

Appeal Statement

Planning ref:24/02370/FP North Herts District Council

Installation of external insulation and cladding (development already carried out)

32-33 Nightingale Road, Hitchin, Hertfordshire, SG5 1QU

Prepared by Matt Brown of Brown Boots Town Planning

brownbootsgt@gmail.com

07508 305 766

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1.Introduction

1.1 This Appeal has been made under section 78 of the Town and Country Planning Act 1990 and the appeal statement is prepared by Brown Boots Town Planning on behalf of the appellant Nav Nagra to support an appeal against the decision of North Herts District Council refuse planning permission for Retrospective for the Installation of external insulation and cladding.

1.2 Following a description of the site and surrounding area, this report will consider the planning history, provide an overview of relevant planning policy and outline the case for the appellant.

1.3 It will be demonstrated that the proposal complies with relevant local and national policies and that planning permission should therefore be granted.

2. Background

2.1 An application for planning permission was made valid by North Herts District Council on 21st November 2024 under reference: 24/02370/FP for the following,

Installation of external insulation and cladding (development already carried out)

2.2 On 8th January 2025 the council refused planning permission for the following reason:

“By reason of its appearance, the use of cladding to the external finish of such a prominent building is considered highly unsympathetic and harmful to the visual amenity, character and appearance of the locality in which the building is situated contrary to Policy D1 of the North Hertfordshire Local Plan 2011-2031 and Section 12 of the NPPF 2024.”

2.3 The decision notice does not quote any plans but these were the plans that were submitted with the application and noted in the officer report,

Location Plan 44471_01_01 44471_02_01

3. SITE DESCRIPTION

3.1 The application site comprises of a three-storey building which occupies a prominent position fronting the north side of Nightingale Road, which is part of the A505 through Hitchin and signposted as linking Luton, Bedford and Stevenage to the west with Letchworth and Baldock to the east. Immediately to the west of the premises is a small roundabout where Whinbush Road joins from the south.

3.2 Nightingale Road benefits from a mix of planning uses at ground floor level many with residential accommodation above. The application site benefits from planning approval for a hot food establishment known as ‘Papa Johns’ at ground floor level with two residential flats above known as nos. 33a and 33b Nightingale Road. The surrounding area is predominantly residential.

3.3 The application site is within the settlement boundary for Hitchin where development is

generally acceptable subject to policy requirements.

4. PLANNING HISTORY

96/00247/1 - Change of use of first and second floor to residential unit. Single storey extension to ground floor shop (as amended by drawing no 95/49/2A received on 15.4.96). Conditional Permission.

98/00719/1 - Change of use from shop with offices on two floors over to shop with 2 twobedroom self-contained flats. Conditional Permission.

98/01178/1 - Change of use from retail to Class A3 (Hot Food). Refused.

99/00343/1 - Change of use of part of ground floor from Class A1 (Retail) to Class A3 (Hot Food). Appeal Allowed (A/99/1028513/P7).

00/00119/1 - Section 73 Application: Variation of condition 3 (opening hours) planning permission no. 99/0343/1 granted on appeal 1/12/99. Conditional Permission.

00/01560/1AD - Front and side internally illuminated fascia sign, one front internally illuminated projecting sign (as amended by drawing no. NP/1364/8 - 01c received 18.12.00). Conditional Consent.

5. PLANNING POLICY

5.1 Planning law states that decisions on planning applications must be taken in accordance with the statutory development plan unless material considerations indicate otherwise. In this case, the relevant development plan is North Hertfordshire Local Plan 2011-2031 and the National Planning Policy Framework (2025).

5.2 It is our opinion that the Council has repeatedly failed to apply Section Paragraph 2 of the National Planning Policy Framework (2025) which states:

"Planning law requires that applications for planning permission be determined in accordance with the development plan², unless material considerations indicate otherwise³. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements."

5.3 This principle is followed through in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 which states:

*"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.**"*

5.4 A judgement (Colman v SoS for Communities and Local Government) stated that it is a "fundamental and long-established principle of planning law that something identified as a **"material consideration"** is conceptually distinct from considerations identified in the development plan".

