The status quo can be preserved

Conservation area cases are rarely reported, but one case that has been concluded that development is not necessarily detrimental. Martin Edwards and John Martin explain

A neutral development may still preserve character and appearance

 Conservation areas have been a fact of planning life since the Civic Amenities Act 1967 was brought into force. This first introduced the concept of protecting areas – as opposed to buildings – of special architectural or historic interest, whose character or appearance should be preserved or enhanced.

The main statutory provisions governing conservation areas are now to be found in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Advice and policy guidance for England (where an estimated 9,000 conservation areas have been designated) are contained in PPG 15: Planning and the Historic Environment. One of the key planks in the regime for protecting conservation areas is to be found in section 72(1) of the Act. This obliges the decision maker, with regard to an application for planning permission, to pay particular attention to the desirability of preserving or enhancing the special character or appearance of the area.

The correct decision

Chandler v Secretary of State for Communities and Local Government [2007] EWHC 1000 (Admin); [2007] PLCS 95 is one of the few recent cases concerning conservation areas to have been reported.

In that case, Mr and Mrs Moore owned a bungalow in a conservation area. They applied for planning permission to construct an extension to provide residential accommodation for a carer.

Sir Colin Chandler, who lived opposite the bungalow in a Grade II listed building, objected. He was principally concerned about how the extension would affect the character and appearance of the conservation area. Planning permission was refused by the local authority, but was granted on appeal. The secretary of state’s inspector concluded that the character and appearance of the conservation area would be preserved. Sir Colin applied to quash the inspector’s decision on the ground that he had erred in law.

Sir Colin’s specific contention was that, in allowing the appeal, the inspector had to have been satisfied either that the character or appearance of the conservation area would be enhanced by the proposed development or, if not, that there was a particular reason why some lesser test – for example, that the character or appearance would be preserved – should be applied.

That contention, it was argued, was supported by references in the structure plan to the need for heritage resources to be “conserved and enhanced” and, in the local plan, for new development to “complement and enhance” the character of the area.

Keith J dismissed Sir Colin’s claim. He held that the inspector had been entitled to reach the conclusion that he had.

Neutrality is acceptable

The judge began with section 72(1) of the Act, repeating an earlier judicial observation that, in that section, “preserving” was used in conjunction with, but in contrast to, “enhancing”, which itself imports the notion of positive improvement. They were alternatives. The section was not intended to limit development in a conservation area to that which enhanced its character or appearance. Its objective could be achieved by a development that left its character or appearance unharmed.

He referred to South Lakeland District Council v Secretary of State for the Environment [1992] 1 PLR 143. This established the principle that a development that was neutral in its effect upon a conservation area – in that it made no positive contribution to its preservation but left it unharmed – could properly be said to preserve the character and appearance of that area.

The judge then turned to the proper construction of the structure plan and the local plan, issuing a reminder of earlier judicial dicta to the effect that development plans were not “intended to be legally binding documents in the strict sense” and that “the relevant phrases will often be hardly sensible of bearing a strict hard-edged interpretative approach”.

He concluded that they did not oblige the inspector to adopt a more stringent approach than that required by section 72(1) of the Act.

Finally, he questioned what the position would have been if, as a matter of construction, the structure plan and the local plan had obliged the inspector to adopt a more stringent approach. He concluded that the statutory obligation imposed by the latter remained a material consideration to which considerable weight should be attached, and one that might well point to a different outcome to that indicated by the development plan.

Section 72(1) obliges the decision maker, with regard to planning permission, to pay particular attention to the desirability of preserving or enhancing the special character of an area

Martin Edwards is a specialist planning barrister in 39 Essex Street Chambers and John Martin is a solicitor and director of property law research at Pinsent Masons