation of internal staircases for the duplex apartments,
- The re-instatement of timber panelling to the bay windows to ground floor rooms;
- The provision of replacement ceiling cornicing, picture rails and moulded skirting boards;
- Re-instatement of acanthus design console brackets within hall.
- Raising of part of the ground floor;
- Insertion of suspended ceilings in the ground floor spaces to meet fire and sound insulation requirements.

It was considered that these works, whilst acknowledging that these corrected previous unauthorised works, would benefit the building and that these together with other works, would have modest heritage benefits.

The conclusion of the original approval was that when considering the overall harm to the listed building, the proposal would not lead to 'substantial harm' or the total loss of the significance of the designated heritage asset, that being number 363 Wilmslow Road and the group of Grade II Listed Buildings identified as 'Norton Place'. The erection of the extension was considered to lead to less than substantial harm to the significance of a designated heritage asset. Therefore in accordance with the NPPF '*where a development proposal will lead to a less than significant harm to the significance of a designated heritage asset, this harm should be weighed against the public benefit of the proposal, including securing its optimum viable use*'.

The effect of the proposed changes - The previous approval followed a lengthy public inquiry with the appeal being dismissed. The inspector placed significant weight on the heritage value of the original internal features that had been removed. Lengthy discussions and negotiations were had together with concessions in order to arrive at an approved scheme that could be supported by the Council and followed the principles set out in the appeal Inspectors decision.

It is considered that the current amendments go against the principles and carefully detailed reinstatement works that have been previously agreed. The internal features contribute to the architectural and historic significance of the grade II listed building and there was evidence that these features exist to enable authentic reinstatement. The elevational changes proposed to the rear extension were both a compromise to assist the applicant but considered to be the correct architectural and heritage approach, the proposed alterations are considered to dilute the design intent previously negotiated and approved.

Public Benefit - The improvements to the front and side elevation of the property together with the proposed works to replace the stone steps and gate posts, together with the renewal of the front forecourt parking area were considered to derive a direct and visible public benefit given the significance of these elevations within the immediate area. The amendments proposed dilute this benefit.

The proposals would result in the re-use of a designated heritage asset and secure its long term use whilst contributing to the overall stock of residential dwellings in a highly sustainable location. This was considered to be of a major public benefit. Whilst acknowledging the submitted information to support this application, unauthorised and illegal removal of features and the difficulty of reinstatement cannot be used to justify a dilution of the approved scheme as set out in the NPPF.

In this instance it is considered that the proposed amendments would dilute the public benefits that derived from the originally approved proposals and as such cannot be supported.

Conclusion – As set out within this report, the original approval provided further improvements including to the sizes and design of the windows to be incorporated into the extension together with further internal works to replicate some of the historic features lost as part of the unauthorised works, including timber panelling and shutters to the ground floor front rooms. As such the amended proposals that impact on the original approved scheme are not considered to be acceptable.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a

decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Article 35 Declaration

In this instance concerns with the application were expressed to the applicant's agent, the proposal do not comply with the development plan and there are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

- 1) The proposed elevational alterations to: the materials and layout of steps to the main entrance; materials to be used in the rainwater goods; alterations to the design of windows in the rear extension; heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; an alternative treatment of the ceilings of the principal rooms on the ground floor; omission of replica window shutters and associated skirting and architrave to ground floor flats subject of this application fail to preserve or enhance the Grade II designated heritage asset causing harm that cannot and has not been justified by public benefit, and is therefore considered to be contrary to Sections 16(2) and 66 of (Listed Buildings and Conservation Areas) Act 1990, Sections 12 (Achieving well designed places) and 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework, The Core Strategy for the City of Manchester, in particular Policies SP1, DM1 and EN3 and saved policy DC19.1 (Listed Buildings) of the Unitary Development Plan for the City of Manchester.

Appendix 1 – List of consultees & neighbours notified

Withington Civic Society
 Urban Design & Conservation
 Rusholme, Fallowfield & Moss Side Civic Society

Flat 10, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 9, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 8, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 7, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 6, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 5, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 4, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 3, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 2, 363 Wilmslow Road, Manchester, M14 6XU
 Flat 1, 363 Wilmslow Road, Manchester, M14 6XU
 4 Besford Close, Manchester, M14 6NF
 13 Besford Close, Manchester, M14 6NF
 11 Besford Close, Manchester, M14 6NF
 Flat 12, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 McDonald's, 336 Wilmslow Road, Manchester, M14 6XQ
 Willowbank Hotel, 340 - 342 Wilmslow Road, Manchester, M14 6AF
 Flat 2, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 3, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 1, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 6, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 7, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 8, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 4, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 5, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 9, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 11, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 Flat 10, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
 361 Wilmslow Road, Manchester, M14 6XU
 359 Wilmslow Road, Manchester, M14 6XU
 Flat 16, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 14, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 11, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 9, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 6, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 359A Wilmslow Road, Manchester, M14 6XU
 Flat 18, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 17, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 15, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 13, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 12, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 10, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 8, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 7, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 5, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 4, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 3, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 2, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
 Flat 1, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Egerton Road)

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH

Appendix 5: Details of the 2015 Approved Scheme



Planning (Listed Building & Conservation Area) Act 1990 (as amended)

Listed Building Consent

Applicant

Mr David Feltham
 Feltham Management
 20 Aldwych Avenue
 Manchester
 M14 5NL

Agent (if used)

Mr John Lee
 Arca
 Suite 127
 111 Piccadilly
 Manchester
 M1 2HX

Part 1 – Particulars of the application/development

Proposal: Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of 9no. flats

Location: Meridian Education , 363 Wilmslow Road, Withington, Manchester, M14 6XU

Date of application: 27 March 2015

Application number: 107449/LO/2014/S1

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **granted** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

Officers have worked in a positive manner in the consideration of this application which seeks small scale changes to the elevations of a previously approved application.

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363 LD 0008B, 363 LD 21 rev B and 363 LD 0022 rev B stamped as received on 19th November 2014, Heritage Statement ref 363-RT-0011 stamped as received on 10th

December 2014 and Proposed Works Impact ref 363-SE-0005 stamped as received 19th November 2014.

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development that is hereby approved shall commence unless and until samples and specifications of all materials to be used on all external elevations of the development have been submitted to and approved in writing by the City Council as local planning authority.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

4) Within one month of the commencement of the development hereby approved a hard and soft landscaping treatment scheme shall be submitted to the City Council as local planning authority. The approved landscaping scheme shall be implemented not later than 12 months from the date the buildings are first occupied. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.

Reason - To ensure that a satisfactory landscaping scheme for the development is carried out that respects the character and visual amenities of the area, in accordance with policies SP1, EN3, EN9 and DM1 of the Core Strategy.

5) Before the development hereby approved is first occupied a lockable gate of a design and size to be agreed in writing with the City Council shall be installed at the side of the property to prevent free access to the rear garden.

Reason To reduce the risk of crime pursuant to policies SP1 and DM1 of the Core Strategy and to reflect the guidance contained in the National Planning Policy Framework.

6) Within one month of the date of the development hereby approved commencing the detailed scheme for the storage (including segregated waste recycling) and disposal of refuse shall be submitted to the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - To ensure that there is satisfactory provision for the storage of refuse pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC5.

7) Before the works hereby granted by this listed buildings consent are commenced plans and particulars of the soft stripout of the parts of the listed building which are currently obscured by suspended ceilings and partitions or internal cladding and detailing how any damage thereto is to be mitigated shall be submitted to and approved in writing by the City Council as local planning authority. The approved plans and particulars shall be implemented as part of the development and the soft stripout shall be carried out in accordance with the approved plans and particulars.

Reason - In the interests of visual amenity, and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest so careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy 19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

8) Before the development commences a schedule for the refurbishment/repair of the existing roof, including details of any replacement roof covering, shall be submitted to and approved in writing by the City Council as local planning authority. The scheme shall provide for the retention of the existing roofing materials. Any replacement roof covering shall be agreed in writing by the City Council as Local Planning Authority

Reason - In the interests of visual amenity, and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest so careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

9) Before the building is first occupied the external brickwork of the building shall be cleaned in accordance with plans and particulars previously approved in writing by the City Council as local planning authority.

Reason - To improve the appearance of the building in the interests of visual amenity and because proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building and in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

10) No works, including repair to existing windows shall commence until details of the work has been submitted to and approved in writing by the City Council as local planning authority. Such works should not include for the removal or replacement of any original windows unless otherwise approved in writing by the City Council as local planning authority and any such proposal shall be accompanied by a full justification for such works, including a structural survey, details of why repair and refurbishment of such windows is not viable and details, including materials and cross sections, of any proposed replacement windows.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

Informatives

This permission does not grant approval under Building Regulations.

Date: 22 May 2015

Signed: 

Julie Roscoe
Head of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA



359

361

363

365

West Elevation
1:100



Wilmslow
Road

Car
Park

Existing building

Extension

Garden

New development

South Elevation
1:100



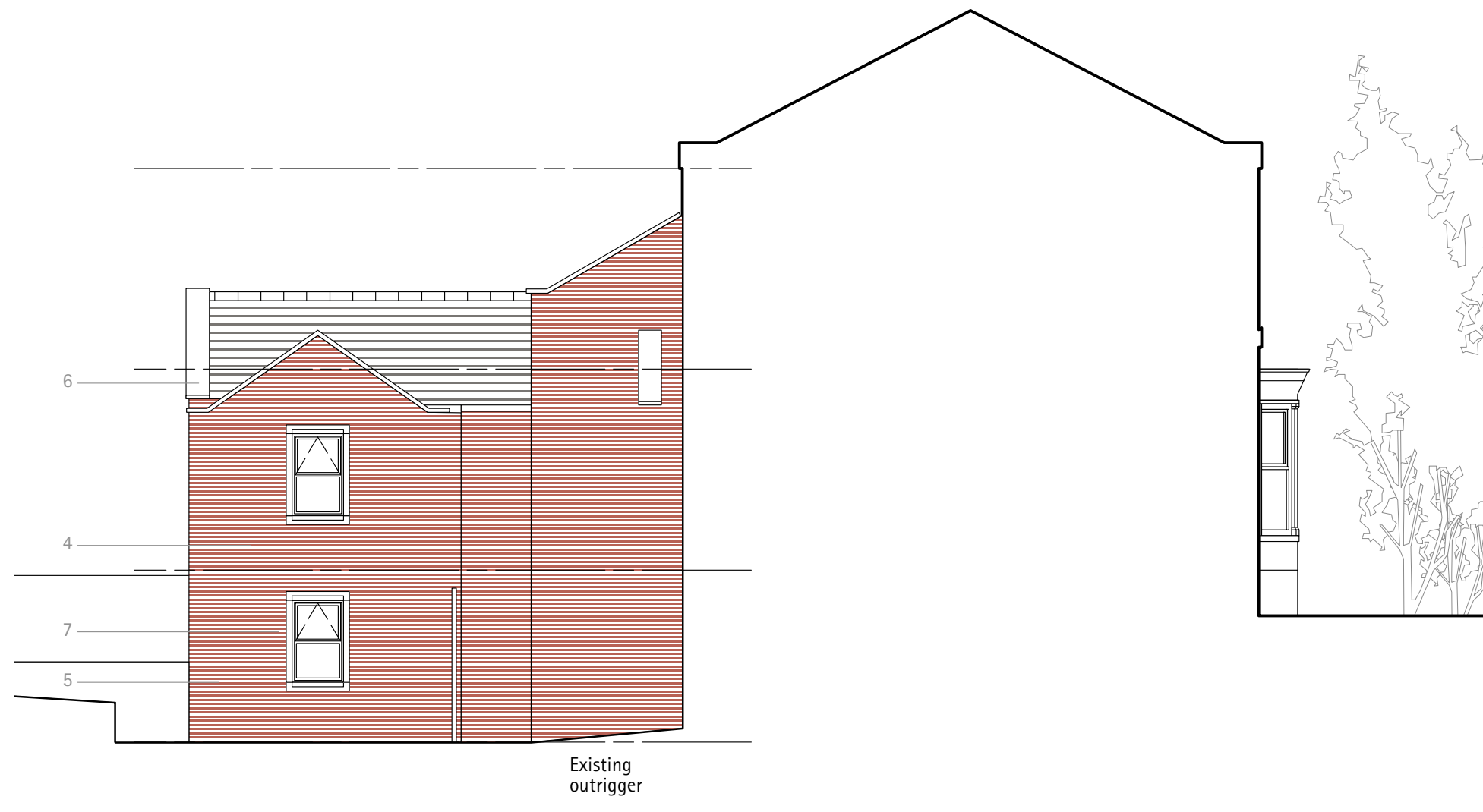
365

363

361

359

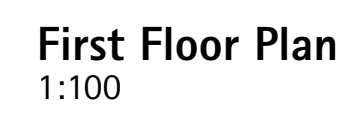
East Elevation
1:100



Existing
outrigger

North Elevation
1:100

- 1 White render
- 2 Sandstone dressing painted black
- 3 Existing white painted timber frame window
- 4 Slate
- 5 Red brick
- 6 White artstone
- 7 New timber frame windows with white artstone surround
- 8 Permeable block pavior finish
- 9 Boundary wall - red brick
- 10 Lawn
- 11 Painted timber front door
- 12 Velux rooflight (Conservation Grade to existing roof)



Appendix 6: Appeal Decision Letter, 2 July 2019



Appeal Decisions

Inquiry Held between 21 May and 24 May 2019

Site visits made on 21 May and 24 May 2019

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 2nd July 2019

Appeal A: Ref: APP/B4215/W/18/3215658 363 Wilmslow Road, Manchester M14 6XU

- 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 Mr D Feltham against the decision of Manchester City Council.
- The application Ref 120505/FO/2018, dated 29 June 2018, was refused by notice dated 10 October 2018
- The development proposed is retention of the existing building including rear extension, car parking and ancillary works, and the use of the building to provide 10 flats.

Appeal B: Ref: APP/B4215/Y/18/3215659 363 Wilmslow Road, Manchester M14 6XU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr D Feltham against the decision of Manchester City Council.
- The application Ref 120506/LO/2018, dated 29 June 2018, was refused by notice dated 10 October 2018
- The development proposed is retention of the existing building including rear extension, car parking and ancillary works, and the use of the building to provide 10 flats.

Decisions

1. Appeal A and Appeal B are both dismissed.

Relevant background and Main Issues

2. Planning Permission (107448/FO/2014/S1) and listed building consent (107449/LO/2014/S1) were granted in March 2015 (the 2015 scheme) for the erection of a part single, part two storey rear extension to the existing building together with the excavation of the rear garden and internal alterations in association with the creation of 9 flats. However, the permitted scheme was not implemented. The appeals in this case relate to the development and works which were subsequently undertaken. I understand that they seek to regularise this scheme.
3. The development and works which are the subject of this appeal are also subject to current enforcement action. I will consider the implications of this action for the outcome of the current appeals, in so far as it is relevant.

4. The appellant has suggested that various alterations to the works undertaken could be made to address the Council's concerns regarding the effects on the listed building. This includes the replacement of plastic rainwater goods with cast iron, replacement of UPVC windows with timber and a reduction in the number of rooflights. I will address such considerations within these decisions.
5. Turning to the main issues, it is logical and more concise to consider both appeals together. Therefore, I consider the main issues to be whether the development and works preserve the Grade II listed building or any features of special architectural or historic interest it possesses, and whether the design and appearance of the extension are acceptable in relation to the surrounding area. Finally, if any harm is found I will consider whether that harm is outweighed by public benefits or other considerations.

Reasons

Effect on the listed building

Significance of the listed building

6. This area of south Manchester remained rural until the mid-19th Century, when development associated with the expansion of the City during the industrial revolution took place. Specifically, the opening of Fallowfield station encouraged residential growth and the development of a number of large villas in this area, including the appeal property, which is at the southern end of the terrace of three properties making up Norton Place. Whilst a number of villas remain in the local area, many have been substantially and unsympathetically altered, with Norton Place being the only listed structure of this type and in this sense of some historic value.
7. The frontage of Norton Place presents a grand and broadly symmetrical Italianate style elevation to Wilmslow Road, clearly intended to embody the new found wealth of the period. The eye-catching stucco rendering, deep eaves with ornate bracketing, central feature gable, Corinthian pilaster doorways, canted bay windows and stone quoining at either end, serve to create a visually prominent and distinctive local landmark. Many of the features of architectural detailing and motifs extend to the side elevations to 'bookend' the terrace, with complementary canted bays set away from the main frontage. The sides are less bold and not directly part of the symmetry of the piece. Nonetheless, as these buildings are mostly seen at an oblique angle when in transit along Wilmslow Road, the sides were clearly designed to be seen as part of the overall composition.
8. The rear elevations are of stock brick and typically subservient and utilitarian in appearance. Photographs of the rear from before the appeal extension was constructed illustrates that this provided evidence of the typical hierarchy of architectural treatment, and that the integrity of the intended plain character across this part of the terrace was retained. This included the original elements such as similarly sized narrow outriggers and modestly sized sliding sash windows. Whilst there was some variety in the pattern of windows these elevations demonstrated the simplicity and lack of adornment typical of the period. The rear elevations therefore form an integral, though modest, part of the special architectural interest and heritage significance of these listed buildings.

9. Looking at the appeal building specifically, it appears from the photographic evidence that prior to the appeal works the craftsmanship and architectural hierarchy of the exterior translated to the interior. This was seen in the decorative treatments including plasterwork, cornicing, timber panelled windows, panel doors with architraves, and in the impressive ceiling heights in the hallway and principle rooms. Elsewhere the typical hierarchy of rooms, spaces and their decorative treatment was in evidence.
10. In recent times the building has seen a range of uses including a medical centre and a school, with the result that prior to the most recent alterations there had been some harmful change internally. This included the sub-division of rooms, the loss of most original fireplaces and some unsympathetic insertions and additions. It also appears that the interior had been somewhat neglected, with some damage to original fabric and poor-quality finishes.
11. Nonetheless, as the Heritage Statement associated with the 2015 permission's acknowledges, whilst original details such as cornices, picture rails and skirtings had been damaged, in many places 'a substantial amount of the existing features remain'. Overall, the photographs illustrate that sufficient evidence of the fabric, layout and proportions of the interior remained such that its original architectural form and function were discernible.
12. The Historic England consultation response to the 2015 scheme (dated 5th May 2015) referred to the importance of the 'collective aesthetic' of this row of terraces, representing a local scale interpretation of the much larger and more decorative 'palace facades' popularised by designs such as the Regents Park Terraces in London. This response also indicated that, whilst the scheme would have involved the loss of the lower levels of the outrigger, this structure forms a 'marginal contribution to the site'. Nonetheless, some contribution is acknowledged. Furthermore, reference was made to the 'minor loss' of original interior fabric, thereby acknowledging the relevance of the interior in considering elements of significance.
13. The overall interest and significance of the building relates in large part to the high aesthetic value of the visual coherence and legibility of the front elevation and its group value with the other properties in the terrace, with the gable ends also contributing significantly to the design composition of the group. Together these elements provide a clear connection to the historic development of this area including the architectural craftsmanship of the age.
14. The rear elevation was in comparison of utilitarian appearance, though in this sense provided evidential value of the typical architectural hierarchy and contributed to the significance of the building overall to a modest degree. The interior was somewhat compromised by small scale unsympathetic alterations and additions. Nonetheless, in so far as its elements were intact, the interior contributed to an appreciation of the original plan form, spatial qualities and décor of this building. Therefore, in historic and evidential terms the interior contributed to the special interest and heritage significance of the building to a moderate degree.

Relevance of listing description

15. The list description relating to Norton Place states that the rear and interior were not inspected. This would suggest that the architectural interest of the main elevations was sufficient to warrant inclusion in the statutory list.

Furthermore, there could have been nothing of significance within the building and to its rear. However, legally the list description is for identification purposes only. Specifically, Historic England guidance to listing indicates that, particularly with older listings such as this dating from 1974, the descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of the building. As such any omission from the list description does not indicate that it is of no interest. Furthermore, the whole of any principle building is listed, including the interior.

16. The National Planning Practice Guidance (NPPG) also advises that for decision-taking purposes 'in most cases the assessment of the significance of the heritage asset ... is likely to need expert advice in addition to the information provided by the historic environment record, similar sources of information and inspection of the asset itself'. (Paragraph: 010 Reference ID: 18a-010-20140306). Further, 'a clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm' (Paragraph: 019 Reference ID: 18a-019-20140306).

The effect of the proposal

17. The scheme has involved the conversion of the building into six one bedroom units and four two bedroom units, including a two storey plus basement extension to the rear. The effects of a number of aspects of the development and works are considered below.

i. The extension

18. In terms of its scale and mass, the extension is a significant structure, projecting at full two storey height over two bays to the side and rear. As such it is a clearly visible addition in views in and around the site, including from Wilmslow Road. It's location to the rear, behind the distinctive front and side of the building, means that its prominence is somewhat reduced by perspective. Nonetheless its bulk and presence erode the visual hierarchy of the main front elevation and subservient rear. More specifically, it challenges the otherwise clear dominance and primacy of the front and side elevations by creating an unusual visual distraction. Further, when viewed in relation to the rear elevations of the listed properties this large structure creates significant imbalance when viewed in relation to the original outriggers, even where modestly extended at No 359. In this respect it has a harmful effect on the setting of these other listed structures, undermining their group value overall.
19. It has a mansard roof design with a slate pitched section and flat top. This is to some degree hidden when viewed from Wilmslow Road, with the angled views hiding the flat roof element. Also, when viewed from the side and rear the overall height and bulk of the addition means that the roof structure is not readily apparent. Nonetheless this limited visibility results in large part from the mass and height of the addition. It should not therefore be taken as an indication of its acceptability, noting also that it sits in contrast to the existing gable and ridge roof design of the rest of the terrace. This incongruity is more readily apparent in other views, including the glimpsed view from Besford Close to the rear. Furthermore, this overall bulk means that the original form of the rear elevation of this property is largely obscured.
20. The extension is of brick and slate with contrasting design elements to the listed building. In some senses, and to the casual observer, it does appear as a

separate structure. The contrasting design is not necessarily unacceptable in principle. However the extension does appear directly adjacent to the listed building and, on closer inspection, the fact that the crude and ill-considered nature of the design detailing fails to respond to the character and architectural finesse of the host building is clearly apparent.