5.5 This principle is reflected in s.38(6) of the Planning and Compulsory Purchase Act 2004, which essentially requires that a determination made under the planning acts must be made in accordance with the development plan **unless material considerations indicate**

otherwise. A simple interpretation of this would suggest that a decision-maker must first consider whether the development proposal is in accordance with the development plan and then consider whether any material considerations justify departing from policy, thereby treating each as “conceptually distinct”.

5.6 However, in this more recent case, Hickenbottom J. held that s.38(6) did not require a rigid two stage process. The judge commented that other material considerations can be **"inextricably interwoven"** with considerations within the plan, for example when the NPPF presumption of sustainable development becomes of direct application. Hickenbottom J. agreed with previous judgements that decision-makers should have a wide discretion as to how they meet the requirements of s.38(6) and that this can include a one-stage process where appropriate. **The judge held that as long as development plan policies are properly understood and engaged with and proper regard is paid to the statutory priority of the development plan, decision-makers need not expressly determine whether a development proposal is in accordance with the development plan.**

5.7 In an attempt to avoid repetition specific analysis of adopted policies will take place within section 6 “Appellants Case.”

6. APPELLANTS CASE

6.1 The Council have used a single reason to refuse the planning application. It is imperative that the Inspector review the case officers report where the case officer concluded the following,

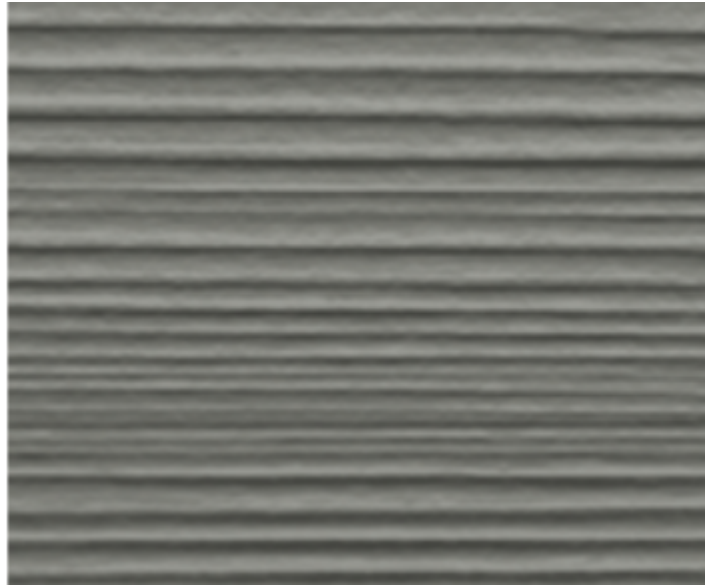
“By reason of its appearance, the use of cladding to the external finish of such a prominent building is considered highly unsympathetic and harmful to the visual amenity, character and appearance of the locality in which the building is situated contrary to Policy D1 of the North Hertfordshire Local Plan 2011-2031 and Section 12 of the NPPF 2024.”

6.2 The Council’s reason for refusal is entirely subjective. The following section will analyse the Council’s application of policy D1 of the North Hertfordshire Local Plan and demonstrate that the installation of external cladding does not result in visual harm to the original building or the wider character of the area. In short, the appellant has chosen to apply moder building materials to ensure that the main fabric of the building is maintained and the occupiers of the building benefit from lower running costs (household bills).

CHOICE OF MATERIALS

6.3 The appellant installed a layer of Sellatex insulation material and finished with HardiePlank weatherboard cladding which is a durable, low-maintenance, and eco-friendly exterior wall cladding option. It's made from fiber cement, which is resistant to rot, warping, and cracking. The works have been undertaken without the knowledge that planning permission was required for the cladding.

6.4 Hardie Plank Weatherboard is not timber it is made of 8mm thick fibre cement planks and is now used in many new build residential developments. The Image below shows the texture of the Grey Slate.



6.5 As stated previously the installation of the internal cladding has been done to improve the conditions of occupiers reducing household costs and overall making this period construction more efficient.

IMPACT ON THE CHARACTER OF THE BUILDING AND THE WIDER AREA

6.6 The section above clarifies the rationale behind installing the cladding, as such we can now move onto the impact of the development on the visual impact of the character of the building and the wider area. As with many planning decisions the Council have failed to demonstrate the following

- what the established character of the area and the building
- how does the cladding results in visual harm
- How and why, it should accord with policy D1 as quoted.