21. Specifically, the modern uPVC windows with their horizontal emphasis sit in contrast with the traditional one over one paned sliding sash windows with slender timber painted frames present in the main building. Whilst when viewed at an angle, the horizontal proportions appear somewhat reduced, it remains that the weak detailing and poor proportions are seen directly abutting the prominent and well-conceived decorative façade. As such they represent jarring elements with a negative effect when viewed alongside the design of the building as a whole. To the rear the full height French windows are also at odds with the traditional simplicity and utilitarian appearance of this elevation.
22. The Design and Access Statement refers to the traditional construction of the extension, including 'artstone parapets'. However, these elements are not present.
23. Overall, as a result of the scale, weak detailing, use of inappropriate materials, and proximity to the principle elevations of the host building, the extension serves to undermine and weaken the dominance of the listed structure overall. It is therefore significantly harmful in this regard.

ii. Front and gable elevations

24. The works undertaken include repairs to the front elevation and gable end, including the restoration of the bay windows and stone quoins, repair and restoration of the parapet, re-rendering, restoration of damaged sills, repair of slate roof and repointing chimneys. These impacts are primarily positive.
25. However, the introduction of a range of contemporary elements including alarm boxes, boiler flues, plastic rainwater pipes and floodlights are distracting elements from the architectural qualities of these primary elevations. Whilst some such elements may be necessary to enable the conversion, there is no evidence to demonstrate that other less visually intrusive solutions could not have been employed.
26. Other small scale detractors include lighting above the front door and the door control mechanism which create some visual clutter. Also, the loss of the original stone steps up to the front door, with single slabs for each step, and their replacement with smaller sections with visible joints, is a modest detractor from the aesthetic qualities of the main entry point.

iii. Replacement windows

27. The works have resulted in the loss and replacement of many of the original windows in the building. Whilst the appellant makes reference to the pre-existing condition of the building, there is no clear evidence that most of these windows could not have been conserved and repaired, and their evidential value as part of the original design composition retained. Most of the replacement windows on the main elevations have sought to replicate the original, thereby reducing the degree of harm in terms of the loss of original fabric. However, others such as those to the rear, which included both large

paned one over one windows and multi-paned sash windows, have been replaced with inappropriate modern uPVC windows. Such windows stand out as their manufactured design cannot match the sections and proportions of historic joinery, as can be clearly seen in the windows to the rear, and those used in the front lightwells.

iv. Rooflights

28. Historically these buildings would have had single rooflights to light the attic space, and in general terms sensitively positioned additional rooflights would not be unacceptable. In this case there is a run of six roof lights across the front roof slope, resulting in the loss of a significant amount of the original roof plane. Further, they are not positioned in a balanced or consistent way with reference to the windows in the front elevation below. As such they are a distracting element, drawing the eye away from the decorative primacy of the main elevation, an effect which is exacerbated when rooms are lit during winter months. The five rooflights on the rear elevation are considerably less visible, particularly due to the bulk of the extension, and are seen within the context of the less significant rear elevation. As such these are less harmful additions.

v. Internal alterations

29. A range of alterations to the internal fabric and configuration of the building have been undertaken. The removal of original fabric includes flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. Reconfiguration includes the insertion of staircases between the basement and ground floors of the duplex flats, some removal of previous partitions and the insertion of new partitions, including those to create lobbies at the flat entrances, the insertion of suspended ceilings on the ground and first floors and the raising of the ground floor.
30. The detailed assessments presented by the main parties differ, with some minor harmful elements such as the insertion of staircases considered by the Council to be of neutral impact. Nonetheless, there is agreement that a significant number of such alterations have a minor negative impact on the significance of the interior. Even if minor, the cumulative impact of such changes must be considered. For example, within an individual room if the original windows, panelling, skirtings, plasterwork and doors have been removed and ceiling heights reduced the effect is to significantly erode original character.
31. This point is well illustrated by the photographic evidence comparing the internal alterations within a ground floor room of the appeal property with a comparable room at the other end of Norton Terrace, No 359 (Mr Mason's evidence, Appendix 3, Fig 41 and 42). At No 359 the original full height bay with fully restored timber panelling and shuttering and restored ornate plasterwork clearly illustrates the impressive proportions and decorative treatment which originally characterised this room. At the appeal property the evidence suggests that these elements were reasonably intact, if in poor condition, prior to the alterations. However, as a result of the alterations these features, and the ability to appreciate the character of the higher status rooms within the overall hierarchy of room proportions and decoration, has been considerably weakened.

32. Some internal alterations have been beneficial. This includes the removal of harmful elements including internal partitioning, such as the enclosure around the original staircase, the service counter, surface cabling and powerpoints. Also the repair of some original elements such as the staircase and its balustrade, though the full scope of the repairs undertaken is unclear from the evidence.
33. It is of concern that there appear to be some discrepancies in the plans and supporting information, and some uncertainty about whether they accurately describe the works undertaken to the interior. For example, whilst Mr Clemons Proof of Evidence refers to retained features including two fire places on the first floor, the Heritage Statement accompanying the application states that there are no remaining fire places and that they were presumably removed when the villa was converted to a medical surgery.
34. Summing up, the plethora of works associated with the internal refurbishment of the appeal building have had some modest heritage benefits, but also cumulatively a notable degree of harm. Before concluding on heritage matters overall, I will consider a number of other relevant matters raised by the parties, including comparisons of the appeal scheme with earlier approved proposals for the building, the relevance of the condition of the building and other regulatory requirements, and finally the provisions of policy and statute.

Comparison with previous approvals

35. In 2008 planning permission and listed building consent (086507/FO/2008/S1 and 086581/LO/2008/S1) (the 2008 scheme) was granted for the remodelling of the building as a health centre, including an extension and new main entrance with ramp to the side elevation. The 2015 scheme would have involved the conversion of the building into 9 apartments. The extension in this case had a slightly larger footprint than the 2008 scheme and would have extended across the ground floor to the full extent of this footprint.
36. These schemes together indicate the acceptability in principle of extending the building to the rear across the basement and ground floors, and by up to two bays in depth. However, there were some clear and distinct design differences, such that these schemes were materially different to the appeal development. Firstly, the previous approvals incorporated the principle of retaining at least the appearance and basic form of the original outrigger into their design, showing some respect to the design hierarchy.
37. Whilst the 2008 scheme would have involved the remodelling of the outrigger to form a stairwell, from the evidence it is not entirely clear whether this scheme incorporated an increase in height to this structure. Photographic evidence from the 2008 Design and Access Statement indicates that the three rear outriggers across the terrace were of around the same height and position, with their highest points adjoining the rear elevation at just above the sill level of the top windows on the rear elevation. This height appears to be retained in the scheme drawings from this application (Proposed elevations, Job No 181:08:08).
38. The drawings for the current appeal present the 'pre-existing' rear elevation a little differently, with the outrigger adjoining at a lower maximum height, just below the sill of the highest window on this elevation (Elevations (Pre-existing)

363-OD-0003 Rev 03). It appears from this evidence that the current appeal drawings may be inaccurate, not that the earlier scheme gave consent for an increase in the height of the outrigger. However, the 2008 scheme did refer to the fact that the outrigger would be subject to a structural inspection, with no requirement that the findings, or their implications, would be considered by the Council. Nonetheless the principle of the upper part structure remaining was apparent in the 2008 and 2015 schemes.

39. Fundamentally, the lesser height, scale and more diminutive appearance of these rear extensions in comparison to the current scheme would have allowed the front and side elevations to have been more fully appreciated, without what appears as a large development to the rear. Further, in terms of detailing, whilst the 2008 scheme included a more contemporary window design to the side elevation, the fact that this was of much lesser scale than the current scheme would have led to a lesser degree of visual discordance.
40. The 2008 scheme incorporated a new main entrance on the side elevation, accessed via a ramp, and some alterations to the layout of the ground floor. Whilst the full circumstances of this proposal are not known, it appears that it was associated with the continued use of the building as a medical centre. The side entrance design was based on the existing main entrance and picked up on this design through replication. Whilst this would have been moderately disruptive to the overall design composition of the building, any harm may have been offset by benefits. I also note that this scheme was approved prior to the introduction of the National Planning Policy Framework (the Framework) and its associated heritage policy provisions, including the requirement to consider significance.
41. Given the mass of the extension approved as part of the 2015 scheme and the modest size of the rear garden area, it does not appear that this would have left significantly more of the original rear elevation on show from the garden than is currently the case. However, more of this elevation would have been visible from some views locally. This would have included the upper part of the outrigger. Further, this extension would have had pitched roofs typical of this type of building, which would have reduced the bulk of the roof and reflected the existing form of the original building. Overall, whilst there would have been some disruption to the balance across the terrace, this extension would have appeared more subservient in comparison with the current scheme.
42. The 2015 scheme introduced the principle of further rooflights, with three on the front roof slope. However, whilst these may be seen as modestly intrusive, as they were aligned with the three windows on the floor below they would have retained a sense of symmetry and balance overall.
43. Looking at the treatment of the interior, the 2015 scheme would have required some changes to the floor plans and alterations to floors and joists. However, the Heritage Statement associated with this scheme referred to the fact that 'the original rooms will be reinstated, the interior will be refurbished and any damage to original elements repaired'. The Officer report also referred to the fact that there would 'not be (sic) significant changes to the historic fabric which will be restored.' Further, the permissions associated with this had conditions requiring, for example, plans of the 'soft stripout' of the parts of the building which are currently obscured, detailing how any damage is to be

mitigated, and requiring details of repair works to windows which should not be removed or replaced unless approved. The Heritage Statement also suggested that this conversion to flats was 'the most viable solution' with the advantages resulting from the development suggested to outweigh the minor impact it would have on the listed building.

44. Summing up, the 2008 and 2015 schemes established some basic principles which provide a 'useful yardstick' for assessing the heritage impact of the current proposal. The design of their additions, whilst distinct from the listed building in terms of materials, clearly sought to respond to the listed building and site context in terms of the height and scale of the extensions, including the more appropriate detailing of the larger 2015 proposal. Further, considerably more attention was given to the protection of original features, particularly in the 2015 scheme, including the outrigger and internal fabric. Overall these schemes reflected a greater recognition of the significance and sensitivity to change of the heritage asset than the appeal proposals.

Structural issues and the condition of the building

45. The usual approach to the management of change in heritage assets involves the retention of as much historic fabric as possible, with the production of a structural report indicating what is necessary and the least intrusive means of achieving the outcome, including conservation led techniques to ensure that no further damage is caused. However, in this case there is no evidence to indicate that such an approach was considered or advised. For example, I understand that a decorative ceiling bracket fell during the re-construction of a central wall, suggesting that the necessary measures were not in place to protect such features. Also, during the building works the ground floor joists were found to be unsound. There is no evidence that the reconstruction of the ground floor at a higher level was necessary other than to give greater headroom in the basement.
46. References are also made to parts of the building being in a poor condition prior to the works to justify some of the alterations made, including the replacement of windows. However, limited photographic evidence is available to support this claim. Specifically, whilst many windows have been replaced, only minor evidence of the nature of damage to the windows is presented in the form of a small amount of damage to one window. Overall, there is no evidence that structural issues or the condition of the building justified the works undertaken.

Compliance with buildings and fire regulations

47. The appellant indicates that some of the internal alterations made resulted from discussions with building regulations advisers. Specifically, false ceilings and vestibules at the flat entrances were introduced for fire safety and to assist in acoustic and thermal insulation. It is also suggested that the timber panelling around windows was removed to improve insulation.
48. Some alterations, such as those addressing fire safety, may be non-negotiable. However, there is usually some flexibility in respect of acoustic and thermal insulation measures for listed buildings, and specific less intrusive treatments are available which allow features of interest to be retained. There is no evidence in this case that the alterations undertaken were necessary to meet

building regulations, or indeed that the least intrusive means of achieving the necessary standards were sought.

Comparisons with No 359 Wilmslow Road

49. The Council refers to the recent internal restoration works at No 359 Wilmslow Road as an example of what is possible and appropriate for such buildings. This building is in established use as an HMO and therefore building regulation requirements may differ, with the appellants witness suggesting that higher building and fire regulation standards may be required for a flat development. However, there is no evidence to indicate that such differing requirements should have any substantive impact on the way in which restoration works can be undertaken.

Heritage policy and statute

50. The Council's reasons for refusal refer to the Policy EN3 of the Manchester Core Strategy DPD 2012 (Core Strategy), which sets out the importance of preserving and enhancing the historic environment. Reference is also made to saved Policy DC19 of the Manchester Unitary Development Plan 1995 (UDP), which refers to the desirability of the retention, restoration, maintenance and continued use of listed buildings.
51. These policies do not reflect the more qualitative and proportionate consideration of proposals impacting on heritage assets that is set out in Section 16 of the Framework. Specifically, they do not require the identification of significance, do not differentiate between substantial and less than substantial degrees of harm, and they do not allow for the balancing of any harm with public benefits. On this basis these policies are less permissive of development than the Framework's heritage provisions.
52. Having regard to paragraph 213 of the Framework, the presumption in favour of preservation set out within Policy EN3 and saved Policy DC19 is consistent with the overriding purpose and intention of Section 16 of the Framework and the Act¹. Therefore, whilst they do not reflect the more nuanced approach to heritage matters, in so far as these policies are consistent with the Framework they are not out of date.

Conclusions on impact on the listed building

53. I have found harm due to the scale, form and detailed design of the extension when viewed in relation to the architectural craftsmanship and hierarchy of the Norton Terrace. I have also found harm from some of the unsympathetic additions and alterations to the exterior of the building, and from a range of alterations to the interior, many of which cause some degree of harm to original form and fabric. As a result the development and works fail to preserve the special interest and significance of the listed building.
54. I have also reviewed a range of matters relevant to heritage considerations raised by the parties. After considering the nature of previous approvals, the evidence relating to the condition of the building and the requirements of other regulatory regimes, I conclude that there is no evidence that the current harm was necessary to bring the building back into use.

¹ Section 16(2) and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

55. I am aware that substantial harm in the terms set out in paragraph 195 of the Framework can be equated to total loss of significance and is therefore an extremely high test. The NPPG on substantial harm to a designated heritage asset further clarifies that 'an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest' (Reference ID: 18a-017-20140306). On this basis, as the front and side elevations of the appeal building remain largely intact, my view is that this harm lies below a high degree of less than substantial harm but, given the cumulative nature of this harm, it is certainly above a moderate level within this spectrum.
56. I therefore conclude that, against the requirements of the development plan, national policy and statute, the scheme causes less than substantial harm when considered in the context of the significance of the heritage asset overall. The Framework paragraph 196 sets out that in such circumstances this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I give consideration to the to this matter below.

Could the harm be addressed by conditions requiring alterations?

57. Various alterations have been suggested to address the heritage impact of this scheme on the building. Specifically, the appellant has suggested a reduction in the number of rooflights from 6 to 4 on the front elevation and from 4 to 3 on the rear, the replacement of plastic rainwater pipes with cast iron, and the replacement of basement uPVC windows in the main building, and all uPVC windows in the extension with timber side hung casement windows. Ground floor uPVC doors would also be replaced with timber. Further, the conditions suggested by the Council would also see the removal of suspended ceilings and the reinstatement of decorative plasterwork, the reinstatement of decorative timberwork and the reinstatement of original internal doors.
58. My view is that these works may address some of the harm caused to the exterior, and could possibly return the appearance of the interior to suggest of its original form which may be seen as a betterment overall. However, they would not address the substantive concerns regarding the harm caused to the heritage asset by the form, scale and main design elements of the extension, including window proportions. Furthermore, given the scant information as to why some of the internal alterations were undertaken, other than references to various regulatory requirements, there is no evidence before me that these alterations could be satisfactorily made. Overall my view is that less than substantial harm would remain.

Design and appearance

59. The appeal site is located on the busy Wilmslow Road corridor. There are a range of uses in the area, with some of the original villas having been converted to hotel and other commercial uses. The built character of the area is also somewhat varied. Whilst in the immediate vicinity of the appeal site much of the character and appearance of the original Victorian residential area remains, the other original villas have been significantly altered through extensions, including that to No 365 directly to the south. There is also some diversity evident in the more contemporary development.

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60. The Norton Terrace properties form a landmark structure within this area. Its distinctive and striking appearance stands out against the backdrop of the Besford Close development of two and three storey red brick town houses to the rear of the site.
61. In terms of general appearance, materials, scale and mass the extension appears in views from Wilmslow Road as a similar structure to the Besford Close properties. Furthermore, the fact that it is to the rear of the property behind the side bay window, and of lesser height and contrasting materials means that in some senses it appears to be distinct from the host building. In this sense the extension is not a dominant or domineering feature. Nevertheless, the overall mass of built form creates a sense of built density which is at odds with the typical spaciousness associated with Victorian villas, competing with the primacy of Norton Terrace.
62. Furthermore, when viewed in greater detail, I have already concluded that the extension relates poorly to the host building in terms of both its scale and detailing. Whilst the appellant suggests that the design is 'appropriate by accident', in design terms insufficient attention has been given to the local context, which would be the case whether or not the building was listed. In this sense the consultation objection which refers to the fact that 'a passer-by would have no idea that it was connected to Norton Place' appears to be with reference to the fact that the extension fails to take any design cues from the host building, noting that 'there is not even an echo of its Victorian past'. The point being that a contextual design would reasonably be expected for an extension of this scale.
63. I was able to see that the extension is visible from Wilmslow Road, though over a relatively short stretch when travelling north only. Nonetheless, the open frontage of No 365 means that the extension is clearly seen, such that these views are more than glimpsed. The visibility of the extension is to some minor degree reduced by the presence of trees, noting the silver birch tree adjacent in the grounds of No 365. I understand that this tree is in the ownership of the appellant, and whilst not currently protected, the appellant would be willing to enter into a unilateral undertaking to ensure its long term retention. However, this provision would not significantly address the current degree of visual intrusion caused by the form and mass of the extension, particularly at leaf fall in winter months.
64. Whilst the sensitivity of the view from Wilmslow Road was not raised in relation to previous schemes, this is most likely because the lesser scale of the extensions proposed did not raise such concerns. In this regard the photomontage prepared in support of the 2015 scheme illustrates a more considered and modestly scaled addition, clearly subservient to the main structure. This also demonstrates that, in comparison with the appeal scheme, the visible roof area would have been greater. However, given the considerably greater mass of brickwork on show, this point does not support the argument that the current mansard roof, whilst 'less complicated' in form, is in any way preferable to the former roof design.
65. Looking at visibility more generally, glimpsed views are possible from Besford Close and adjacent gardens, including from Whiteoak Road. The view of the rear elevation from Besford Close is restricted both by the presence of these properties and a number of trees along the shared boundary. Whilst this
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obscures views of the full rear to a large degree, the predominant simple treatment of the rear elevation of Norton Terrace with small windows, modestly sized outriggers and the small extension to 359, is discernible and contrasts with the bulk and mass of the appeal extension. In this view the flat roof element and large patio style windows can be seen, contrasting with the otherwise modest form and style of the rear.

66. I appreciate that the appellant may have set out to implement the 2015 approved scheme, which I understand went through a design evolution as advised by the Framework paragraph 128. However, there are clear and distinct design differences between these schemes in terms of mass, scale and detailing.
67. Overall I conclude that whilst the extension is not a prominent element in the general street-scene, by reason of its scale, form and detailing it does not relate well to its context. Therefore, the design and appearance of this addition are not acceptable in relation to the surrounding area.
68. In this respect there is modest conflict with the relevant provisions of Core Strategy Policy SP1 which sets out core principles such as providing high quality and diverse housing, and the protection and enhancement of the built environment. There is also conflict with the relevant provisions of Core Strategy Policy DM1, referring to the need for development to have regard to appropriate scale, form, massing, materials and details, as well as impact on surrounding areas in terms of design, scale and appearance.
69. UDP saved Policy EN1 describes the principles of urban design and identifies strategic character areas. Whilst the current scheme does not conflict with specific matters, this Policy places importance on good design on main and radial routes such as Wilmslow Road. Finally, UDP saved Policy DC1 refers to residential extensions. Whilst many aspects of this Policy are not engaged, there is conflict with specific elements including (1.1a) the need to have regard to the general character of the property and (1.2a) whether extensions are excessively large or bulky. There would also be conflict with the design provisions of the Framework, particularly paragraph 127, including the requirement that development is visually attractive as a result of good architecture and is sympathetic to local character and history.

Public benefits

70. The development and works provide several public benefits which need to be considered in the balancing exercise required by paragraph 196 of the Framework.
71. I have acknowledged that heritage benefits have been delivered through improvements to the front and side elevations, thereby maintaining key elements of interest of this building. Given the significance of these elevations this is a clear public benefit of the scheme. However, the weight to be attached to this benefit is moderated by the fact that the current Heritage Statement states that 'while some elements are in need of repair, the elevation is in decent condition'. Therefore, the degree to which this work was necessary to enable the appreciation of the heritage asset is debatable. I have also noted that some detracting elements have been added to these elevations. I therefore accord modest to moderate weight to this point.

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72. Works to the frontage area to create hardstanding for parking may be an improvement on the previous situation, however as this would have previously formed the front garden this aspect of the scheme is of limited benefit. Whilst I am aware that bricks gathered from the reduction in height of the perimeter wall have been used to build the extension, this is not a significant point.
73. There have been some limited improvements to the interior, such as the removal of temporary shoring and the repair of the stair balustrade. However, in the appellant's schedule (Inquiry document 5) these are acknowledged as being 'negligible' or 'minor' positive impacts. Cumulatively these small scale changes have had a minor beneficial effect. I am therefore able to give this point modest weight at best.
74. More generally, the development has resulted in the re-use of a building which had been somewhat neglected and was in poor condition in places. The appellant also suggests that converting and extending the building in this way has resulted in delivering its optimum re-use. Nonetheless, as the 2015 scheme was expressly assessed by the appellant to be viable this point is of limited weight.
75. The appeal scheme has resulted in the provision of good quality housing with a high standard of internal design. This point was supported by the residents in attendance at the inquiry, who said that they felt comfortable and safe in their accommodation. Elements such as the significant number of rooflights are designed to increase daylight into living areas. However, there is no evidence of the necessity of such elements in ensuring satisfactory living conditions, nor that such a high-quality scheme overall could not be achieved with less harm to heritage significance. This point therefore gains limited weight.
76. The scheme complies with saved Policy DC5.2 of the UDP, a positively worded policy setting out the general presumption in favour of flat conversions within residential areas. This policy welcomes the conversion of large, old, difficult to re-use properties, and supports the preservation of attractive buildings which may not be viable for other uses, providing investment to enable the retention and improvement of the housing stock. However, whilst these factors are applicable to the appeal property, these provisions are promoted 'subject to other relevant policies of the Plan'. Whilst this Policy was specifically recognised by the Council's officer report as supporting the 2015 scheme, this did not involve the heritage or design conflict identified in the present case. Overall therefore this point does not weigh in favour of the appeal scheme.
77. Following the publication of the Five Year Housing Land Supply Statement in January 2019, the Council is now able to demonstrate a five years supply of housing land, currently at 7.05 years. The appellant suggests that due to the scale of some of the schemes involved it is unlikely that all will be delivered within a 5 year period. However, the current deliverable supply is well over 5 years worth and no evidence is presented in support of this claim.
78. Nonetheless, whilst the provision of 10 units is not a significant number in the context of available supply, and is only one more than the 2015 scheme, it is a benefit of modest weight in the context of the government's priority to significantly boost the supply of housing.
79. Other points in favour of the scheme include some of those relating to sustainable development, as set out in paragraph 8 of the Framework.
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Specifically, this is a highly sustainable location close to amenities and employment/education opportunities, with excellent public transport links. Also, this use of the building helps to maintain the diversity and vitality of the neighbourhood. These points weigh modestly in favour of the scheme.

80. Finally, the fact that there is no issue with specific elements of the scheme such as the split level rear garden, and a range of planning standards are met, are not indicative of any particular benefits of the scheme.

Conclusion on paragraph 196 balance

81. The statutory presumption against harm to a designated heritage asset is not irrebuttable. Nonetheless, the Framework paragraph 194 sets out that any harm to the significance of a designated heritage asset should require clear and convincing justification. In carrying out the balancing exercise paragraph 193 also clarifies that great weight should be given to the asset's conservation. By extension, this could be taken to mean that great weight should be given to those attributes of a scheme which support the long term preservation of the significance of the asset. As such in reaching a conclusion on such cases harms must be weighed against the benefits.
82. Many of those elements identified above are not over-riding benefits that could outweigh the strong presumption against harm to a listed building. For example, a number of the points referred to by the appellant, such as securing the future of the building, the provision of additional accommodation, and the support to the vitality of the neighbourhood would also apply to the 2015 scheme. This tempers the weight which can be attached to such benefits.
83. The benefits identified are at best modest in weight, with the exception of the works to restore the main elevation. The degree of harm caused to the significance and special interest of the Grade II listed building overall is above a moderate level within the less than substantial spectrum. Even when considered as a collective these benefits would be significantly outweighed by the harm caused to this designated heritage asset, to which I am required to give considerable importance and weight.

Other matters

84. The enforcement notices require the residential use of the whole building to cease, which I understand is to take effect from July 2019. If the appeals were to be dismissed, and the enforcement notices were therefore to take effect, this would result in the 17 current tenants losing their homes. It is possible that the tenants could have appealed the enforcement action based on their personal circumstances. However, I appreciate that, particularly as many appear to be on short term leases, it is unlikely that they would have either the inclination or the appreciation of the need to do so. Evidence presented at the inquiry indicated that most residents are, or will shortly be, on monthly rolling tenancies.
85. I fully appreciate and have sympathy with the fact that existing tenants will have made their homes within the appeal property. The inquiry heard how these residents and their visitors find the location of the appeal property and the accommodation provided to be particularly convenient, suitable and safe. However, as things stand their tenancies could be terminated at short notice whatever the outcome of the current appeals. Furthermore, there is nothing

before me to indicate a shortage of such accommodation within this part of Manchester, or any individual circumstances suggesting that the tenants involved would have any difficulty finding suitable alternative accommodation within the local area.

86. The outcome of these appeals engages the building occupants' rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. However, those rights are qualified and I must ensure in relation to these appeals that any interference with those rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. A decision to dismiss these appeals could result in the current tenants losing their homes, but in this case the harm to the heritage asset is such that the dismissal of the appeals is a necessary, justified and proportionate response. The public interest cannot be achieved by means that cause less interference with the occupants' rights and hence no violation of Article 8 would occur.
87. On the basis of the current enforcement action there is no fall back position. The appellant also makes reference to the fact that the Council has not been prepared to discuss works to render the scheme acceptable. However, there is no suggestion that the Council would not accept the 2015 scheme.
88. The views of interested parties were apparent from attendance at the inquiry and the letters received. As a collective these indicate that local opinion on the appeal scheme is divided, with supporters and objectors presenting diametrically opposed views. I have considered all of the points made in order to reach a balanced view overall.

Overall conclusion

89. I have found that less than substantial harm to the significance of the designated heritage asset would not be outweighed by the public benefits of the scheme. The scheme is therefore in conflict with the statutory duty to have special regard to the preservation of listed buildings. My findings in relation to design matters add further to the weight against the proposal. I have also given careful consideration to other matters, particularly the implications of dismissing the appeals for the existing residents of the property. However, nothing overrides my conclusions about the damage to the heritage asset or the adverse impact of the design on general appearance.
90. The scheme would be contrary to the provisions of the development plan. Whilst relevant policies are less permissive of development than the Framework there are no other material considerations that outweigh this finding. Indeed, the development does not accord with the policies in the Framework relating to the historic environment. For these reasons the appeals should fail.

AJ Mageean

INSPECTOR

APPEARANCES

For the Council

Ms Reid of Counsel, instructed by Manchester City Council.

She called:

Mr Mason Group Manager, Urban Design and Conservation

Ms Atkinson Principle Planning Officer

For the appellant

Mr Goatley and Mr Martin of Counsel, instructed by Addleshaw Goddard.

They called:

Mr Clemons Savills (UK) Ltd, addressing heritage matters

Mr Nicholls Alyn Nicholls, addressing planning matters

Interested parties

Ms Kincaid South East Fallowfield Residents Association

Ms Given Local resident

Mr Hollinshead Local resident

Inquiry documents

1. Extract of Housing Delivery Test: 2018 measurement
2. ICOMOS Guidance on Heritage Impact Assessment for Cultural World Heritage Properties
3. Appellant Opening Statement.
4. Council Opening Statement.
5. Schedule of works and impacts (Mr Clemon's Appendix 6), with additional column for Mr Mason's comments (*revised and corrected version*).
6. Historic England Response to application no 107449/LO/2014/S1.
7. Representations received in respect of application 12506/LO/2018
8. Representations received in respect of application 12505/FO/2018
9. Details of the City of Manchester (Wilmslow Road, Fallowfield) Tree Preservation Order 1989, confirmed 1990, as it affects 365 Wilmslow Road.
10. Suggested conditions (*revised version submitted with Closings*).
11. Closing submissions on behalf of the council.
12. Closing submissions on behalf of the appellant.

Appendix 7: Jones v Mordue [2015] EWCA Civ 1243

Neutral Citation Number: [2015] EWCA Civ 1243
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION, PLANNING COURT
MR JOHN HOWELL QC
[2015] EWHC 539 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2015

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE FLOYD
 and
LORD JUSTICE SALES

Between :

Aidan Jones
- and -

Appellant

Jane Margaret Mordue
- and -

First Respondent

Secretary of State for Communities
and Local Government

Second Respondent

- and -

South Northamptonshire Council

Third Respondent

Mr Alistair Mills (instructed by **Wilkin Chapman LLP**) for the **Appellant**

Mr Juan Lopez (instructed by **Direct Access**) for the **First Respondent**

The 2nd Respondent did not appear and was not represented

The 3rd Respondent did not appear and was not represented

Hearing date: 28 October 2015

Judgment

Lord Justice Sales:

1. This appeal relates to planning permission granted by an Inspector (Mr John Braithwaite) for the erection of a single freestanding wind turbine with associated hard standing, access road and electricity sub-station on land at Poplars Farm, Wappenham, Towcester. The land is owned by the appellant. The respondent is chairperson of a local group of objectors. She made an application to the High Court under section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”) to quash that grant of permission. Her application was successful before John Howell QC, sitting as a deputy judge of the High Court. The appellant appeals to this court.
2. The wind turbine will impinge to a certain extent on views of the Church of St Mary in Wappenham (“the Church”), which is a Grade II* listed building. It will also affect to a very limited degree the setting of certain other listed buildings: The Manor at Wappenham, which is located close to the Church of St Mary, and the Church of St Botolph at Slapton, which is located some distance away. Listed buildings and their settings are accorded special protection under the planning controls regime by virtue of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”) and chapter 12 (“Conserving and enhancing the historic environment”), paras. 126-141, of the National Planning Policy Framework (“the NPPF”).
3. Since the wind turbine would affect the setting of the Church and, to a lesser extent, the other listed buildings, the deputy judge correctly held that the Inspector was obliged to give considerable weight to that harm when considering whether planning permission should nonetheless be granted. Under Ground 2 of the respondent’s application, the deputy judge held that the respondent could not show that the Inspector had in fact failed to give the considerable weight to any harm to the setting of the listed buildings which he was required to give: para. [42] of the judgment. The deputy judge also rejected a claim by the respondent (Ground 1 of her application) that the Inspector failed to apply properly the duty imposed by section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), which required the application for planning permission to be determined “in accordance with the [development] plan unless material considerations [indicated] otherwise”.
4. However, the deputy judge allowed the respondent’s application to quash the planning permission under a second limb of Ground 2, because he accepted her submission that the Inspector had failed *to demonstrate* in the reasons he gave that he had complied with his duty under section 66(1) of the Listed Buildings Act to have special regard to the desirability of preserving the setting of the Church and other listed buildings by giving considerable weight to the desirability of preserving that setting: see, in particular, para. [48] of the judgment. The deputy judge considered that he was bound to reach this conclusion by the decision of this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137; [2015] 1 WLR 45 (“the *East Northamptonshire case*”), in particular at [29] per Sullivan LJ (with whose judgment Rafferty and Maurice Kay LJJs agreed).
5. The deputy judge, however, also gave what are to my mind excellent reasons for thinking that this result would be out of line with other high authority, *Save Britain’s Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153, HL. That in turn calls in

question whether he was right to interpret Sullivan LJ's judgment in the *East Northamptonshire* case in the way he did.

6. The deputy judge rejected a further claim by the respondent (Ground 3 of her application) that the Inspector had failed properly to consider the intrinsic significance of the heritage assets and the contribution which their settings made to their significance, as required by the NPPF. Finally, the deputy judge held that the claim by the respondent (Ground 4 of her application) that she had been substantially prejudiced by a failure on the part of the Inspector to give reasons for his decision was made out for the same reason that Ground 2 was made out, but added nothing material to that Ground.
7. In the event, Sullivan LJ himself granted permission to appeal in relation to Grounds 2 and 4 on the footing that the appellant had a good prospect of successfully persuading the Court of Appeal that either the deputy judge had misunderstood the judgment in the *East Northamptonshire* case or that that judgment had been decided *per incuriam* and was not to be followed. In relation to the first of these points, Sullivan LJ wrote:

“The basis for the Deputy Judge’s central conclusion in paragraph 48 of his judgment appears to be the short extract from paragraph 29 of my judgment in *East Northamptonshire* which he cited in paragraph 43 of his judgment. It is strongly arguable that paragraph 29 of *East Northamptonshire* should be read as a whole, in the context of the preceding paragraphs in the judgment referred to in the Appellant’s Skeleton Argument; and if that is done, that it was clear from the Inspector’s reasoning in his decision in *East Northamptonshire* that he had not given ‘considerable importance and weight’ to the ‘detrimental effect’ of the turbine array upon the setting of a group of designated heritage assets which he had found to have ‘archaeological, architectural, artist and historic significance of the highest magnitude.’”

8. The respondent supports the deputy judge’s decision for the reasons he gave and also, by a respondent’s notice, seeks to uphold it on the basis that he should have accepted Ground 1 of her application (alleged failure to comply with section 38(6) of the 2004 Act).

The statutory and policy framework

9. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to the provisions of the development plan for the area. Section 38(6) of the 2004 Act provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

10. The relevant policies in the local development plan for the area were saved Policies G3 and EV1, which related to general design and landscaping and amenity considerations, and Policy EV12 in relation to Listed Buildings. Policy EV12 provides as follows:

“When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features.”

11. The development plan also set out a paragraph of commentary on Policy EV12, which included the statement: “In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting.”

12. Section 66(1) of the Listed Buildings Act provides as follows:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

13. The relevant paragraphs in the NPPF are as follows:

“131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. 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. The more important the asset, the greater the weight should be. Significance can be

harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. 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 securing its optimum viable use.”

The decision of the Inspector

14. The Inspector made the relevant decision on behalf of the Secretary of State. The Inspector identified the main issues for consideration on the appeal at para. 3 of the Decision Letter, as follows:

“3. The main issues are; first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme.”

15. He considered the second issue, the effect of the development on heritage assets, in these paragraphs of the Decision Letter:

“10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature that is the Church tower. Nevertheless, the turbine would be a feature in the countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.

11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.

12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.

13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative

harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12.”

16. The fourth issue identified by the Inspector, regarding the environmental benefits of the development, was considered in these paragraphs of the Decision Letter:

“20. The landscape was formed by the most recent ice age and has been altered by man for farming and other purposes. These activities, such as an increasing reliance on motorised transport, have contributed to changes in the global climate that are having a detrimental effect on, amongst other things, the landscape. The landscape of South Northamptonshire is not immune from the effects of climate change. Flooding is a serious issue and will have affected South Northamptonshire as it has to devastating effect elsewhere in the country. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes hardship for those who suffer the direct consequences of climate change; flooding of their homes and businesses.

21. A suggested condition would require the removal of the wind turbine within twenty-five years after it is brought into operation. Twenty-five years is a fraction of the history of the landscape of South Northamptonshire and if the landscape is not to suffer serious erosion in the long-term future then consideration must be given to accepting short-term harm to the character of the landscape. A low carbon future is at the heart of Government policy that seeks to meet the challenge of climate change, as set out in the National Planning Policy Framework (NPPF). In paragraph 93 it is stated that “Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure”.

22. The candidate turbine, an Enercon E53, is rated at 0.8 MW but would be operated to produce no more than 0.5 MW. It would be de-rated because supply to the National Grid of over 0.5 MW would require upgrading about 4 kms of electricity transmission lines and this would be financially prohibitive. Furthermore, de-rating a 0.8 MW turbine would produce a consistent output close to the limit of 0.5 MW whereas a 0.5 MW turbine could not produce such a consistent output, and an Enercon 0.5 MW turbine is not materially smaller than their 0.8 MW turbine. The specification of an Enercon E53 turbine maximises the potential for electricity generation at Poplars Farm within the limit set by existing transmission lines. The development would make a small

contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements.”

17. The Inspector then turned to the balancing exercise he had to perform, as follows:

“23. Paragraph 134 of the NPPF states that “Where a development proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal...”. The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the Localism Act 2011 and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that “...all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities”. It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.

24. Paragraph 98 of the NPPF states that local planning authorities should “...not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy...”. There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.

25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan.”

18. Accordingly, the Inspector granted planning permission for the development.

Discussion

19. As the deputy judge correctly pointed out, *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL, is authority regarding the standard of reasons to be expected where a planning decision is taken granting permission for development which has a detrimental impact upon listed buildings. In that case, permission was granted by the Secretary of State, on the recommendation of his inspector, for a redevelopment scheme involving the demolition of eight Grade II listed buildings. The merits of the redevelopment scheme were assessed to override the Secretary of State's stated policy of the time, that listed buildings capable of economic use should not be demolished. An objector applied to quash the permission. At first instance, the application was unsuccessful; but the applicant was successful in the Court of Appeal, on the grounds that the court was not satisfied from the reasons given for the decision that there had been no error of approach on the part of the Secretary of State. The House of Lords, however, overturned that decision on appeal. Lord Bridge of Harwich gave the leading speech. At pp. 167C-168E he said this:

“Whatever may be the position in any other legislative context, under the planning legislation, when it comes to deciding in any particular case whether the reasons given are deficient, the question is not to be answered in vacuo. The alleged deficiency will only afford a ground for quashing the decision if the court is satisfied that the interests of the applicant have been substantially prejudiced by it. This reinforces the view I have already expressed that the adequacy of reasons is not to be judged by reference to some abstract standard. There are in truth not two separate questions: (1) were the reasons adequate? (2) if not, were the interests of the applicant substantially prejudiced thereby? The single indivisible question, in my opinion, which the court must ask itself whenever a planning decision is challenged on the ground of a failure to give reasons is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given. Here again, I disclaim any intention to put a gloss on the statutory provisions by attempting to define or delimit the circumstances in which deficiency of reasons will be capable of causing substantial prejudice, but I should expect that normally such prejudice will arise from one of three causes. First, there will be substantial prejudice to a developer whose application for permission has been refused or to an opponent of development when permission has been granted where the reasons for the decision are so inadequately or obscurely expressed as to raise a substantial doubt whether the decision was taken within the powers of the Act. Secondly, a developer whose application for permission is refused may be substantially prejudiced where the planning considerations on which the decision is based are not explained sufficiently clearly to enable him reasonably to assess the prospects of succeeding in an application for some alternative form of development. Thirdly, an opponent of development, whether the local planning authority or some

unofficial body like Save, may be substantially prejudiced by a decision to grant permission in which the planning considerations on which the decision is based, particularly if they relate to planning policy, are not explained sufficiently clearly to indicate what, if any, impact they may have in relation to the decision of future applications.

Here again, I regret to find myself in disagreement with Woolf L.J. who said, *60 P. & C.R.* 539, 557:

“Once it is accepted that the reasoning is not adequate, then in a case of this sort it seems to me that, apart from the exceptional case where it can be said with confidence that the inadequacy in the reasons given could not conceal a flaw in the decision-making process, it is not possible to say that a party who is entitled to apply to the court under section 245 has not been substantially prejudiced.”

The flaw in this reasoning, it seems to me, is that it assumes an abstract standard of adequacy determined by the court and then asserts, in effect, that a failure by the decision-maker to attain that standard will give rise to a presumption of substantial prejudice which can only be rebutted if the court is satisfied that the inadequacy “*could not* conceal a flaw in the decision-making process.” But this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged in the way that Woolf L.J. suggests unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section 245. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision.”

20. The guidance in *Save Britain's Heritage* was followed by Lord Brown of Eaton-under-Heywood in his speech in *South Bucks District Council v Porter (No. 2)* [2004] UKHL 33; [2004] 1 WLR 1953, leading to his very familiar summary of the relevant principles at [36] as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

21. In the *East Northamptonshire case* the local planning authority refused the developer’s application for planning permission to erect wind turbines in a location where this would have a detrimental effect on the setting of listed buildings. An inspector appointed by the Secretary of State allowed the developer’s appeal and granted planning permission. The local planning authority applied to quash that decision on the ground that the inspector had failed to give sufficient weight to the desirability of preserving the setting of the listed buildings as required by section 66(1) of the Listed Buildings Act, and was successful at first instance. The appeal to this court was dismissed.
22. This court held that the judge had been correct to rule that section 66(1) requires the decision-maker to give “the desirability of preserving the building or its setting” not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm: [22]-[24] per Sullivan LJ. The judge found that the inspector had failed to comply with this duty, as evidenced by the reasoning in his decision letter, and had instead downplayed the desirability of preserving the setting of the listed buildings. This court agreed.
23. At para. [29] Sullivan LJ said this:

“For these reasons, I agree with Lang J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed

buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The second defendant's skeleton argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the inspector's planning judgment. In his oral submissions Mr Nardell contended that the inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the "significant weight" which the inspector expressly gave in para 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out."

24. In the present case, the deputy judge treated this passage as authority for the proposition that there is an onus on a decision-maker positively to demonstrate by the reasons given that considerable weight has been given to the desirability of preserving the setting of relevant listed buildings, notwithstanding that this is contrary to the general position explained in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*: see [43]-[49], [58] (where he said that "the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act is taken to impose"), [65] and [73]. The deputy judge also drew support for this conclusion from the first instance decisions in *R (The Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895; [2015] JPL 22 and *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin): see [44].
25. Accordingly, the deputy judge found that the complaint in Ground 2 (failure to comply with the duty in section 66(1) of the Listed Buildings Act) was made out, because the Inspector had failed positively to demonstrate in his reasons that he had referred to and applied that provision. He also found that the complaint in Ground 4 regarding the alleged inadequacy of the reasons given was made out for the same reason. The deputy judge was correct to treat these two grounds as being in substance the same, since the only evidence as to whether the Inspector had failed in fact to comply with the duty in section 66(1) was what was contained in the reasons he gave in the decision letter. The deputy judge reached the conclusion that the decision should be quashed only because he regarded himself as bound to do so by the *East*

Northamptonshire case and with considerable reluctance, as he explained at para. [73], not least because in his judgment “it is clear in this case why the Inspector decided to grant planning permission”. I agree with this last comment.

26. With respect to the deputy judge, I think he read too much into para. [29] of the judgment of Sullivan LJ in the *East Northamptonshire case*. I do not consider that, read in the context of the judgment as a whole, Sullivan LJ and the court intended to state an approach to the reasons required to be given by a decision-maker dealing with a case involving application of section 66(1) of the Listed Buildings Act which was at variance from, and more demanding than, that stated in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*. Sullivan LJ's comments in para. [29] were made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. In my judgment, the relevant standard to be applied in assessing the adequacy of the reasons given in the present case is indeed the usual approach explained in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, which is what the deputy judge correctly thought it ought to be.
27. Mr Lopez, for the respondent, took us to first instance authorities - *The Forge Field Society* and *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) - in which the reasons for decisions in cases involving application of section 66(1) of the Listed Buildings Act had been found to be inadequate and invited us to compare them with the reasons given by the Inspector in this case. I did not find this a helpful exercise. Reasons for planning decisions have to be read as a whole in their proper context, and there will inevitably be differences of context, expression and nuance between cases which may be highly relevant. Reading other decision letters (and the judgments in relation to them) can take up considerable time and effort without adding value for the determination of the particular case before the court. The relevant principles in relation to the giving of reasons are well-established and very well known, and it should be sufficient for a judge to be reminded of them and taken to the reasons in the case before him or her to assess them in light of those principles, without any need for exegetical comparison with reasons given in relation to other planning decisions. I would add, however, that on my reading of them the judgments we were taken to concerned reasons for decisions which, as in the *East Northamptonshire case* itself, contained positive indications that the decision-maker had failed to comply with the duty under section 66(1) of the Listed Buildings Act: see *The Forge Field Society* [2015] JPL 22, at [42] and [53], and *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin), at [72]-[73]. Such indications would have had to have been dispelled by a countervailing positive reference to the relevant duty in the reasons themselves in order to avoid the conclusion that the decision-maker had erred as a matter of substance in the test being applied. Although *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)* were not referred to, there is nothing in the judgments themselves to show that the familiar basic principles laid down in them were departed from on the facts of these cases.
28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, it cannot be said that the reasoning of

the Inspector gives rise to any substantial doubt as to whether he erred in law. On the contrary, the express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. Policy EV12 reflects that duty, and the textual commentary on it reminds the reader of that provision. Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did.

29. The Inspector was lawfully entitled to assess that the harm to the setting of the listed buildings identified and discussed by him at paras. 10-13 of the Decision Letter, giving that factor the weight properly due to it under section 66(1) of the Listed Buildings Act and paras. 131-134 of the NPPF, was outweighed by the environmental benefits from the turbine identified and discussed by him at paras. 20-22 of the Decision Letter.
30. For these reasons, I would allow the appeal and uphold the decision of the Inspector.
31. The additional contention raised in the respondent's notice, namely that the Inspector failed properly to comply with the duty in section 38(6) of the 2004 Act, is wholly devoid of merit and should be dismissed. The Inspector clearly considered that there were good reasons to depart from the relevant policies in the development plan, for the reasons he explained. That was an entirely lawful exercise of planning judgment by him.

Lord Justice Floyd:

32. I agree

Lord Justice Richards:

33. I also agree.

APPENDICES

- Appendix 1: Planning Permission reference 127016/FO/2020**
- Appendix 2: Listed Building Consent reference 127017/LO/2020.**
- Appendix 3: Officer Delegated Report (133618/JO/2022)**
- Appendix 4: Officer Delegated Report (133619/JO/2022)**
- Appendix 5: Details of the 2015 Approved Scheme**
- Appendix 6: Appeal Decision Letter, 2 July 2019**
- Appendix 7: Jones v Mordue [2015] EWCA Civ 1243**

Appendix 1: Planning Permission reference 127016/FO/2020

Town & Country Planning Act 1990 (as amended)

Planning Permission

Applicant

Feltham Management Limited
20 Aldwych Avenue
Manchester
M14 5NL

Agent (if used)

Alyn Nicholls
Alyn Nicholls & Associates
140 Denby Lane
Upper Denby
Huddersfield
HD8 8UN

Part 1 – Particulars of the application/development

Proposal: Erection of two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Location: 363 Wilmslow Road, Manchester, M14 6XU

Date of application: 3 June 2020

Application number: 127016/FO/2020

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **Approved** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

The application has been considered in a positive and proactive manner as required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 and any problems arising in relation to dealing with the application has been communicated to the applicant.

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363-OD-0102 01 Proposed and Existing site plan - as received on the 28th May 2020

363-OD-0110 Rev 02 Cross Section (As Proposed)
363-OD-0111 Rev 02 Interior Details (Sheet 1)
363-OD-0112 Rev 02 Interior Details (Sheet 2)
363-OD-0113 Rev 02 Window Details (Sheet 1)
363-OD-0114 Rev 02 Window Details (Sheet 2)
363-OD-0115 Rev 02 Front Steps Details
363-OD-0116 Rev 02 External Works Details
363-OD-0117 Rev 01 Window Details (Sheet 3)
363-OD-0119 Rev 01 Replacement Window Shutters
363-OD-0120 Rev 01 Window Shutters (View)
363-OD-0121 Rev 01 Suspended Ceiling Details
All as received via email on the 14th September 2020

363-OD-0109 Rev 03 Elevations (As Proposed)
363-OD-0118 Rev 02 Roof Details - both as received via email on the 17th October 2020

363-OD-0108 Rev 04 Floor Plans (As Proposed)- as received via email on the 20th May 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development shall commence (including any demolition or site set up works) until a method statement for the construction works to be undertaken to implement the approval have been submitted to and approved in writing by the City Council as local planning authority. The submitted statement shall include methods to protect the listed building whilst works are being carried out on the building and at the site. The development shall be subsequently carried out in accordance with the agreed details.

Reason - To ensure works are undertaken to protect designated heritage assets, pursuant to policy EN3 of the Core Strategy and saved policy DC19.1 of the Unitary Development Plan.

4) No development that is hereby approved shall commence unless and until samples and specifications of all materials including mortar specification to be used on all external elevations of the development and including: gate posts; front steps; and, all hard landscaping materials have been submitted to and approved in writing by the City Council as local planning authority. The development shall be subsequently carried out in accordance with the agreed materials.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

5) Within one month of the date of the development hereby approved commencing the detailed scheme for the storage (including segregated waste recycling) and disposal of refuse shall be submitted to the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - To ensure that there is satisfactory provision for the storage of refuse pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC5.

6) Notwithstanding the approved plans, within one month of the commencement of development a hard and soft landscaping treatment scheme including frontage hedgerow planting shall be submitted to and approved in writing by the City Council as local planning authority. The approved scheme shall be implemented not later than 12 months from the date the buildings are first occupied. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.

Reason - To ensure that a satisfactory landscaping scheme for the development is carried out that respects the character and visual amenities of the area, in accordance with policies SP1, EN3, EN9 and DM1 of the Core Strategy and saved UDP policy DC19.

7) The car parking as indicated on the approved site layout drawing, shall be laid out and demarcated prior to the first occupation of the development hereby approved and shall be retained thereafter for sole use by the occupiers of the development.

Reason - To ensure that adequate car parking provision is available for the occupiers of the development pursuant to saved UDP policy DC5 and Core Strategy policy DM1.

8) The bicycle store indicated on the approved plans shall be installed prior to the first occupation of the development hereby approved and shall remain in situ whilst the development is in use.

Reason - To ensure adequate access to secure cycle parking facilities by occupiers of the development pursuant to policy T1 and DM1 of the adopted Core Strategy.

9) The residential use hereby approved shall be used only as private dwellings (which description shall not include serviced properties or similar uses where sleeping accommodation (with or without other services) is provided by way of trade for money or money's worth and occupied by the same person for less than ninety consecutive nights) and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason - In the interests of residential amenity, to safeguard the character of the area and to maintain the sustainability of the local community through provision of accommodation that is suitable for private residential purposes and to ensure the achievement of the public benefit identified pursuant to policies SP1, DM1, EN3, H1, H6 and H11 of the Core Strategy for Manchester and the guidance contained within National Planning Policy Framework including section 16.

10) Before first occupation the windows in the side elevation of the rear extension facing towards 361 Wilmslow Road (north elevation) shall be obscure glazed to a specification of no less than level 5 of the Pilkington Glass Scale or such other alternative equivalent and shall remain so in perpetuity.

Reason - To protect the amenity and living conditions of adjacent residential property from overlooking or perceived overlooking and in accordance with policies SP1 and DM1 of the Core Strategy.

Informatives

Building Regulations 2010

This permission does not grant approval under Building Regulations.

Street Naming & Numbering Requirements

Manchester City Council is responsible for allocating street naming and numbering within Manchester for new developments or property conversions. Individuals or businesses are not permitted to allocate their own property numbers, building or street names.

If your development includes the creation of new dwellings (either new build or conversion of existing buildings), creation of new commercial properties or the subdivision of existing properties you must ensure that you request new or changes to addresses through us so they can be officially allocated and registered in accordance with the Public Health Act 1925 Sections 17-19 & Greater Manchester Act 1981 Section 22.

Failure to do this may result in difficulties for the developer/occupier when requiring services such as connections to utilities, phone lines and postal services and may delay your development.

You can apply online at the following address:

http://www.manchester.gov.uk/info/100011/roads_parking_and_transport/1988/naming_and_numbering_of_houses_buildings_streets_and_roads/2

Date: 4 June 2021

Signed:



Julie Roscoe

Director of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA

Appendix 2: Listed Building Consent reference 127017/LO/2020.

Planning (Listed Building & Conservation Area) Act 1990 (as amended)

Listed Building Consent

Applicant

Feltham Management Limited
20 Aldwych Avenue
Manchester
M14 5NL

Agent (if used)

Alyn Nicholls
Alyn Nicholls & Associates
40 Denby Lane
Upper Denby
Huddersfield
HD8 8UN

Part 1 – Particulars of the application/development

Proposal: Listed building consent for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Location: 363 Wilmslow Road, Manchester, M14 6XU

Date of application: 3 June 2020

Application number: 127017/LO/2020

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **granted** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

The application has been considered in a positive and proactive manner as required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 and any problems arising in relation to dealing with the application has been communicated to the applicant

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363-OD-0102 01 Proposed and Existing site plan - as received on the 28th May 2020

363-OD-0110 Rev 02 Cross Section (As Proposed)
363-OD-0111 Rev 02 Interior Details (Sheet 1)
363-OD-0112 Rev 02 Interior Details (Sheet 2)
363-OD-0113 Rev 02 Window Details (Sheet 1)
363-OD-0114 Rev 02 Window Details (Sheet 2)
363-OD-0115 Rev 02 Front Steps Details
363-OD-0116 Rev 02 External Works Details
363-OD-0117 Rev 01 Window Details (Sheet 3)
363-OD-0119 Rev 01 Replacement Window Shutters
363-OD-0120 Rev 01 Window Shutters (View)
363-OD-0121 Rev 01 Suspended Ceiling Datasheets
All as received via email on the 14th September 2020

363-OD-0109 Rev 03 Elevations (As Proposed)
363-OD-0118 Rev 02 Roof Details - both as received via email on the 17th October 2020

363-OD-0108 Rev 04 Floor Plans (As Proposed)- as received via email on the 20th May 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development shall commence (including any demolition or site set up works) until a method statement for the construction works to be undertaken to implement the approval have been submitted to and approved in writing by the City Council as local planning authority. The submitted statement shall include methods to protect the listed building whilst works are being carried out on the building and at the site. The development shall be subsequently carried out in accordance with the agreed details.

Reason - To ensure that the construction works associated with the development of the extension to this Grade II Listed Building are undertaken in an appropriate manner pursuant to policies EN3, SP1 and DM1 of the Core Strategy, saved Unitary Development Plan policy DC19 and the National Planning Policy Framework.

4) No development that is hereby approved shall commence unless and until samples and specifications of all materials including mortar specification to be used on all external elevations of the development and including: gate posts; front steps; and, all hard landscaping materials have been submitted to and approved in writing by the City Council as local planning authority. The development shall be subsequently carried out in accordance with the agreed materials.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

5) Prior to the installation of the new false ceiling to the ground floor of the property, a detailed method statement for its installation including: details of the types, fixing

method and position of supporting structures and ceiling in relation to existing heritage features; materials and finishes of the ceiling; details of the refurbishment and repair of original fabric to be concealed by the ceiling including a full record of the original fabric to be concealed; together with the details of the new cornicing to be installed to the new ceiling including moulding specifications and design, shall be submitted to and approved in writing by the City Council as local planning authority. The approved details shall be installed in accordance with the agreed details prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity, and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest so careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

6) No rainwater goods nor pipes shall be installed nor affixed other than rainwater goods and pipes constructed of cast iron and coloured black. All such goods shall kept coloured and be in situ prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19; of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

7) No works, to install the timber panelling and shutters to ground floor windows shall commence until details of the work has been submitted to and approved in writing by the City Council as local planning authority. The details shall include method statements for their installation; details of materials and their finishes; and fixtures and fittings required for their installations. The development shall be subsequently carried out in accordance with the agreed details prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

8) The details of the picture rails, moulded skirting boards, acanthus design console brackets within hall, as indicated on the approved drawings shall be installed prior to the first occupation of the development hereby approved.

Reason - In the interests of visual amenity and because the proposed works affect a building which is included in the Statutory List of Buildings of Special Architectural or Historic Interest and careful attention to building work is required to protect the character and appearance of this building in accordance with saved policy DC19.1 of the Unitary Development Plan for the City of Manchester and policies SP1, EN3 and DM1 of the Core Strategy.

Informatives

Building Regulations 2010

This permission does not grant approval under Building Regulations.

Street Naming & Numbering Requirements

Manchester City Council is responsible for allocating street naming and numbering within Manchester for new developments or property conversions. Individuals or businesses are not permitted to allocate their own property numbers, building or street names.

If your development includes the creation of new dwellings (either new build or conversion of existing buildings), creation of new commercial properties or the subdivision of existing properties you must ensure that you request new or changes to addresses through us so they can be officially allocated and registered in accordance with the Public Health Act 1925 Sections 17-19 & Greater Manchester Act 1981 Section 22.

Failure to do this may result in difficulties for the developer/occupier when requiring services such as connections to utilities, phone lines and postal services and may delay your development.

You can apply online at the following address:

http://www.manchester.gov.uk/info/100011/roads_parking_and_transport/1988/naming_and_numbering_of_houses_buildings_streets_and_roads/2

Date: 4 June 2021

Signed:



Julie Roscoe

Director of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA

Notes

1. This permission refers only to that required under the Planning (Listed Buildings and Conservation Areas) Act 1990 does not include any consent or approval under any other enactment, byelaw, order or regulation.

2 If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State in accordance with sections 20 and 21 of the Act within six months of the date of the notice of the decision.

The Planning Inspectorate have introduced an online appeals service that can be used to make appeals online. This service is available through the gov.uk website – www.gov.uk/planning-inspectorate. The Inspectorate will publish details of your appeal on the internet. Alternatively If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances that excuse the delay in giving notice of appeal.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the City Council (planning@manchester.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

3. The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70(1) and 72(1) of the Act.

4. If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990

5. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to them. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Appendix 3: Officer Delegated Report (133618/JO/2022)

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133618/JO/2022

Date registered valid: 27 April 2022

Proposal: Variation of condition numbers: 2 (specified plans) and 10 (obscure glazing) from planning approval reference 127016/FO/2020 to allow amendments: to the materials and layout of steps to the main entrance, materials to be used in the rainwater goods, alterations to the design of windows in the rear extension, heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; and, to allow the partial occupation prior to the installation of obscure glazing

Address: 363 Wilmslow Road, Manchester, M14 6XU

Ward(s): Withington Ward

Applicant: Feltham Management Limited 20 Aldwych Avenue, Manchester, M14 5NL

Agent (if any): Alyn Nicholls Alyn Nicholls Chartered Town Planner 140 Denby Lane, Upper Denby, Huddersfield, HD8 8UN

Case officer: Robert Griffin
Tel: 0161 234 4527
Email: robert.griffin@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 22.07.2022

Application details

Type of application: Variation or Removal of Condition

Development type: Minor Dwellings

Date of site visit: 10th May 2022

Standard consultations:

Printed: 5 May 2022 Expired: 26 May 2022

Neighbour notifications

Printed: 5 May 2022 Expired: 26 May 2022

Site notice

Posted: 10 May 2022 Expired: 31 May 2022

Press advert

Published: 10 May 2022 Expired: 31 May 2022

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Grade II

Conservation area: N/A

Tree Preservation Order: N/A

Description

The application property is a grade II listed building, having been formally designated in 1974, and forms an end property of a short terrace row of three buildings known as 'Norton Place'. The property was originally constructed as a dwellinghouse, along with the other two buildings in the row. Predominately two storey in height, the property benefited from a basement area, two-storey outrigger to the rear and attic accommodation.

The front of the property has two ground floor bay windows with central entrance door way and steps. The bays and doorway have distinctive decorative detailing as do the eaves of the property. The upper floor windows have vertical sash windows, with vertical glazing bars, and a more simple stone surround.

The side gable wall to the property has a similar bay window as the front elevation with decorative features and an upper floor window, which again follows the same style and features as the front elevation.

The rear elevation of the property was once characterised by a two-storey outrigger. This was similar to the outriggers, which remain evident within the remainder of the terrace row at properties 359 and 361 Wilmslow Road known as 'Norton Place'.

A low boundary wall and gate post mark the entrance to the front curtilage of the property which once formed the front garden and now consists of hardstanding for car parking. To the rear of the property is a landscaped garden area with cycle store and clothes drying area. The list description for the property indicates it was in use in 1974 as offices and the planning history for the property indicates it was used as a medical centre from 1979 to 2010. There appears to have been an education use in the building subsequently prior to it becoming vacant.

The surrounding area is mixed use in nature. The application property, together with the other properties in the terrace that form Norton Place, retain their residential character.

Development Proposals

Planning and Listed Building Consent was granted under application references 127016/FO/2020 and 127017/LO/2020 for the erection of basement and two storey rear extension to create 9no. self-contained flats together with other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store.

In determining those applications supporting statements indicated that the proposals conformed closely to the proposals for the conversion and extension of the property to form 9 no. apartments granted planning and listed building consent in 2015.

The approved scheme subject of this variation comprised: four one-bed duplex apartments on the ground level and basement, two one-bed flats on the first floor, a two-bed flat in the attic and two two-bed flats in the extension to create a total of nine apartments. Each duplex apartment would occupy one of the original rooms on the ground level and the corresponding space in the lower ground floor. The first floor apartments would each occupy two rooms, front to back, while the two-bed apartment would occupy the three existing rooms on the upper level. The rooms located towards the front of the building on the ground and first floor have been refurbished and returned to close to their original size. The applicant indicates that the number of partition walls introduced have been kept to a minimum throughout the existing building. The extension has two storeys and a floorplate of about 60m² per floor. The extension would be constructed traditionally, with loadbearing brick-faced cavity using salvaged bricks, slate roof. Windows and doors are to be of painted timber.

The current variation of condition application seeks to change elements of the approved scheme that impacts on the external elevations of the extension building together with changes to elements of internal works approved under the original permission. The amendments that permission is sort for are:

- Staged completion of the building
- Use of aluminium heritage style rainwater goods in lieu of cast iron
- Use of stone effect concrete entrance steps in lieu of natural stone
- Retention of the installed suspended ceiling and omit further works to the concealed original ceiling and cornice together with the omission of a replica cornice below the suspended ceiling
- Design details to the rear extension including removal of swept arch heads to windows, alter the window size, removal of dummy windows, retain concrete sills, change to fenestration pattern.
- Omit the installation

A separate variation to the listed building consent application (reference 133619/JO/2022) has also been submitted.

Relevant Planning History

March 2001 - Application for Planning permission 061665/FO/SOUTH1/01, Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear. Approved June 2001.

March 2001- Application for Listed Building Consent 061666/LO/SOUTH1/01, LISTED BUILDING CONSENT Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear and internal alterations. Approved June 2001.

May 2008 -Planning application 086507/FO/2008/S1 Erection of a part single/part 2 storey extension at rear of property and entrance ramp and new entrance at side of property. Provision of parking spaces in rear garden with associated landscaping. Approved July 2008.

May 2008 - Application for Listed Building Consent 086581/LO/2008/S1 LISTED BUILDING CONSENT for the erection of a part single/part 2 storey rear extension, new access ramp and side entrance, car parking in rear garden and associated landscaping Approved July 2008.

July 2014 - Planning application 106424/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create nine flats, with landscaping and parking Approved September 2014.

July 2014 - Application for Listed Building Consent 106425/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of nine flats, Approved September 2014.

March 2015 -Planning application 107448/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create 9no. self contained flats with landscaping and parking, Approved May 2015.

March 2015- Application for Listed Building Consent 107449/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of 9no. flats, Approved May 2015.

June 2017 Planning application 116773/FO/2017, Change of Use from doctors surgery to create 10no. self contained flats including the erection of a basement and two storey rear extension to existing building together with excavation of rear garden with associated landscaping and parking, Refused August 2017

June 2017 -Application for Listed Building Consent 116774/LO/2017, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking ,Refused August 2017

July 2018 - Planning application 120505/FO/2018, Erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking, Refused October 2018.

July 2018 - Application for Listed Building Consent 120506/LO/2018, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking. Refused October 2018.

Appeal against refusal of Planning permission 120505/FO/2018 and 120506/LO/2018 dismissed following Public Enquiry in July 2019.

June 2020 - Planning application 127016/FO/2020, Erection of basement and two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store, Approved June 2021

June 2020 - Application for Listed building consent 127017/LO/2020 for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Consultations & Notification Responses

Neighbouring properties were notified, a site notice was posted and advertisement was placed in the Manchester Evening News. No responses were received.

Policy

The development plan consists of the:

- Manchester Core Strategy Development Plan Document (Adopted July 2012); and
- The extant Unitary Development for the City of Manchester (Adopted 1995)

The Manchester Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP). The Core Strategy sets out the long term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the development plan unless material considerations indicate otherwise.

The relevant policies to in considering this application are as follows:

Policy SP1 '*Spatial Principles*'

Policy EN1 '*Design principles and strategic character areas*'

Policy EN3 '*Heritage*'.

Policy DM1 '*Development Management*'

The Unitary Development Plan for the City of Manchester was adopted in 1995. However, it has now been largely replaced by the Manchester Core Strategy. There are some saved policies which remain part of the development plan and the starting point for decision making pursuant to section 38 (6) of the Planning and Compulsory Purchase Act. The below saved policies are considered relevant.

Saved policy DC1 '*Residential Extensions*' states that this policy is applicable to extensions to properties in use as flats (part DC1.6).

Saved policy DC1 outlines a number of general criteria which is considered relevant in the determination of residential extensions it provides the considerations when determining

applications including that extensions should not be excessively large or bulky; extensions should not be out of character with the style of development in the area or the surrounding street scene by virtue of design, use of materials or constructional details.

Saved policy DC5 '*Flat conversions*' states at DC5.2 that there will be a general presumption in favour of flat conversions within residential areas, on the upper floors of businesses within commercial areas and in properties on main road frontages, subject to other relevant policies of the Plan.

Saved policy DC19 '*Listed Buildings*' states that in determining applications for listed building consent or planning applications for development involving or having an impact on buildings of Special Architectural or Historic Interest, the Council will have regard to the desirability of securing the retention, restoration, maintenance and continued use of such buildings and to protecting their general setting.

The National Planning Policy Framework (NPPF- 2021) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Relevant sections to this application are contained in Section 12 (Achieving well-designed places) and Section 16 (Conserving and enhancing the historic environment)

The creation of high quality, beautiful and sustainable buildings and places is identified as fundamental to what the planning and development process should achieve.

The NPPF indicates that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The NPPF states that in determining planning applications, local planning authorities should take account of:

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c. the desirability of new development making a positive contribution to local character and distinctiveness.

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.

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a. the nature of the heritage asset prevents all reasonable uses of the site; and b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d. the harm or loss is outweighed by the benefit of bringing the site back into use.

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.

Local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

Issues

Principle – The principle of the conversion of the application property to 9 no. self-contained apartments facilitated by the erection of a rear extension has been accepted through the granting of the principle permission that variations are now sort. In this instance the application proposals seek to omit and alter the permission previously granted permission and further consideration of these matters is required.

Effects on the listed building - The frontage of Norton Place presents a grand and broadly symmetrical Italianate style elevation to Wilmslow Road. The stucco rendering, deep eaves with ornate bracketing, central feature gable, Corinthian pilaster doorways, canted bay windows and stone quoining at either end, serve to create a visually prominent and distinctive local landmark.

Whilst the side gables are less detailed they are considered to have been designed as part of the overall aesthetic of the terrace of properties that forms Norton Place. The rear elevations of the properties on Norton Place are more subservient of stock brick construction and considered utilitarian in appearance, and were more modest in terms of materials and of windows openings but together demonstrate the historic development of the area and the age in which they were built. The principle significance of the Grade II listed building at 363 Wilmslow Road are the front and side elevations with the rear elevation reflecting the character of more modest detailing and finishes.

The Historic England (HE) Listing of Norton Place indicates that an interior inspection of the property was not undertaken at the time of its listing in 1974. The guidance of HE is that listing descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of a building. It is fact that the whole of a listed building is covered by its designation, including its interior. In this instance the internal configuration of the building was previously compromised by small scale unsympathetic alterations and additions that were undertaken in association with its previous usage over a period of time. However, evidence available indicates that prior to the unauthorised works having taken place, there were present within the interior of the building decoration and finishes that contributed towards the appreciation of the original construction of the building. These included flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. It is considered therefore that the interior of the building did contribute to the special

interest and significance of the building and the proposals impacts on the significance of the interior is required.

The proposed extension – In approving the original consent subject of this variation application it was considered that the inclusion of window sizes and styles more reflective of the original rear elevation, together with segmental arch features more closely reflected the rear elevations of the group of properties forming the listed Norton Place. This was an important consideration and that the proposed rear extension reflected the hierarchy of significance of the listed building in continuing to reflect a more modest and subservient built form to the more significant front and side elevations.

The conclusion was that the proposed extension would result in harm to the listed building, as the front and side elevations of the application property would remain largely intact as a result of the proposal the level of harm was considered to be of less than substantial harm. The proposed change to this element of the scheme is considered to erode the quality and authenticity of the design response previously approved.

Other works - In addition to the rear extension the approved proposals incorporated a number of other works to the building that would replace elements installed as part of the unauthorised works to the property these include:

- The replacement of uPVC windows and doors with timber sliding sash windows;
- The installation of three no. rooflights to the front roof plane (instead of the 6 installed) and 4 no rooflights to the rear roof plane (instead of 5 installed)
- The replacement of uPVC rainwater goods with heritage aluminium cast downpipes and guttering
- Removal of boiler vents and alarm boxes from the side gable wall
- Reinstatement of stone gateposts
- Reinstatement of stone flight of steps to front entrance

The re-introduction of traditional timber framed windows to the existing building together with more appropriately sized timber windows to the proposed extension and rear elevation were considered to reduce the degree of harm of the loss of the original windows from the building.

The current proposals seek to reverse a number of these elements of the approved scheme, as set above the cumulative effect of the changes set out is to diminish the approved scheme and erode features that were considered to assist in overcoming the harm identified.

Matters relating to allow the partial occupation of the property prior to the installation of obscure glazing are considered to have been achievable on there own as part of a distinct application, however in this instance other proposed changes are considered to not be acceptable.

Internal works – The proposed conversion of the listed property encompasses a range of works to ensure it is suitable for habitation and provide a safe environment for future occupiers. The approved application proposals were modified to incorporate and replace lost features undertaken as part of the unauthorised works.

The internal works comprised:

- The installation of internal staircases for the duplex apartments,
- The re-instatement of timber panelling to the bay windows to ground floor rooms;
- The provision of replacement ceiling cornicing, picture rails and moulded skirting boards;
- Re-instatement of acanthus design console brackets within hall.
- Raising of part of the ground floor;
- Insertion of suspended ceilings in the ground floor spaces to meet fire and sound insulation requirements.

It was considered that these works, whilst acknowledging that these corrected previous unauthorised works, would benefit the building and that these together with other works, would have modest heritage benefits.

The conclusion of the original approval was that when considering the overall harm to the listed building, the proposal would not lead to 'substantial harm' or the total loss of the significance of the designated heritage asset, that being number 363 Wilmslow Road and the group of Grade II Listed Buildings identified as 'Norton Place'. The erection of the extension was considered to lead to less than substantial harm to the significance of a designated heritage asset. Therefore in accordance with the NPPF *'where a development proposal will lead to a less than significant harm to the significance of a designated heritage asset, this harm should be weighed against the public benefit of the proposal, including securing its optimum viable use'*.

The effect of the proposed changes - The previous approval followed a lengthy public inquiry with the appeal being dismissed. The inspector placed significant weight on the heritage value of the original internal features that had been removed. Lengthy discussions and negotiations were had together with concessions in order to arrive at an approved scheme that could be supported by the Council and followed the principles set out in the appeal Inspectors decision.

It is considered that the current amendments go against the principles and carefully detailed reinstatement works that have been previously agreed. The internal features contribute to the architectural and historic significance of the grade II listed building and there was evidence that these features exist to enable authentic reinstatement. The elevational changes proposed to the rear extension were both a compromise to assist the applicant but also considered to be the correct architectural and heritage approach, the proposed alterations are considered to dilute the design intent previously negotiated and approved.

Public Benefit - The improvements to the front and side elevation of the property together with the proposed works to replace the stone steps and gate posts, together with the renewal of the front forecourt parking area were considered to derive a direct and visible public benefit given the significance of these elevations within the immediate area. The amendments proposed dilute this benefit.

The proposals would result in the re-use of a designated heritage asset and secure its long term use whilst contributing to the overall stock of residential dwellings in a highly sustainable location. This was considered to be of a major public benefit. Whilst acknowledging the submitted information to support this application, unauthorised and illegal removal of features and the difficulty of potential reinstatements cannot be used to justify a dilution of the approved scheme as set out in the NPPF.

In this instance it is considered that the proposed amendments would dilute the public benefits that derived from the originally approved proposals and as such cannot be supported.

Conclusion – As set out within this report, the original approval provided further improvements including to the sizes and design of the windows to be incorporated into the extension together with further internal works to replicate some of the historic features lost as part of the unauthorised works, including timber panelling and shutters to the ground floor front rooms. As such the amended proposals that impact on the original approved scheme are not considered to be acceptable.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Article 35 Declaration

In this instance concerns with the application were expressed to the applicant's agent, the proposal do not comply with the development plan and there are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

Reasons for recommendation to refuse

- 1) The proposed elevational alterations to: the materials and layout of steps to the main entrance; materials to be used in the rainwater goods; alterations to the design of windows in the rear extension; heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; subject of this application fail to preserve or enhance the Grade II designated heritage asset causing harm that cannot and has not been justified by public benefit, and is therefore considered to be contrary to Sections 16(2) and 66 of (Listed Buildings and Conservation Areas) Act 1990, Sections 12 (Achieving well designed places) and 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework, The Core Strategy for the City of Manchester, in particular Policies SP1, DM1 and EN3 and saved policy DC19.1 (Listed Buildings) of the Unitary Development Plan for the City of Manchester.

Appendix 1 – List of consultees & neighbours notified

Urban Design & Conservation
Withington Civic Society
Rusholme, Fallowfield & Moss Side Civic Society
South East Fallowfield Residents Association

2A Egerton Road, , Manchester, , M14 6XW
Flat 10, 363 Wilmslow Road, Manchester, M14 6XU
Flat 9, 363 Wilmslow Road, Manchester, M14 6XU
Flat 8, 363 Wilmslow Road, Manchester, M14 6XU
Flat 7, 363 Wilmslow Road, Manchester, M14 6XU
Flat 6, 363 Wilmslow Road, Manchester, M14 6XU
Flat 5, 363 Wilmslow Road, Manchester, M14 6XU
Flat 4, 363 Wilmslow Road, Manchester, M14 6XU
Flat 3, 363 Wilmslow Road, Manchester, M14 6XU
Flat 2, 363 Wilmslow Road, Manchester, M14 6XU
Flat 1, 363 Wilmslow Road, Manchester, M14 6XU
4 Besford Close, Manchester, M14 6NF
13 Besford Close, Manchester, M14 6NF
11 Besford Close, Manchester, M14 6NF
Flat 12, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
McDonald's, 336 Wilmslow Road, Manchester, M14 6XQ
Willowbank Hotel, 340 - 342 Wilmslow Road, Manchester, M14 6AF
Flat 2, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 3, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 1, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 6, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 7, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 8, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 4, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 5, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 9, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 11, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 10, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
361 Wilmslow Road, Manchester, M14 6XU
359 Wilmslow Road, Manchester, M14 6XU
Flat 16, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 14, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 11, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 9, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 6, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
359A Wilmslow Road, Manchester, M14 6XU
Flat 18, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 17, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 15, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 13, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 12, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 10, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 8, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 7, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 5, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 4, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 1, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Flat 3, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 2, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Egerton Road)

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH

Appendix 4: Officer Delegated Report (133619/JO/2022)

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133619/JO/2022

Date registered valid: 27 April 2022

Proposal: Variation of condition numbers: 2 (specified plans), 5 (false ceiling), 6 (rainwater goods), 7 (timber panelling) and 8 (internal decoration details) from Listed Building Consent reference 127017/LO/2020 to allow amendments: to the materials and layout of steps to the main entrance, materials to be used in the rainwater goods, alterations to the design of windows in the rear extension, heads of windows in the rear elevation of the original building and rear extension treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension, an alternative treatment of the ceilings of the principal rooms on the ground floor; and, omit replica window shutters and associated skirting and architrave to ground floor flats

Address: 363 Wilmslow Road, Manchester, M14 6XU

Ward(s): Withington Ward

Applicant: Feltham Management Limited 20 Aldwych Avenue, Manchester, M14 5NL

Agent (if any): Alyn Nicholls Alyn Nicholls Chartered Town Planner 140 Denby Lane, Upper Denby, Huddersfield, HD8 8UN

Case officer: Robert Griffin
Tel: 0161 234 4527
Email: robert.griffin@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 22.07.2022

Application details

Type of application: Variation or Removal of Condition

Development type: Listed building alteration

Date of site visit: 10th May 2022

Standard consultations:

Printed: 6 May 2022 Expired: 27 May 2022

Neighbour notifications

Printed: 6 May 2022 Expired: 27 May 2022

Site notice

Posted: 10 May 2022 Expired: 31 May 2022

Press advert

Published: 10 May 2022 Expired: 31 May 2022

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Grade II

Conservation area: N/A

Tree Preservation Order: N/A

Description

The application property is a grade II listed building, having been formally designated in 1974, and forms an end property of a short terrace row of three buildings known as 'Norton Place'. The property was originally constructed as a dwellinghouse, along with the other two buildings in the row. Predominately two storey in height, the property benefited from a basement area, two-storey outrigger to the rear and attic accommodation.

The front of the property has two ground floor bay windows with central entrance door way and steps. The bays and doorway have distinctive decorative detailing as do the eaves of the property. The upper floor windows have vertical sash windows, with vertical glazing bars, and a more simple stone surround.

The side gable wall to the property has a similar bay window as the front elevation with decorative features and an upper floor window, which again follows the same style and features as the front elevation.

The rear elevation of the property was once characterised by a two-storey outrigger. This was similar to the outriggers, which remain evident within the remainder of the terrace row at properties 359 and 361 Wilmslow Road known as 'Norton Place'.

A low boundary wall and gate post mark the entrance to the front curtilage of the property which once formed the front garden and now consists of hardstanding for car parking. To the rear of the property is a landscaped garden area with cycle store and clothes drying area. The list description for the property indicates it was in use in 1974 as offices and the planning history for the property indicates it was used as a medical centre from 1979 to 2010. There appears to have been an education use in the building subsequently prior to it becoming vacant.

The surrounding area is mixed use in nature. The application property, together with the other properties in the terrace that form Norton Place, retain their residential character.

Development Proposals

Planning and Listed Building Consent was granted under application references 127016/FO/2020 and 127017/LO/2020 for the erection of basement and two storey rear extension to create 9no. self-contained flats together with other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store.

In determining those applications supporting statements indicated that the proposals conformed closely to the proposals for the conversion and extension of the property to form 9 no. apartments granted planning and listed building consent in 2015.

The approved scheme subject of this variation comprised: four one-bed duplex apartments on the ground level and basement, two one-bed flats on the first floor, a two-bed flat in the attic and two two-bed flats in the extension to create a total of nine apartments. Each duplex apartment would occupy one of the original rooms on the ground level and the corresponding space in the lower ground floor. The first floor apartments would each occupy two rooms, front to back, while the two-bed apartment would occupy the three existing rooms on the upper level. The rooms located towards the front of the building on the ground and first floor have been refurbished and returned to close to their original size. The applicant indicates that the number of partition walls introduced have been kept to a minimum throughout the existing building. The extension has two storeys and a floorplate of about 60m² per floor. The extension would be constructed traditionally, with loadbearing brick-faced cavity using salvaged bricks, slate roof. Windows and doors are to be of painted timber.

The current variation of condition application seeks to change elements of the approved scheme that impacts on the external elevations of the extension building together with changes to elements of internal works approved under the original permission. The amendments that permission is sort for are:

- Staged completion of the building
- Use of aluminium heritage style rainwater goods in lieu of cast iron
- Use of stone effect concrete entrance steps in lieu of natural stone
- Retention of the installed suspended ceiling and omit further works to the concealed original ceiling and cornice together with the omission of a replica cornice below the suspended ceiling
- Design details to the rear extension including removal of swept arch heads to windows, alter the window size, removal of dummy windows, retain concrete sills, change to fenestration pattern.
- Omit the installation

A separate variation to the planning consent application (reference 133618/JO/2022) has also been submitted.

Relevant Planning History

March 2001 - Application for Planning permission 061665/FO/SOUTH1/01, Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear. Approved June 2001.

March 2001- Application for Listed Building Consent 061666/LO/SOUTH1/01, LISTED BUILDING CONSENT Part single part two storey rear extension, new entrance at side of property with access ramp and parking at rear and internal alterations. Approved June 2001.

May 2008 -Planning application 086507/FO/2008/S1 Erection of a part single/part 2 storey extension at rear of property and entrance ramp and new entrance at side of property. Provision of parking spaces in rear garden with associated landscaping. Approved July 2008.

May 2008 - Application for Listed Building Consent 086581/LO/2008/S1 LISTED BUILDING CONSENT for the erection of a part single/part 2 storey rear extension, new access ramp and side entrance, car parking in rear garden and associated landscaping Approved July 2008.

July 2014 - Planning application 106424/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create nine flats, with landscaping and parking Approved September 2014.

July 2014 - Application for Listed Building Consent 106425/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of nine flats, Approved September 2014.

March 2015 -Planning application 107448/FO/2014/S1 Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create 9no. self contained flats with landscaping and parking, Approved May 2015.

March 2015- Application for Listed Building Consent 107449/LO/2014/S1 Listed Building Consent for the erection of part single, part two-storey rear extension to existing building together with excavation of rear garden and internal alterations in association with the creation of 9no. flats, Approved May 2015.

June 2017 Planning application 116773/FO/2017, Change of Use from doctors surgery to create 10no. self contained flats including the erection of a basement and two storey rear extension to existing building together with excavation of rear garden with associated landscaping and parking, Refused August 2017

June 2017 -Application for Listed Building Consent 116774/LO/2017, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking ,Refused August 2017

July 2018 - Planning application 120505/FO/2018, Erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking, Refused October 2018.

July 2018 - Application for Listed Building Consent 120506/LO/2018, Listed Building Consent for the erection of basement and two storey rear extension to existing building to create 10no. self contained flats together with excavation of rear garden with associated landscaping and parking. Refused October 2018.

Appeal against refusal of Planning permission 120505/FO/2018 and 120506/LO/2018 dismissed following Public Enquiry in July 2019.

June 2020 - Planning application 127016/FO/2020, Erection of basement and two storey rear extension to create 9no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store, Approved June 2021

June 2020 - Application for Listed building consent 127017/LO/2020 for the erection of two storey rear extension to create 9 no. self contained flats together with various other works including internal alterations, the rebuilding of gate piers, the laying out of car parking area and the provision of a cycle store and refuse store

Consultations & Notification Responses

Neighbouring properties were notified, a site notice was posted and advertisement was placed in the Manchester Evening News. No responses were received.

Policy

The development plan consists of the:

- Manchester Core Strategy Development Plan Document (Adopted July 2012); and
- The extant Unitary Development for the City of Manchester (Adopted 1995)

The Manchester Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP). The Core Strategy sets out the long term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the development plan unless material considerations indicate otherwise.

The relevant policies to in considering this application are as follows:

Policy SP1 '*Spatial Principles*'

Policy EN1 '*Design principles and strategic character areas*'

Policy EN3 '*Heritage*'.

Policy DM1 '*Development Management*'

The Unitary Development Plan for the City of Manchester was adopted in 1995. However, it has now been largely replaced by the Manchester Core Strategy. There are some saved policies which remain part of the development plan and the starting point for decision making pursuant to section 38 (6) of the Planning and Compulsory Purchase Act. The below saved policy is considered relevant.

Saved policy DC19 '*Listed Buildings*' states that in determining applications for listed building consent or planning applications for development involving or having an impact on buildings of Special Architectural or Historic Interest, the Council will have regard to the desirability of

securing the retention, restoration, maintenance and continued use of such buildings and to protecting their general setting.

The National Planning Policy Framework (NPPF- 2021) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Relevant sections to this application are contained in Section 12 (Achieving well-designed places) and Section 16 (Conserving and enhancing the historic environment)

The creation of high quality, beautiful and sustainable buildings and places is identified as fundamental to what the planning and development process should achieve.

The NPPF indicates that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The NPPF states that in determining planning applications, local planning authorities should take account of:

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c. the desirability of new development making a positive contribution to local character and distinctiveness.

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.

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a. the nature of the heritage asset prevents all reasonable uses of the site; and b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d. the harm or loss is outweighed by the benefit of bringing the site back into use.

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.

Local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

Issues

Principle – The principle of the conversion of the application property to 9 no. self-contained apartments facilitated by the erection of a rear extension has been accepted through the granting of the principle permission that variations are now sort. In this instance the application proposals seek to omit and alter the permission previously granted permission and further consideration of these matters is required.

Effects on the listed building - The frontage of Norton Place presents a grand and broadly symmetrical Italianate style elevation to Wilmslow Road. The stucco rendering, deep eaves with ornate bracketing, central feature gable, Corinthian pilaster doorways, canted bay windows and stone quoining at either end, serve to create a visually prominent and distinctive local landmark.

Whilst the side gables are less detailed they are considered to have been designed as part of the overall aesthetic of the terrace of properties that forms Norton Place. The rear elevations of the properties on Norton Place are more subservient of stock brick construction and considered utilitarian in appearance, and were more modest in terms of materials and of windows openings but together demonstrate the historic development of the area and the age in which they were built. The principle significance of the Grade II listed building at 363 Wilmslow Road are the front and side elevations with the rear elevation reflecting the character of more modest detailing and finishes.

The Historic England (HE) Listing of Norton Place indicates that an interior inspection of the property was not undertaken at the time of its listing in 1974. The guidance of HE is that listing descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of a building. It is fact that the whole of a listed building is covered by its designation, including its interior. In this instance the internal configuration of the building was previously compromised by small scale unsympathetic alterations and additions that were undertaken in association with its previous usage over a period of time. However, evidence available indicates that prior to the unauthorised works having taken place, there were present within the interior of the building decoration and finishes that contributed towards the appreciation of the original construction of the building. These included flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. It is considered therefore that the interior of the building did contribute to the special interest and significance of the building and the proposals impacts on the significance of the interior is required.

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proposed change to this element of the scheme is considered to erode the quality and authenticity of the design response previously approved.

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- Raising of part of the ground floor;
- Insertion of suspended ceilings in the ground floor spaces to meet fire and sound insulation requirements.

It was considered that these works, whilst acknowledging that these corrected previous unauthorised works, would benefit the building and that these together with other works, would have modest heritage benefits.

The conclusion of the original approval was that when considering the overall harm to the listed building, the proposal would not lead to 'substantial harm' or the total loss of the significance of the designated heritage asset, that being number 363 Wilmslow Road and the group of Grade II Listed Buildings identified as 'Norton Place'. The erection of the extension was considered to lead to less than substantial harm to the significance of a designated heritage asset. Therefore in accordance with the NPPF '*where a development proposal will lead to a less than significant harm to the significance of a designated heritage asset, this harm should be weighed against the public benefit of the proposal, including securing its optimum viable use*'.

The effect of the proposed changes - The previous approval followed a lengthy public inquiry with the appeal being dismissed. The inspector placed significant weight on the heritage value of the original internal features that had been removed. Lengthy discussions and negotiations were had together with concessions in order to arrive at an approved scheme that could be supported by the Council and followed the principles set out in the appeal Inspectors decision.

It is considered that the current amendments go against the principles and carefully detailed reinstatement works that have been previously agreed. The internal features contribute to the architectural and historic significance of the grade II listed building and there was evidence that these features exist to enable authentic reinstatement. The elevational changes proposed to the rear extension were both a compromise to assist the applicant but considered to be the correct architectural and heritage approach, the proposed alterations are considered to dilute the design intent previously negotiated and approved.

Public Benefit - The improvements to the front and side elevation of the property together with the proposed works to replace the stone steps and gate posts, together with the renewal of the front forecourt parking area were considered to derive a direct and visible public benefit given the significance of these elevations within the immediate area. The amendments proposed dilute this benefit.

The proposals would result in the re-use of a designated heritage asset and secure its long term use whilst contributing to the overall stock of residential dwellings in a highly sustainable location. This was considered to be of a major public benefit. Whilst acknowledging the submitted information to support this application, unauthorised and illegal removal of features and the difficulty of reinstatement cannot be used to justify a dilution of the approved scheme as set out in the NPPF.

In this instance it is considered that the proposed amendments would dilute the public benefits that derived from the originally approved proposals and as such cannot be supported.

Conclusion – As set out within this report, the original approval provided further improvements including to the sizes and design of the windows to be incorporated into the extension together with further internal works to replicate some of the historic features lost as part of the unauthorised works, including timber panelling and shutters to the ground floor front rooms. As such the amended proposals that impact on the original approved scheme are not considered to be acceptable.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a

decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Article 35 Declaration

In this instance concerns with the application were expressed to the applicant's agent, the proposal do not comply with the development plan and there are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

- 1) The proposed elevational alterations to: the materials and layout of steps to the main entrance; materials to be used in the rainwater goods; alterations to the design of windows in the rear extension; heads of windows in the rear elevation of the original building and rear extension; treatment of window sills in the rear extensions and omission of dummy window in the side elevation of the rear extension; an alternative treatment of the ceilings of the principal rooms on the ground floor; omission of replica window shutters and associated skirting and architrave to ground floor flats subject of this application fail to preserve or enhance the Grade II designated heritage asset causing harm that cannot and has not been justified by public benefit, and is therefore considered to be contrary to Sections 16(2) and 66 of (Listed Buildings and Conservation Areas) Act 1990, Sections 12 (Achieving well designed places) and 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework, The Core Strategy for the City of Manchester, in particular Policies SP1, DM1 and EN3 and saved policy DC19.1 (Listed Buildings) of the Unitary Development Plan for the City of Manchester.

Appendix 1 – List of consultees & neighbours notified

Withington Civic Society
Urban Design & Conservation
Rusholme, Fallowfield & Moss Side Civic Society

Flat 10, 363 Wilmslow Road, Manchester, M14 6XU
Flat 9, 363 Wilmslow Road, Manchester, M14 6XU
Flat 8, 363 Wilmslow Road, Manchester, M14 6XU
Flat 7, 363 Wilmslow Road, Manchester, M14 6XU
Flat 6, 363 Wilmslow Road, Manchester, M14 6XU
Flat 5, 363 Wilmslow Road, Manchester, M14 6XU
Flat 4, 363 Wilmslow Road, Manchester, M14 6XU
Flat 3, 363 Wilmslow Road, Manchester, M14 6XU
Flat 2, 363 Wilmslow Road, Manchester, M14 6XU
Flat 1, 363 Wilmslow Road, Manchester, M14 6XU
4 Besford Close, Manchester, M14 6NF
13 Besford Close, Manchester, M14 6NF
11 Besford Close, Manchester, M14 6NF
Flat 12, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
McDonald's, 336 Wilmslow Road, Manchester, M14 6XQ
Willowbank Hotel, 340 - 342 Wilmslow Road, Manchester, M14 6AF
Flat 2, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 3, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 1, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 6, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 7, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 8, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 4, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 5, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 9, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 11, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
Flat 10, Carlogie House, 365 Wilmslow Road, Manchester, M14 6AH
361 Wilmslow Road, Manchester, M14 6XU
359 Wilmslow Road, Manchester, M14 6XU
Flat 16, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 14, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 11, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 9, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 6, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
359A Wilmslow Road, Manchester, M14 6XU
Flat 18, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 17, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 15, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 13, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 12, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 10, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 8, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 7, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 5, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 4, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 3, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 2, The Portland, 1 Whiteoak Road, Manchester, M14 6WT
Flat 1, The Portland, 1 Whiteoak Road, Manchester, M14 6WT

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Egerton Road)

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH

Appendix 5: Details of the 2015 Approved Scheme

Town & Country Planning Act 1990 (as amended)

Planning Permission

Applicant

Mr David Feltham
Feltham Management
20 Aldwych Avenue
Manchester
M14 5NL

Agent (if used)

Mr John Lee
Arca
Suite 127
111 Piccadilly
Manchester
M1 2HX

Part 1 – Particulars of the application/development

Proposal: Erection of part single, part two-storey rear extension to existing building together with excavation of rear garden to create 9no. with landscaping and parking

Location: Meridian Education , 363 Wilmslow Road, Withington, Manchester, M14 6XU

Date of application: 27 March 2015

Application number: 107448/FO/2014/S1

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **Approved** in accordance with the application and plans submitted subject to the condition(s) listed below (if any).

Article 35 Declaration

Officers have worked in a positive manner in the consideration of this application which seeks small scale changes to the elevations of a previously approved application.

Condition(s) attached to this decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

363 LD0008 rev B, 363 LD 0021 rev B and 363 LD 0022 rev B stamped as received on 19th November 2015

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) No development that is hereby approved shall commence unless and until samples and specifications of all materials to be used on all external elevations of the development have been submitted to and approved in writing by the City Council as local planning authority.

Reason - To ensure that the appearance of the extension to this Grade II Listed Building is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies EN3, SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC19.

4) Within one month of the commencement of the development hereby approved a hard and soft landscaping treatment scheme shall be submitted to the City Council as local planning authority. The approved landscaping scheme shall be implemented not later than 12 months from the date the buildings are first occupied. If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.

Reason - To ensure that a satisfactory landscaping scheme for the development is carried out that respects the character and visual amenities of the area, in accordance with policies SP1, EN3, EN9 and DM1 of the Core Strategy.

5) Within one month of the development hereby approved commencing a scheme for acoustically insulating the residential accommodation against noise from traffic on Wilmslow Road shall be submitted to the City Council as local planning authority. The approved noise insulation scheme shall be completed before any of the dwelling units are occupied.

Reason - To secure a reduction in noise from traffic on Wilmslow Road; in order to protect future residents from noise nuisance, pursuant to policies SP1, H1 and DM1 of the Core Strategy.

6) Within one month of the date of the development hereby approved commencing the detailed scheme for the storage (including segregated waste recycling) and disposal of refuse shall be submitted to the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - To ensure that there is satisfactory provision for the storage of refuse pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC5.

7) The development shall include the installation of a proprietary gas protection membrane, in order to alleviate any possibility of landfill gas ingress to the building. Appropriate and comprehensive construction designs shall be submitted to and approved in writing by the City Council as local planning authority.

Reason - The development site lies within 250 metres of a registered landfill site or in close proximity to a potential historical source of landfill gas, pursuant to policies DM1 and EN18 of the Core Strategy.

8) Before the development hereby approved is first occupied a lockable gate of a design and size to be agreed in writing with the City Council shall be installed at the side of the property to prevent free access to the rear garden.

Reason To reduce the risk of crime pursuant to policies SP1 and DM1 of the Core Strategy and to reflect the guidance contained in the National Planning Policy Framework.

Informatives

This permission does not grant approval under Building Regulations.

Date: 22 May 2015

Signed: 

Julie Roscoe
Head of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA



359

361

363

365

West Elevation
1:100



Wilmslow
Road

Car
Park

Existing building

Extension

Garden

New development

South Elevation
1:100



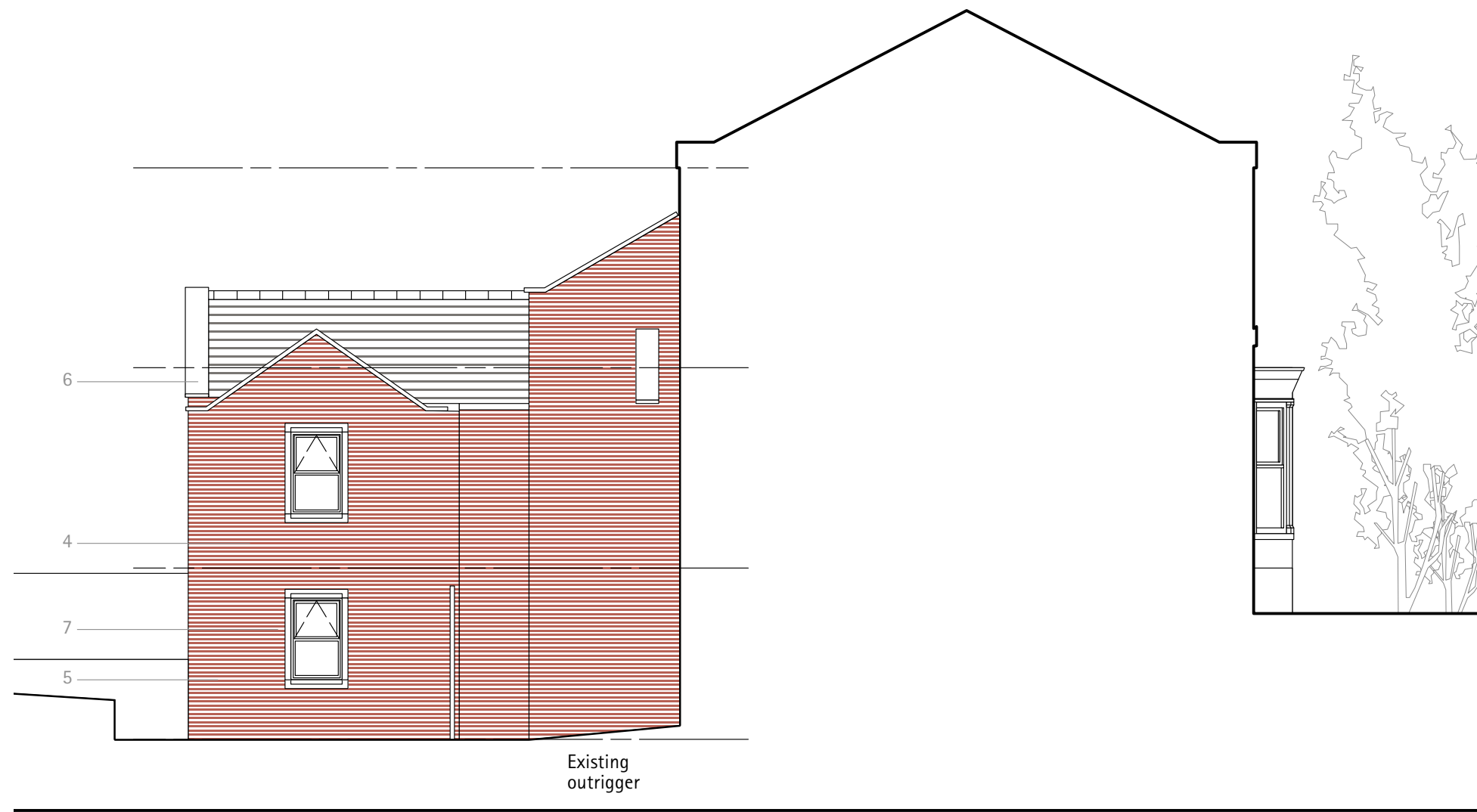
365

363

361

359

East Elevation
1:100



Existing
outrigger

North Elevation
1:100

- 1 White render
- 2 Sandstone dressing painted black
- 3 Existing white painted timber frame window
- 4 Slate
- 5 Red brick
- 6 White artstone
- 7 New timber frame windows with white artstone surround
- 8 Permeable block pavior finish
- 9 Boundary wall - red brick
- 10 Lawn
- 11 Painted timber front door
- 12 Velux rooflight (Conservation Grade to existing roof)



Appendix 6: Appeal Decision Letter, 2 July 2019



Appeal Decisions

Inquiry Held between 21 May and 24 May 2019

Site visits made on 21 May and 24 May 2019

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 2nd July 2019

Appeal A: Ref: APP/B4215/W/18/3215658 363 Wilmslow Road, Manchester M14 6XU

- 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 Mr D Feltham against the decision of Manchester City Council.
 - The application Ref 120505/FO/2018, dated 29 June 2018, was refused by notice dated 10 October 2018
 - The development proposed is retention of the existing building including rear extension, car parking and ancillary works, and the use of the building to provide 10 flats.
-

Appeal B: Ref: APP/B4215/Y/18/3215659 363 Wilmslow Road, Manchester M14 6XU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr D Feltham against the decision of Manchester City Council.
 - The application Ref 120506/LO/2018, dated 29 June 2018, was refused by notice dated 10 October 2018
 - The development proposed is retention of the existing building including rear extension, car parking and ancillary works, and the use of the building to provide 10 flats.
-

Decisions

1. Appeal A and Appeal B are both dismissed.

Relevant background and Main Issues

2. Planning Permission (107448/FO/2014/S1) and listed building consent (107449/LO/2014/S1) were granted in March 2015 (the 2015 scheme) for the erection of a part single, part two storey rear extension to the existing building together with the excavation of the rear garden and internal alterations in association with the creation of 9 flats. However, the permitted scheme was not implemented. The appeals in this case relate to the development and works which were subsequently undertaken. I understand that they seek to regularise this scheme.
3. The development and works which are the subject of this appeal are also subject to current enforcement action. I will consider the implications of this action for the outcome of the current appeals, in so far as it is relevant.

4. The appellant has suggested that various alterations to the works undertaken could be made to address the Council's concerns regarding the effects on the listed building. This includes the replacement of plastic rainwater goods with cast iron, replacement of UPVC windows with timber and a reduction in the number of rooflights. I will address such considerations within these decisions.
5. Turning to the main issues, it is logical and more concise to consider both appeals together. Therefore, I consider the main issues to be whether the development and works preserve the Grade II listed building or any features of special architectural or historic interest it possesses, and whether the design and appearance of the extension are acceptable in relation to the surrounding area. Finally, if any harm is found I will consider whether that harm is outweighed by public benefits or other considerations.

Reasons

Effect on the listed building

Significance of the listed building

6. This area of south Manchester remained rural until the mid-19th Century, when development associated with the expansion of the City during the industrial revolution took place. Specifically, the opening of Fallowfield station encouraged residential growth and the development of a number of large villas in this area, including the appeal property, which is at the southern end of the terrace of three properties making up Norton Place. Whilst a number of villas remain in the local area, many have been substantially and unsympathetically altered, with Norton Place being the only listed structure of this type and in this sense of some historic value.
7. The frontage of Norton Place presents a grand and broadly symmetrical Italianate style elevation to Wilmslow Road, clearly intended to embody the new found wealth of the period. The eye-catching stucco rendering, deep eaves with ornate bracketing, central feature gable, Corinthian pilaster doorways, canted bay windows and stone quoining at either end, serve to create a visually prominent and distinctive local landmark. Many of the features of architectural detailing and motifs extend to the side elevations to 'bookend' the terrace, with complementary canted bays set away from the main frontage. The sides are less bold and not directly part of the symmetry of the piece. Nonetheless, as these buildings are mostly seen at an oblique angle when in transit along Wilmslow Road, the sides were clearly designed to be seen as part of the overall composition.
8. The rear elevations are of stock brick and typically subservient and utilitarian in appearance. Photographs of the rear from before the appeal extension was constructed illustrates that this provided evidence of the typical hierarchy of architectural treatment, and that the integrity of the intended plain character across this part of the terrace was retained. This included the original elements such as similarly sized narrow outriggers and modestly sized sliding sash windows. Whilst there was some variety in the pattern of windows these elevations demonstrated the simplicity and lack of adornment typical of the period. The rear elevations therefore form an integral, though modest, part of the special architectural interest and heritage significance of these listed buildings.

9. Looking at the appeal building specifically, it appears from the photographic evidence that prior to the appeal works the craftsmanship and architectural hierarchy of the exterior translated to the interior. This was seen in the decorative treatments including plasterwork, cornicing, timber panelled windows, panel doors with architraves, and in the impressive ceiling heights in the hallway and principle rooms. Elsewhere the typical hierarchy of rooms, spaces and their decorative treatment was in evidence.
10. In recent times the building has seen a range of uses including a medical centre and a school, with the result that prior to the most recent alterations there had been some harmful change internally. This included the sub-division of rooms, the loss of most original fireplaces and some unsympathetic insertions and additions. It also appears that the interior had been somewhat neglected, with some damage to original fabric and poor-quality finishes.
11. Nonetheless, as the Heritage Statement associated with the 2015 permission's acknowledges, whilst original details such as cornices, picture rails and skirtings had been damaged, in many places 'a substantial amount of the existing features remain'. Overall, the photographs illustrate that sufficient evidence of the fabric, layout and proportions of the interior remained such that its original architectural form and function were discernible.
12. The Historic England consultation response to the 2015 scheme (dated 5th May 2015) referred to the importance of the 'collective aesthetic' of this row of terraces, representing a local scale interpretation of the much larger and more decorative 'palace facades' popularised by designs such as the Regents Park Terraces in London. This response also indicated that, whilst the scheme would have involved the loss of the lower levels of the outrigger, this structure forms a 'marginal contribution to the site'. Nonetheless, some contribution is acknowledged. Furthermore, reference was made to the 'minor loss' of original interior fabric, thereby acknowledging the relevance of the interior in considering elements of significance.
13. The overall interest and significance of the building relates in large part to the high aesthetic value of the visual coherence and legibility of the front elevation and its group value with the other properties in the terrace, with the gable ends also contributing significantly to the design composition of the group. Together these elements provide a clear connection to the historic development of this area including the architectural craftsmanship of the age.
14. The rear elevation was in comparison of utilitarian appearance, though in this sense provided evidential value of the typical architectural hierarchy and contributed to the significance of the building overall to a modest degree. The interior was somewhat compromised by small scale unsympathetic alterations and additions. Nonetheless, in so far as its elements were intact, the interior contributed to an appreciation of the original plan form, spatial qualities and décor of this building. Therefore, in historic and evidential terms the interior contributed to the special interest and heritage significance of the building to a moderate degree.

Relevance of listing description

15. The list description relating to Norton Place states that the rear and interior were not inspected. This would suggest that the architectural interest of the main elevations was sufficient to warrant inclusion in the statutory list.

Furthermore, there could have been nothing of significance within the building and to its rear. However, legally the list description is for identification purposes only. Specifically, Historic England guidance to listing indicates that, particularly with older listings such as this dating from 1974, the descriptions were not intended to be a comprehensive or exclusive record of the special interest or significance of the building. As such any omission from the list description does not indicate that it is of no interest. Furthermore, the whole of any principle building is listed, including the interior.

16. The National Planning Practice Guidance (NPPG) also advises that for decision-taking purposes 'in most cases the assessment of the significance of the heritage asset ... is likely to need expert advice in addition to the information provided by the historic environment record, similar sources of information and inspection of the asset itself'. (Paragraph: 010 Reference ID: 18a-010-20140306). Further, 'a clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm' (Paragraph: 019 Reference ID: 18a-019-20140306).

The effect of the proposal

17. The scheme has involved the conversion of the building into six one bedroom units and four two bedroom units, including a two storey plus basement extension to the rear. The effects of a number of aspects of the development and works are considered below.

i. The extension

18. In terms of its scale and mass, the extension is a significant structure, projecting at full two storey height over two bays to the side and rear. As such it is a clearly visible addition in views in and around the site, including from Wilmslow Road. It's location to the rear, behind the distinctive front and side of the building, means that its prominence is somewhat reduced by perspective. Nonetheless its bulk and presence erode the visual hierarchy of the main front elevation and subservient rear. More specifically, it challenges the otherwise clear dominance and primacy of the front and side elevations by creating an unusual visual distraction. Further, when viewed in relation to the rear elevations of the listed properties this large structure creates significant imbalance when viewed in relation to the original outriggers, even where modestly extended at No 359. In this respect it has a harmful effect on the setting of these other listed structures, undermining their group value overall.
19. It has a mansard roof design with a slate pitched section and flat top. This is to some degree hidden when viewed from Wilmslow Road, with the angled views hiding the flat roof element. Also, when viewed from the side and rear the overall height and bulk of the addition means that the roof structure is not readily apparent. Nonetheless this limited visibility results in large part from the mass and height of the addition. It should not therefore be taken as an indication of its acceptability, noting also that it sits in contrast to the existing gable and ridge roof design of the rest of the terrace. This incongruity is more readily apparent in other views, including the glimpsed view from Besford Close to the rear. Furthermore, this overall bulk means that the original form of the rear elevation of this property is largely obscured.
20. The extension is of brick and slate with contrasting design elements to the listed building. In some senses, and to the casual observer, it does appear as a

separate structure. The contrasting design is not necessarily unacceptable in principle. However the extension does appear directly adjacent to the listed building and, on closer inspection, the fact that the crude and ill-considered nature of the design detailing fails to respond to the character and architectural finesse of the host building is clearly apparent.

21. Specifically, the modern uPVC windows with their horizontal emphasis sit in contrast with the traditional one over one paned sliding sash windows with slender timber painted frames present in the main building. Whilst when viewed at an angle, the horizontal proportions appear somewhat reduced, it remains that the weak detailing and poor proportions are seen directly abutting the prominent and well-conceived decorative façade. As such they represent jarring elements with a negative effect when viewed alongside the design of the building as a whole. To the rear the full height French windows are also at odds with the traditional simplicity and utilitarian appearance of this elevation.
22. The Design and Access Statement refers to the traditional construction of the extension, including 'artstone parapets'. However, these elements are not present.
23. Overall, as a result of the scale, weak detailing, use of inappropriate materials, and proximity to the principle elevations of the host building, the extension serves to undermine and weaken the dominance of the listed structure overall. It is therefore significantly harmful in this regard.

ii. Front and gable elevations

24. The works undertaken include repairs to the front elevation and gable end, including the restoration of the bay windows and stone quoins, repair and restoration of the parapet, re-rendering, restoration of damaged sills, repair of slate roof and repointing chimneys. These impacts are primarily positive.
25. However, the introduction of a range of contemporary elements including alarm boxes, boiler flues, plastic rainwater pipes and floodlights are distracting elements from the architectural qualities of these primary elevations. Whilst some such elements may be necessary to enable the conversion, there is no evidence to demonstrate that other less visually intrusive solutions could not have been employed.
26. Other small scale detractors include lighting above the front door and the door control mechanism which create some visual clutter. Also, the loss of the original stone steps up to the front door, with single slabs for each step, and their replacement with smaller sections with visible joints, is a modest detractor from the aesthetic qualities of the main entry point.

iii. Replacement windows

27. The works have resulted in the loss and replacement of many of the original windows in the building. Whilst the appellant makes reference to the pre-existing condition of the building, there is no clear evidence that most of these windows could not have been conserved and repaired, and their evidential value as part of the original design composition retained. Most of the replacement windows on the main elevations have sought to replicate the original, thereby reducing the degree of harm in terms of the loss of original fabric. However, others such as those to the rear, which included both large

paned one over one windows and multi-paned sash windows, have been replaced with inappropriate modern uPVC windows. Such windows stand out as their manufactured design cannot match the sections and proportions of historic joinery, as can be clearly seen in the windows to the rear, and those used in the front lightwells.

iv. Rooflights

28. Historically these buildings would have had single rooflights to light the attic space, and in general terms sensitively positioned additional rooflights would not be unacceptable. In this case there is a run of six roof lights across the front roof slope, resulting in the loss of a significant amount of the original roof plane. Further, they are not positioned in a balanced or consistent way with reference to the windows in the front elevation below. As such they are a distracting element, drawing the eye away from the decorative primacy of the main elevation, an effect which is exacerbated when rooms are lit during winter months. The five rooflights on the rear elevation are considerably less visible, particularly due to the bulk of the extension, and are seen within the context of the less significant rear elevation. As such these are less harmful additions.

v. Internal alterations

29. A range of alterations to the internal fabric and configuration of the building have been undertaken. The removal of original fabric includes flagstones, decorative plasterwork, skirtings and architraves, timber panelling and shutters to bay windows and original doors. Reconfiguration includes the insertion of staircases between the basement and ground floors of the duplex flats, some removal of previous partitions and the insertion of new partitions, including those to create lobbies at the flat entrances, the insertion of suspended ceilings on the ground and first floors and the raising of the ground floor.
30. The detailed assessments presented by the main parties differ, with some minor harmful elements such as the insertion of staircases considered by the Council to be of neutral impact. Nonetheless, there is agreement that a significant number of such alterations have a minor negative impact on the significance of the interior. Even if minor, the cumulative impact of such changes must be considered. For example, within an individual room if the original windows, panelling, skirtings, plasterwork and doors have been removed and ceiling heights reduced the effect is to significantly erode original character.
31. This point is well illustrated by the photographic evidence comparing the internal alterations within a ground floor room of the appeal property with a comparable room at the other end of Norton Terrace, No 359 (Mr Mason's evidence, Appendix 3, Fig 41 and 42). At No 359 the original full height bay with fully restored timber panelling and shuttering and restored ornate plasterwork clearly illustrates the impressive proportions and decorative treatment which originally characterised this room. At the appeal property the evidence suggests that these elements were reasonably intact, if in poor condition, prior to the alterations. However, as a result of the alterations these features, and the ability to appreciate the character of the higher status rooms within the overall hierarchy of room proportions and decoration, has been considerably weakened.

32. Some internal alterations have been beneficial. This includes the removal of harmful elements including internal partitioning, such as the enclosure around the original staircase, the service counter, surface cabling and powerpoints. Also the repair of some original elements such as the staircase and its balustrade, though the full scope of the repairs undertaken is unclear from the evidence.
33. It is of concern that there appear to be some discrepancies in the plans and supporting information, and some uncertainty about whether they accurately describe the works undertaken to the interior. For example, whilst Mr Clemons Proof of Evidence refers to retained features including two fire places on the first floor, the Heritage Statement accompanying the application states that there are no remaining fire places and that they were presumably removed when the villa was converted to a medical surgery.
34. Summing up, the plethora of works associated with the internal refurbishment of the appeal building have had some modest heritage benefits, but also cumulatively a notable degree of harm. Before concluding on heritage matters overall, I will consider a number of other relevant matters raised by the parties, including comparisons of the appeal scheme with earlier approved proposals for the building, the relevance of the condition of the building and other regulatory requirements, and finally the provisions of policy and statute.

Comparison with previous approvals

35. In 2008 planning permission and listed building consent (086507/FO/2008/S1 and 086581/LO/2008/S1) (the 2008 scheme) was granted for the remodelling of the building as a health centre, including an extension and new main entrance with ramp to the side elevation. The 2015 scheme would have involved the conversion of the building into 9 apartments. The extension in this case had a slightly larger footprint than the 2008 scheme and would have extended across the ground floor to the full extent of this footprint.
36. These schemes together indicate the acceptability in principle of extending the building to the rear across the basement and ground floors, and by up to two bays in depth. However, there were some clear and distinct design differences, such that these schemes were materially different to the appeal development. Firstly, the previous approvals incorporated the principle of retaining at least the appearance and basic form of the original outrigger into their design, showing some respect to the design hierarchy.
37. Whilst the 2008 scheme would have involved the remodelling of the outrigger to form a stairwell, from the evidence it is not entirely clear whether this scheme incorporated an increase in height to this structure. Photographic evidence from the 2008 Design and Access Statement indicates that the three rear outriggers across the terrace were of around the same height and position, with their highest points adjoining the rear elevation at just above the sill level of the top windows on the rear elevation. This height appears to be retained in the scheme drawings from this application (Proposed elevations, Job No 181:08:08).
38. The drawings for the current appeal present the 'pre-existing' rear elevation a little differently, with the outrigger adjoining at a lower maximum height, just below the sill of the highest window on this elevation (Elevations (Pre-existing)

363-OD-0003 Rev 03). It appears from this evidence that the current appeal drawings may be inaccurate, not that the earlier scheme gave consent for an increase in the height of the outrigger. However, the 2008 scheme did refer to the fact that the outrigger would be subject to a structural inspection, with no requirement that the findings, or their implications, would be considered by the Council. Nonetheless the principle of the upper part structure remaining was apparent in the 2008 and 2015 schemes.

39. Fundamentally, the lesser height, scale and more diminutive appearance of these rear extensions in comparison to the current scheme would have allowed the front and side elevations to have been more fully appreciated, without what appears as a large development to the rear. Further, in terms of detailing, whilst the 2008 scheme included a more contemporary window design to the side elevation, the fact that this was of much lesser scale than the current scheme would have led to a lesser degree of visual discordance.
40. The 2008 scheme incorporated a new main entrance on the side elevation, accessed via a ramp, and some alterations to the layout of the ground floor. Whilst the full circumstances of this proposal are not known, it appears that it was associated with the continued use of the building as a medical centre. The side entrance design was based on the existing main entrance and picked up on this design through replication. Whilst this would have been moderately disruptive to the overall design composition of the building, any harm may have been offset by benefits. I also note that this scheme was approved prior to the introduction of the National Planning Policy Framework (the Framework) and its associated heritage policy provisions, including the requirement to consider significance.
41. Given the mass of the extension approved as part of the 2015 scheme and the modest size of the rear garden area, it does not appear that this would have left significantly more of the original rear elevation on show from the garden than is currently the case. However, more of this elevation would have been visible from some views locally. This would have included the upper part of the outrigger. Further, this extension would have had pitched roofs typical of this type of building, which would have reduced the bulk of the roof and reflected the existing form of the original building. Overall, whilst there would have been some disruption to the balance across the terrace, this extension would have appeared more subservient in comparison with the current scheme.
42. The 2015 scheme introduced the principle of further rooflights, with three on the front roof slope. However, whilst these may be seen as modestly intrusive, as they were aligned with the three windows on the floor below they would have retained a sense of symmetry and balance overall.
43. Looking at the treatment of the interior, the 2015 scheme would have required some changes to the floor plans and alterations to floors and joists. However, the Heritage Statement associated with this scheme referred to the fact that 'the original rooms will be reinstated, the interior will be refurbished and any damage to original elements repaired'. The Officer report also referred to the fact that there would 'not be (sic) significant changes to the historic fabric which will be restored.' Further, the permissions associated with this had conditions requiring, for example, plans of the 'soft stripout' of the parts of the building which are currently obscured, detailing how any damage is to be

mitigated, and requiring details of repair works to windows which should not be removed or replaced unless approved. The Heritage Statement also suggested that this conversion to flats was 'the most viable solution' with the advantages resulting from the development suggested to outweigh the minor impact it would have on the listed building.

44. Summing up, the 2008 and 2015 schemes established some basic principles which provide a 'useful yardstick' for assessing the heritage impact of the current proposal. The design of their additions, whilst distinct from the listed building in terms of materials, clearly sought to respond to the listed building and site context in terms of the height and scale of the extensions, including the more appropriate detailing of the larger 2015 proposal. Further, considerably more attention was given to the protection of original features, particularly in the 2015 scheme, including the outrigger and internal fabric. Overall these schemes reflected a greater recognition of the significance and sensitivity to change of the heritage asset than the appeal proposals.

Structural issues and the condition of the building

45. The usual approach to the management of change in heritage assets involves the retention of as much historic fabric as possible, with the production of a structural report indicating what is necessary and the least intrusive means of achieving the outcome, including conservation led techniques to ensure that no further damage is caused. However, in this case there is no evidence to indicate that such an approach was considered or advised. For example, I understand that a decorative ceiling bracket fell during the re-construction of a central wall, suggesting that the necessary measures were not in place to protect such features. Also, during the building works the ground floor joists were found to be unsound. There is no evidence that the reconstruction of the ground floor at a higher level was necessary other than to give greater headroom in the basement.
46. References are also made to parts of the building being in a poor condition prior to the works to justify some of the alterations made, including the replacement of windows. However, limited photographic evidence is available to support this claim. Specifically, whilst many windows have been replaced, only minor evidence of the nature of damage to the windows is presented in the form of a small amount of damage to one window. Overall, there is no evidence that structural issues or the condition of the building justified the works undertaken.

Compliance with buildings and fire regulations

47. The appellant indicates that some of the internal alterations made resulted from discussions with building regulations advisers. Specifically, false ceilings and vestibules at the flat entrances were introduced for fire safety and to assist in acoustic and thermal insulation. It is also suggested that the timber panelling around windows was removed to improve insulation.
48. Some alterations, such as those addressing fire safety, may be non-negotiable. However, there is usually some flexibility in respect of acoustic and thermal insulation measures for listed buildings, and specific less intrusive treatments are available which allow features of interest to be retained. There is no evidence in this case that the alterations undertaken were necessary to meet

building regulations, or indeed that the least intrusive means of achieving the necessary standards were sought.

Comparisons with No 359 Wilmslow Road

49. The Council refers to the recent internal restoration works at No 359 Wilmslow Road as an example of what is possible and appropriate for such buildings. This building is in established use as an HMO and therefore building regulation requirements may differ, with the appellants witness suggesting that higher building and fire regulation standards may be required for a flat development. However, there is no evidence to indicate that such differing requirements should have any substantive impact on the way in which restoration works can be undertaken.

Heritage policy and statute

50. The Council's reasons for refusal refer to the Policy EN3 of the Manchester Core Strategy DPD 2012 (Core Strategy), which sets out the importance of preserving and enhancing the historic environment. Reference is also made to saved Policy DC19 of the Manchester Unitary Development Plan 1995 (UDP), which refers to the desirability of the retention, restoration, maintenance and continued use of listed buildings.
51. These policies do not reflect the more qualitative and proportionate consideration of proposals impacting on heritage assets that is set out in Section 16 of the Framework. Specifically, they do not require the identification of significance, do not differentiate between substantial and less than substantial degrees of harm, and they do not allow for the balancing of any harm with public benefits. On this basis these policies are less permissive of development than the Framework's heritage provisions.
52. Having regard to paragraph 213 of the Framework, the presumption in favour of preservation set out within Policy EN3 and saved Policy DC19 is consistent with the overriding purpose and intention of Section 16 of the Framework and the Act¹. Therefore, whilst they do not reflect the more nuanced approach to heritage matters, in so far as these policies are consistent with the Framework they are not out of date.

Conclusions on impact on the listed building

53. I have found harm due to the scale, form and detailed design of the extension when viewed in relation to the architectural craftsmanship and hierarchy of the Norton Terrace. I have also found harm from some of the unsympathetic additions and alterations to the exterior of the building, and from a range of alterations to the interior, many of which cause some degree of harm to original form and fabric. As a result the development and works fail to preserve the special interest and significance of the listed building.
54. I have also reviewed a range of matters relevant to heritage considerations raised by the parties. After considering the nature of previous approvals, the evidence relating to the condition of the building and the requirements of other regulatory regimes, I conclude that there is no evidence that the current harm was necessary to bring the building back into use.

¹ Section 16(2) and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

55. I am aware that substantial harm in the terms set out in paragraph 195 of the Framework can be equated to total loss of significance and is therefore an extremely high test. The NPPG on substantial harm to a designated heritage asset further clarifies that 'an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest' (Reference ID: 18a-017-20140306). On this basis, as the front and side elevations of the appeal building remain largely intact, my view is that this harm lies below a high degree of less than substantial harm but, given the cumulative nature of this harm, it is certainly above a moderate level within this spectrum.
56. I therefore conclude that, against the requirements of the development plan, national policy and statute, the scheme causes less than substantial harm when considered in the context of the significance of the heritage asset overall. The Framework paragraph 196 sets out that in such circumstances this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I give consideration to the to this matter below.

Could the harm be addressed by conditions requiring alterations?

57. Various alterations have been suggested to address the heritage impact of this scheme on the building. Specifically, the appellant has suggested a reduction in the number of rooflights from 6 to 4 on the front elevation and from 4 to 3 on the rear, the replacement of plastic rainwater pipes with cast iron, and the replacement of basement uPVC windows in the main building, and all uPVC windows in the extension with timber side hung casement windows. Ground floor uPVC doors would also be replaced with timber. Further, the conditions suggested by the Council would also see the removal of suspended ceilings and the reinstatement of decorative plasterwork, the reinstatement of decorative timberwork and the reinstatement of original internal doors.
58. My view is that these works may address some of the harm caused to the exterior, and could possibly return the appearance of the interior to suggest of its original form which may be seen as a betterment overall. However, they would not address the substantive concerns regarding the harm caused to the heritage asset by the form, scale and main design elements of the extension, including window proportions. Furthermore, given the scant information as to why some of the internal alterations were undertaken, other than references to various regulatory requirements, there is no evidence before me that these alterations could be satisfactorily made. Overall my view is that less than substantial harm would remain.

Design and appearance

59. The appeal site is located on the busy Wilmslow Road corridor. There are a range of uses in the area, with some of the original villas having been converted to hotel and other commercial uses. The built character of the area is also somewhat varied. Whilst in the immediate vicinity of the appeal site much of the character and appearance of the original Victorian residential area remains, the other original villas have been significantly altered through extensions, including that to No 365 directly to the south. There is also some diversity evident in the more contemporary development.

60. The Norton Terrace properties form a landmark structure within this area. Its distinctive and striking appearance stands out against the backdrop of the Besford Close development of two and three storey red brick town houses to the rear of the site.
61. In terms of general appearance, materials, scale and mass the extension appears in views from Wilmslow Road as a similar structure to the Besford Close properties. Furthermore, the fact that it is to the rear of the property behind the side bay window, and of lesser height and contrasting materials means that in some senses it appears to be distinct from the host building. In this sense the extension is not a dominant or domineering feature. Nevertheless, the overall mass of built form creates a sense of built density which is at odds with the typical spaciousness associated with Victorian villas, competing with the primacy of Norton Terrace.
62. Furthermore, when viewed in greater detail, I have already concluded that the extension relates poorly to the host building in terms of both its scale and detailing. Whilst the appellant suggests that the design is 'appropriate by accident', in design terms insufficient attention has been given to the local context, which would be the case whether or not the building was listed. In this sense the consultation objection which refers to the fact that 'a passer-by would have no idea that it was connected to Norton Place' appears to be with reference to the fact that the extension fails to take any design cues from the host building, noting that 'there is not even an echo of its Victorian past'. The point being that a contextual design would reasonably be expected for an extension of this scale.
63. I was able to see that the extension is visible from Wilmslow Road, though over a relatively short stretch when travelling north only. Nonetheless, the open frontage of No 365 means that the extension is clearly seen, such that these views are more than glimpsed. The visibility of the extension is to some minor degree reduced by the presence of trees, noting the silver birch tree adjacent in the grounds of No 365. I understand that this tree is in the ownership of the appellant, and whilst not currently protected, the appellant would be willing to enter into a unilateral undertaking to ensure its long term retention. However, this provision would not significantly address the current degree of visual intrusion caused by the form and mass of the extension, particularly at leaf fall in winter months.
64. Whilst the sensitivity of the view from Wilmslow Road was not raised in relation to previous schemes, this is most likely because the lesser scale of the extensions proposed did not raise such concerns. In this regard the photomontage prepared in support of the 2015 scheme illustrates a more considered and modestly scaled addition, clearly subservient to the main structure. This also demonstrates that, in comparison with the appeal scheme, the visible roof area would have been greater. However, given the considerably greater mass of brickwork on show, this point does not support the argument that the current mansard roof, whilst 'less complicated' in form, is in any way preferable to the former roof design.
65. Looking at visibility more generally, glimpsed views are possible from Besford Close and adjacent gardens, including from Whiteoak Road. The view of the rear elevation from Besford Close is restricted both by the presence of these properties and a number of trees along the shared boundary. Whilst this

obscures views of the full rear to a large degree, the predominant simple treatment of the rear elevation of Norton Terrace with small windows, modestly sized outriggers and the small extension to 359, is discernible and contrasts with the bulk and mass of the appeal extension. In this view the flat roof element and large patio style windows can be seen, contrasting with the otherwise modest form and style of the rear.

66. I appreciate that the appellant may have set out to implement the 2015 approved scheme, which I understand went through a design evolution as advised by the Framework paragraph 128. However, there are clear and distinct design differences between these schemes in terms of mass, scale and detailing.
67. Overall I conclude that whilst the extension is not a prominent element in the general street-scene, by reason of its scale, form and detailing it does not relate well to its context. Therefore, the design and appearance of this addition are not acceptable in relation to the surrounding area.
68. In this respect there is modest conflict with the relevant provisions of Core Strategy Policy SP1 which sets out core principles such as providing high quality and diverse housing, and the protection and enhancement of the built environment. There is also conflict with the relevant provisions of Core Strategy Policy DM1, referring to the need for development to have regard to appropriate scale, form, massing, materials and details, as well as impact on surrounding areas in terms of design, scale and appearance.
69. UDP saved Policy EN1 describes the principles of urban design and identifies strategic character areas. Whilst the current scheme does not conflict with specific matters, this Policy places importance on good design on main and radial routes such as Wilmslow Road. Finally, UDP saved Policy DC1 refers to residential extensions. Whilst many aspects of this Policy are not engaged, there is conflict with specific elements including (1.1a) the need to have regard to the general character of the property and (1.2a) whether extensions are excessively large or bulky. There would also be conflict with the design provisions of the Framework, particularly paragraph 127, including the requirement that development is visually attractive as a result of good architecture and is sympathetic to local character and history.

Public benefits

70. The development and works provide several public benefits which need to be considered in the balancing exercise required by paragraph 196 of the Framework.
71. I have acknowledged that heritage benefits have been delivered through improvements to the front and side elevations, thereby maintaining key elements of interest of this building. Given the significance of these elevations this is a clear public benefit of the scheme. However, the weight to be attached to this benefit is moderated by the fact that the current Heritage Statement states that 'while some elements are in need of repair, the elevation is in decent condition'. Therefore, the degree to which this work was necessary to enable the appreciation of the heritage asset is debatable. I have also noted that some detracting elements have been added to these elevations. I therefore accord modest to moderate weight to this point.

72. Works to the frontage area to create hardstanding for parking may be an improvement on the previous situation, however as this would have previously formed the front garden this aspect of the scheme is of limited benefit. Whilst I am aware that bricks gathered from the reduction in height of the perimeter wall have been used to build the extension, this is not a significant point.
73. There have been some limited improvements to the interior, such as the removal of temporary shoring and the repair of the stair balustrade. However, in the appellant's schedule (Inquiry document 5) these are acknowledged as being 'negligible' or 'minor' positive impacts. Cumulatively these small scale changes have had a minor beneficial effect. I am therefore able to give this point modest weight at best.
74. More generally, the development has resulted in the re-use of a building which had been somewhat neglected and was in poor condition in places. The appellant also suggests that converting and extending the building in this way has resulted in delivering its optimum re-use. Nonetheless, as the 2015 scheme was expressly assessed by the appellant to be viable this point is of limited weight.
75. The appeal scheme has resulted in the provision of good quality housing with a high standard of internal design. This point was supported by the residents in attendance at the inquiry, who said that they felt comfortable and safe in their accommodation. Elements such as the significant number of rooflights are designed to increase daylight into living areas. However, there is no evidence of the necessity of such elements in ensuring satisfactory living conditions, nor that such a high-quality scheme overall could not be achieved with less harm to heritage significance. This point therefore gains limited weight.
76. The scheme complies with saved Policy DC5.2 of the UDP, a positively worded policy setting out the general presumption in favour of flat conversions within residential areas. This policy welcomes the conversion of large, old, difficult to re-use properties, and supports the preservation of attractive buildings which may not be viable for other uses, providing investment to enable the retention and improvement of the housing stock. However, whilst these factors are applicable to the appeal property, these provisions are promoted 'subject to other relevant policies of the Plan'. Whilst this Policy was specifically recognised by the Council's officer report as supporting the 2015 scheme, this did not involve the heritage or design conflict identified in the present case. Overall therefore this point does not weigh in favour of the appeal scheme.
77. Following the publication of the Five Year Housing Land Supply Statement in January 2019, the Council is now able to demonstrate a five years supply of housing land, currently at 7.05 years. The appellant suggests that due to the scale of some of the schemes involved it is unlikely that all will be delivered within a 5 year period. However, the current deliverable supply is well over 5 years worth and no evidence is presented in support of this claim.
78. Nonetheless, whilst the provision of 10 units is not a significant number in the context of available supply, and is only one more than the 2015 scheme, it is a benefit of modest weight in the context of the government's priority to significantly boost the supply of housing.
79. Other points in favour of the scheme include some of those relating to sustainable development, as set out in paragraph 8 of the Framework.

Specifically, this is a highly sustainable location close to amenities and employment/education opportunities, with excellent public transport links. Also, this use of the building helps to maintain the diversity and vitality of the neighbourhood. These points weigh modestly in favour of the scheme.

80. Finally, the fact that there is no issue with specific elements of the scheme such as the split level rear garden, and a range of planning standards are met, are not indicative of any particular benefits of the scheme.

Conclusion on paragraph 196 balance

81. The statutory presumption against harm to a designated heritage asset is not irrebuttable. Nonetheless, the Framework paragraph 194 sets out that any harm to the significance of a designated heritage asset should require clear and convincing justification. In carrying out the balancing exercise paragraph 193 also clarifies that great weight should be given to the asset's conservation. By extension, this could be taken to mean that great weight should be given to those attributes of a scheme which support the long term preservation of the significance of the asset. As such in reaching a conclusion on such cases harms must be weighed against the benefits.
82. Many of those elements identified above are not over-riding benefits that could outweigh the strong presumption against harm to a listed building. For example, a number of the points referred to by the appellant, such as securing the future of the building, the provision of additional accommodation, and the support to the vitality of the neighbourhood would also apply to the 2015 scheme. This tempers the weight which can be attached to such benefits.
83. The benefits identified are at best modest in weight, with the exception of the works to restore the main elevation. The degree of harm caused to the significance and special interest of the Grade II listed building overall is above a moderate level within the less than substantial spectrum. Even when considered as a collective these benefits would be significantly outweighed by the harm caused to this designated heritage asset, to which I am required to give considerable importance and weight.

Other matters

84. The enforcement notices require the residential use of the whole building to cease, which I understand is to take effect from July 2019. If the appeals were to be dismissed, and the enforcement notices were therefore to take effect, this would result in the 17 current tenants losing their homes. It is possible that the tenants could have appealed the enforcement action based on their personal circumstances. However, I appreciate that, particularly as many appear to be on short term leases, it is unlikely that they would have either the inclination or the appreciation of the need to do so. Evidence presented at the inquiry indicated that most residents are, or will shortly be, on monthly rolling tenancies.
85. I fully appreciate and have sympathy with the fact that existing tenants will have made their homes within the appeal property. The inquiry heard how these residents and their visitors find the location of the appeal property and the accommodation provided to be particularly convenient, suitable and safe. However, as things stand their tenancies could be terminated at short notice whatever the outcome of the current appeals. Furthermore, there is nothing

before me to indicate a shortage of such accommodation within this part of Manchester, or any individual circumstances suggesting that the tenants involved would have any difficulty finding suitable alternative accommodation within the local area.

86. The outcome of these appeals engages the building occupants' rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. However, those rights are qualified and I must ensure in relation to these appeals that any interference with those rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. A decision to dismiss these appeals could result in the current tenants losing their homes, but in this case the harm to the heritage asset is such that the dismissal of the appeals is a necessary, justified and proportionate response. The public interest cannot be achieved by means that cause less interference with the occupants' rights and hence no violation of Article 8 would occur.
87. On the basis of the current enforcement action there is no fall back position. The appellant also makes reference to the fact that the Council has not been prepared to discuss works to render the scheme acceptable. However, there is no suggestion that the Council would not accept the 2015 scheme.
88. The views of interested parties were apparent from attendance at the inquiry and the letters received. As a collective these indicate that local opinion on the appeal scheme is divided, with supporters and objectors presenting diametrically opposed views. I have considered all of the points made in order to reach a balanced view overall.

Overall conclusion

89. I have found that less than substantial harm to the significance of the designated heritage asset would not be outweighed by the public benefits of the scheme. The scheme is therefore in conflict with the statutory duty to have special regard to the preservation of listed buildings. My findings in relation to design matters add further to the weight against the proposal. I have also given careful consideration to other matters, particularly the implications of dismissing the appeals for the existing residents of the property. However, nothing overrides my conclusions about the damage to the heritage asset or the adverse impact of the design on general appearance.
90. The scheme would be contrary to the provisions of the development plan. Whilst relevant policies are less permissive of development than the Framework there are no other material considerations that outweigh this finding. Indeed, the development does not accord with the policies in the Framework relating to the historic environment. For these reasons the appeals should fail.

AJ Mageean

INSPECTOR

APPEARANCES

For the Council

Ms Reid of Counsel, instructed by Manchester City Council.

She called:

Mr Mason Group Manager, Urban Design and Conservation

Ms Atkinson Principle Planning Officer

For the appellant

Mr Goatley and Mr Martin of Counsel, instructed by Addleshaw Goddard.

They called:

Mr Clemons Savills (UK) Ltd, addressing heritage matters

Mr Nicholls Alyn Nicholls, addressing planning matters

Interested parties

Ms Kincaid South East Fallowfield Residents Association

Ms Given Local resident

Mr Hollinshead Local resident

Inquiry documents

1. Extract of Housing Delivery Test: 2018 measurement
2. ICOMOS Guidance on Heritage Impact Assessment for Cultural World Heritage Properties
3. Appellant Opening Statement.
4. Council Opening Statement.
5. Schedule of works and impacts (Mr Clemon's Appendix 6), with additional column for Mr Mason's comments (*revised and corrected version*).
6. Historic England Response to application no 107449/LO/2014/S1.
7. Representations received in respect of application 12506/LO/2018
8. Representations received in respect of application 12505/FO/2018
9. Details of the City of Manchester (Wilmslow Road, Fallowfield) Tree Preservation Order 1989, confirmed 1990, as it affects 365 Wilmslow Road.
10. Suggested conditions (*revised version submitted with Closings*).
11. Closing submissions on behalf of the council.
12. Closing submissions on behalf of the appellant.

Appendix 7: Jones v Mordue [2015] EWCA Civ 1243

Neutral Citation Number: [2015] EWCA Civ 1243
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION, PLANNING COURT
MR JOHN HOWELL QC
[2015] EWHC 539 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2015

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE FLOYD
and
LORD JUSTICE SALES

Between :

Aidan Jones
- and -

Appellant

Jane Margaret Mordue
- and -

First Respondent

Secretary of State for Communities
and Local Government

Second Respondent

- and -

South Northamptonshire Council

Third Respondent

Mr Alistair Mills (instructed by **Wilkin Chapman LLP**) for the **Appellant**

Mr Juan Lopez (instructed by **Direct Access**) for the **First Respondent**

The 2nd Respondent did not appear and was not represented

The 3rd Respondent did not appear and was not represented

Hearing date: 28 October 2015

Judgment

Lord Justice Sales:

1. This appeal relates to planning permission granted by an Inspector (Mr John Braithwaite) for the erection of a single freestanding wind turbine with associated hard standing, access road and electricity sub-station on land at Poplars Farm, Wappenham, Towcester. The land is owned by the appellant. The respondent is chairperson of a local group of objectors. She made an application to the High Court under section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”) to quash that grant of permission. Her application was successful before John Howell QC, sitting as a deputy judge of the High Court. The appellant appeals to this court.
2. The wind turbine will impinge to a certain extent on views of the Church of St Mary in Wappenham (“the Church”), which is a Grade II* listed building. It will also affect to a very limited degree the setting of certain other listed buildings: The Manor at Wappenham, which is located close to the Church of St Mary, and the Church of St Botolph at Slapton, which is located some distance away. Listed buildings and their settings are accorded special protection under the planning controls regime by virtue of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”) and chapter 12 (“Conserving and enhancing the historic environment”), paras. 126-141, of the National Planning Policy Framework (“the NPPF”).
3. Since the wind turbine would affect the setting of the Church and, to a lesser extent, the other listed buildings, the deputy judge correctly held that the Inspector was obliged to give considerable weight to that harm when considering whether planning permission should nonetheless be granted. Under Ground 2 of the respondent’s application, the deputy judge held that the respondent could not show that the Inspector had in fact failed to give the considerable weight to any harm to the setting of the listed buildings which he was required to give: para. [42] of the judgment. The deputy judge also rejected a claim by the respondent (Ground 1 of her application) that the Inspector failed to apply properly the duty imposed by section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), which required the application for planning permission to be determined “in accordance with the [development] plan unless material considerations [indicated] otherwise”.
4. However, the deputy judge allowed the respondent’s application to quash the planning permission under a second limb of Ground 2, because he accepted her submission that the Inspector had failed *to demonstrate* in the reasons he gave that he had complied with his duty under section 66(1) of the Listed Buildings Act to have special regard to the desirability of preserving the setting of the Church and other listed buildings by giving considerable weight to the desirability of preserving that setting: see, in particular, para. [48] of the judgment. The deputy judge considered that he was bound to reach this conclusion by the decision of this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137; [2015] 1 WLR 45 (“the *East Northamptonshire case*”), in particular at [29] per Sullivan LJ (with whose judgment Rafferty and Maurice Kay LJJs agreed).
5. The deputy judge, however, also gave what are to my mind excellent reasons for thinking that this result would be out of line with other high authority, *Save Britain’s Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153, HL. That in turn calls in

question whether he was right to interpret Sullivan LJ's judgment in the *East Northamptonshire* case in the way he did.

6. The deputy judge rejected a further claim by the respondent (Ground 3 of her application) that the Inspector had failed properly to consider the intrinsic significance of the heritage assets and the contribution which their settings made to their significance, as required by the NPPF. Finally, the deputy judge held that the claim by the respondent (Ground 4 of her application) that she had been substantially prejudiced by a failure on the part of the Inspector to give reasons for his decision was made out for the same reason that Ground 2 was made out, but added nothing material to that Ground.
7. In the event, Sullivan LJ himself granted permission to appeal in relation to Grounds 2 and 4 on the footing that the appellant had a good prospect of successfully persuading the Court of Appeal that either the deputy judge had misunderstood the judgment in the *East Northamptonshire* case or that that judgment had been decided *per incuriam* and was not to be followed. In relation to the first of these points, Sullivan LJ wrote:

“The basis for the Deputy Judge’s central conclusion in paragraph 48 of his judgment appears to be the short extract from paragraph 29 of my judgment in *East Northamptonshire* which he cited in paragraph 43 of his judgment. It is strongly arguable that paragraph 29 of *East Northamptonshire* should be read as a whole, in the context of the preceding paragraphs in the judgment referred to in the Appellant’s Skeleton Argument; and if that is done, that it was clear from the Inspector’s reasoning in his decision in *East Northamptonshire* that he had not given ‘considerable importance and weight’ to the ‘detrimental effect’ of the turbine array upon the setting of a group of designated heritage assets which he had found to have ‘archaeological, architectural, artist and historic significance of the highest magnitude.’”

8. The respondent supports the deputy judge’s decision for the reasons he gave and also, by a respondent’s notice, seeks to uphold it on the basis that he should have accepted Ground 1 of her application (alleged failure to comply with section 38(6) of the 2004 Act).

The statutory and policy framework

9. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to the provisions of the development plan for the area. Section 38(6) of the 2004 Act provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

10. The relevant policies in the local development plan for the area were saved Policies G3 and EV1, which related to general design and landscaping and amenity considerations, and Policy EV12 in relation to Listed Buildings. Policy EV12 provides as follows:

“When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features.”

11. The development plan also set out a paragraph of commentary on Policy EV12, which included the statement: “In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting.”

12. Section 66(1) of the Listed Buildings Act provides as follows:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

13. The relevant paragraphs in the NPPF are as follows:

“131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. 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. The more important the asset, the greater the weight should be. Significance can be

harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. 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 securing its optimum viable use.”

The decision of the Inspector

14. The Inspector made the relevant decision on behalf of the Secretary of State. The Inspector identified the main issues for consideration on the appeal at para. 3 of the Decision Letter, as follows:

“3. The main issues are; first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme.”

15. He considered the second issue, the effect of the development on heritage assets, in these paragraphs of the Decision Letter:

“10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature that is the Church tower. Nevertheless, the turbine would be a feature in the countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.

11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.

12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.

13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative

harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12.”

16. The fourth issue identified by the Inspector, regarding the environmental benefits of the development, was considered in these paragraphs of the Decision Letter:

“20. The landscape was formed by the most recent ice age and has been altered by man for farming and other purposes. These activities, such as an increasing reliance on motorised transport, have contributed to changes in the global climate that are having a detrimental effect on, amongst other things, the landscape. The landscape of South Northamptonshire is not immune from the effects of climate change. Flooding is a serious issue and will have affected South Northamptonshire as it has to devastating effect elsewhere in the country. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes hardship for those who suffer the direct consequences of climate change; flooding of their homes and businesses.

21. A suggested condition would require the removal of the wind turbine within twenty-five years after it is brought into operation. Twenty-five years is a fraction of the history of the landscape of South Northamptonshire and if the landscape is not to suffer serious erosion in the long-term future then consideration must be given to accepting short-term harm to the character of the landscape. A low carbon future is at the heart of Government policy that seeks to meet the challenge of climate change, as set out in the National Planning Policy Framework (NPPF). In paragraph 93 it is stated that “Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure”.

22. The candidate turbine, an Enercon E53, is rated at 0.8 MW but would be operated to produce no more than 0.5 MW. It would be de-rated because supply to the National Grid of over 0.5 MW would require upgrading about 4 kms of electricity transmission lines and this would be financially prohibitive. Furthermore, de-rating a 0.8 MW turbine would produce a consistent output close to the limit of 0.5 MW whereas a 0.5 MW turbine could not produce such a consistent output, and an Enercon 0.5 MW turbine is not materially smaller than their 0.8 MW turbine. The specification of an Enercon E53 turbine maximises the potential for electricity generation at Poplars Farm within the limit set by existing transmission lines. The development would make a small

contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements.”

17. The Inspector then turned to the balancing exercise he had to perform, as follows:

“23. Paragraph 134 of the NPPF states that “Where a development proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal...”. The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the Localism Act 2011 and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that “...all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities”. It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.

24. Paragraph 98 of the NPPF states that local planning authorities should “...not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy...”. There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.

25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan.”

18. Accordingly, the Inspector granted planning permission for the development.

Discussion

19. As the deputy judge correctly pointed out, *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL, is authority regarding the standard of reasons to be expected where a planning decision is taken granting permission for development which has a detrimental impact upon listed buildings. In that case, permission was granted by the Secretary of State, on the recommendation of his inspector, for a redevelopment scheme involving the demolition of eight Grade II listed buildings. The merits of the redevelopment scheme were assessed to override the Secretary of State's stated policy of the time, that listed buildings capable of economic use should not be demolished. An objector applied to quash the permission. At first instance, the application was unsuccessful; but the applicant was successful in the Court of Appeal, on the grounds that the court was not satisfied from the reasons given for the decision that there had been no error of approach on the part of the Secretary of State. The House of Lords, however, overturned that decision on appeal. Lord Bridge of Harwich gave the leading speech. At pp. 167C-168E he said this:

“Whatever may be the position in any other legislative context, under the planning legislation, when it comes to deciding in any particular case whether the reasons given are deficient, the question is not to be answered in vacuo. The alleged deficiency will only afford a ground for quashing the decision if the court is satisfied that the interests of the applicant have been substantially prejudiced by it. This reinforces the view I have already expressed that the adequacy of reasons is not to be judged by reference to some abstract standard. There are in truth not two separate questions: (1) were the reasons adequate? (2) if not, were the interests of the applicant substantially prejudiced thereby? The single indivisible question, in my opinion, which the court must ask itself whenever a planning decision is challenged on the ground of a failure to give reasons is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given. Here again, I disclaim any intention to put a gloss on the statutory provisions by attempting to define or delimit the circumstances in which deficiency of reasons will be capable of causing substantial prejudice, but I should expect that normally such prejudice will arise from one of three causes. First, there will be substantial prejudice to a developer whose application for permission has been refused or to an opponent of development when permission has been granted where the reasons for the decision are so inadequately or obscurely expressed as to raise a substantial doubt whether the decision was taken within the powers of the Act. Secondly, a developer whose application for permission is refused may be substantially prejudiced where the planning considerations on which the decision is based are not explained sufficiently clearly to enable him reasonably to assess the prospects of succeeding in an application for some alternative form of development. Thirdly, an opponent of development, whether the local planning authority or some

unofficial body like Save, may be substantially prejudiced by a decision to grant permission in which the planning considerations on which the decision is based, particularly if they relate to planning policy, are not explained sufficiently clearly to indicate what, if any, impact they may have in relation to the decision of future applications.

Here again, I regret to find myself in disagreement with Woolf L.J. who said, *60 P. & C.R.* 539, 557:

“Once it is accepted that the reasoning is not adequate, then in a case of this sort it seems to me that, apart from the exceptional case where it can be said with confidence that the inadequacy in the reasons given could not conceal a flaw in the decision-making process, it is not possible to say that a party who is entitled to apply to the court under section 245 has not been substantially prejudiced.”

The flaw in this reasoning, it seems to me, is that it assumes an abstract standard of adequacy determined by the court and then asserts, in effect, that a failure by the decision-maker to attain that standard will give rise to a presumption of substantial prejudice which can only be rebutted if the court is satisfied that the inadequacy “*could not* conceal a flaw in the decision-making process.” But this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged in the way that Woolf L.J. suggests unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section 245. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision.”

20. The guidance in *Save Britain's Heritage* was followed by Lord Brown of Eaton-under-Heywood in his speech in *South Bucks District Council v Porter (No. 2)* [2004] UKHL 33; [2004] 1 WLR 1953, leading to his very familiar summary of the relevant principles at [36] as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

21. In the *East Northamptonshire case* the local planning authority refused the developer’s application for planning permission to erect wind turbines in a location where this would have a detrimental effect on the setting of listed buildings. An inspector appointed by the Secretary of State allowed the developer’s appeal and granted planning permission. The local planning authority applied to quash that decision on the ground that the inspector had failed to give sufficient weight to the desirability of preserving the setting of the listed buildings as required by section 66(1) of the Listed Buildings Act, and was successful at first instance. The appeal to this court was dismissed.
22. This court held that the judge had been correct to rule that section 66(1) requires the decision-maker to give “the desirability of preserving the building or its setting” not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm: [22]-[24] per Sullivan LJ. The judge found that the inspector had failed to comply with this duty, as evidenced by the reasoning in his decision letter, and had instead downplayed the desirability of preserving the setting of the listed buildings. This court agreed.
23. At para. [29] Sullivan LJ said this:

“For these reasons, I agree with Lang J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed

buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The second defendant's skeleton argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the inspector's planning judgment. In his oral submissions Mr Nardell contended that the inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the "significant weight" which the inspector expressly gave in para 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out."

24. In the present case, the deputy judge treated this passage as authority for the proposition that there is an onus on a decision-maker positively to demonstrate by the reasons given that considerable weight has been given to the desirability of preserving the setting of relevant listed buildings, notwithstanding that this is contrary to the general position explained in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*: see [43]-[49], [58] (where he said that "the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act is taken to impose"), [65] and [73]. The deputy judge also drew support for this conclusion from the first instance decisions in *R (The Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895; [2015] JPL 22 and *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin): see [44].
25. Accordingly, the deputy judge found that the complaint in Ground 2 (failure to comply with the duty in section 66(1) of the Listed Buildings Act) was made out, because the Inspector had failed positively to demonstrate in his reasons that he had referred to and applied that provision. He also found that the complaint in Ground 4 regarding the alleged inadequacy of the reasons given was made out for the same reason. The deputy judge was correct to treat these two grounds as being in substance the same, since the only evidence as to whether the Inspector had failed in fact to comply with the duty in section 66(1) was what was contained in the reasons he gave in the decision letter. The deputy judge reached the conclusion that the decision should be quashed only because he regarded himself as bound to do so by the *East*

Northamptonshire case and with considerable reluctance, as he explained at para. [73], not least because in his judgment “it is clear in this case why the Inspector decided to grant planning permission”. I agree with this last comment.

26. With respect to the deputy judge, I think he read too much into para. [29] of the judgment of Sullivan LJ in the *East Northamptonshire case*. I do not consider that, read in the context of the judgment as a whole, Sullivan LJ and the court intended to state an approach to the reasons required to be given by a decision-maker dealing with a case involving application of section 66(1) of the Listed Buildings Act which was at variance from, and more demanding than, that stated in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*. Sullivan LJ's comments in para. [29] were made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. In my judgment, the relevant standard to be applied in assessing the adequacy of the reasons given in the present case is indeed the usual approach explained in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, which is what the deputy judge correctly thought it ought to be.
27. Mr Lopez, for the respondent, took us to first instance authorities - *The Forge Field Society* and *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) - in which the reasons for decisions in cases involving application of section 66(1) of the Listed Buildings Act had been found to be inadequate and invited us to compare them with the reasons given by the Inspector in this case. I did not find this a helpful exercise. Reasons for planning decisions have to be read as a whole in their proper context, and there will inevitably be differences of context, expression and nuance between cases which may be highly relevant. Reading other decision letters (and the judgments in relation to them) can take up considerable time and effort without adding value for the determination of the particular case before the court. The relevant principles in relation to the giving of reasons are well-established and very well known, and it should be sufficient for a judge to be reminded of them and taken to the reasons in the case before him or her to assess them in light of those principles, without any need for exegetical comparison with reasons given in relation to other planning decisions. I would add, however, that on my reading of them the judgments we were taken to concerned reasons for decisions which, as in the *East Northamptonshire case* itself, contained positive indications that the decision-maker had failed to comply with the duty under section 66(1) of the Listed Buildings Act: see *The Forge Field Society* [2015] JPL 22, at [42] and [53], and *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin), at [72]-[73]. Such indications would have had to have been dispelled by a countervailing positive reference to the relevant duty in the reasons themselves in order to avoid the conclusion that the decision-maker had erred as a matter of substance in the test being applied. Although *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)* were not referred to, there is nothing in the judgments themselves to show that the familiar basic principles laid down in them were departed from on the facts of these cases.
28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, it cannot be said that the reasoning of

the Inspector gives rise to any substantial doubt as to whether he erred in law. On the contrary, the express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. Policy EV12 reflects that duty, and the textual commentary on it reminds the reader of that provision. Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did.

29. The Inspector was lawfully entitled to assess that the harm to the setting of the listed buildings identified and discussed by him at paras. 10-13 of the Decision Letter, giving that factor the weight properly due to it under section 66(1) of the Listed Buildings Act and paras. 131-134 of the NPPF, was outweighed by the environmental benefits from the turbine identified and discussed by him at paras. 20-22 of the Decision Letter.
30. For these reasons, I would allow the appeal and uphold the decision of the Inspector.
31. The additional contention raised in the respondent's notice, namely that the Inspector failed properly to comply with the duty in section 38(6) of the 2004 Act, is wholly devoid of merit and should be dismissed. The Inspector clearly considered that there were good reasons to depart from the relevant policies in the development plan, for the reasons he explained. That was an entirely lawful exercise of planning judgment by him.

Lord Justice Floyd:

32. I agree

Lord Justice Richards:

33. I also agree.