6.7 The case officers delegated report does to some extent attempts explain the site context by stating the following under paragraph 4.3.4,

“The existing commercial façade is retained, with the original brickwork at ground and first floor levels having been concealed by the use of a horizontal composite light grey cladding material. In terms of the use of different materials in the area, there is evidence of the use of render to no.30 Nightingale Road which lies to the west of the application site and to no.147 Nightingale Road which lies opposite the application site to the south, there is no evidence of the use of cladding which is considered an inappropriate material in this location. In terms of building itself, it is accepted that there is a variety of different building styles in the immediate vicinity, however traditional brickwork is a prevailing pattern which can be seen to dominate the built form along this particular stretch of Nightingale Road albeit with a few exceptions to this and therefore provides a sense of local character and identity to the area.”

6.8 The Council admit that there is very little uniformity in building design and materials in the area the image below captures this accurately.



6.9 Each of the three buildings question different in terms of design, fenestration and materials. The property subject to this appeal is entirely different to the attached properties and the properties in the wider area. The application site has a mansard roof and completely different windows.

6.10 In a wider context there is very little by way of uniformity in terms of building design, building age and use. The Image below shows a slightly wider perspective which adequately demonstrates the complete lack of uniformity in the area,



6.11 The Council appear preoccupied by the fact that the cladding materials are different and that there are no other properties which use cladding, but rather than demonstrating any material harm they just state that because it is different it is unacceptable. The Council officer states,

“however traditional brickwork is a prevailing pattern which can be seen to dominate the built form along this particular stretch of Nightingale Road albeit with a few exceptions to this and therefore provides a sense of local character and identity to the area.”

6.12 We cannot see how the Council have concluded that the dominant built form is brick, as there are numerous examples of tile hung buildings, white render, mock tudor and

painted brickwork buildings all within a couple of steps of the appeal site. Therefore, without being disingenuous the insistence on the retention of brick buildings is unreasonable as this cannot be considered to be the prevailing established built form as of 2025. It is also evident that the Council have completely overlooked the fact that the owner could have, without requiring planning permission paint the original brickwork any colour they wish, which would have a far greater impact on the character of the building than the attached grey slate weatherboard cladding.

6.13 The benefits of weatherboard cladding this building are numerous but essentially it makes the building far more resilient to the weather and adds a layer of insulation which benefits the occupiers in terms of heat loss thereby reducing heating bills.

6.14 The reason for refusal quotes one adopted local plan policy D1 Sustainable Development which reads as follows,

Planning permission will be granted provided that development proposals:

- a) Respond positively to the site's local context;*
- b) Take all reasonable opportunities, consistent with the nature and scale of the scheme, to:*
 - i. create or enhance public realm;*
 - ii. optimise the potential of the site by incorporating Sustainable Drainage Systems (SuDS);*
 - iii. reduce energy consumption and waste;*
 - iv. retain existing vegetation and propose appropriate new planting;*
 - v. maximise accessibility, legibility and physical and social connectivity both internally and with neighbouring areas;*
 - vi. future proof for changes in technology and lifestyle;*
 - vii. design-out opportunities for crime and anti-social behaviour;*
- and*
- viii. minimise the visual impact of street furniture and parking provision;*
- c) Have regard to the Design SPD, and any other relevant guidance;*
- d) Within Letchworth Garden City have regard to the Letchworth Garden City Design Principles contained in Appendix 5; and*
- e) For residential schemes, meet or exceed the nationally described space standards and optional water efficiency standards.*

6.15 The delegated report does not specifically note which part of policy D1 the cladding contravenes instead they state the following,

"Policy D1 of the NHLP provides support to development which achieves high quality design which enhances the public realm and responds positively to the site and local context taking into consideration in this case, the use of materials."

6.16 The case officer has selected parts of this policy which were favourable to the Council's aim to refuse this retrospective application whilst completely overlooking the more positive elements of the scheme subject to this appeal.

6.17 The Council's approach is to conclude that the proposal does not respond positively to the site and local context. We have explained, at length, in the paragraphs above that the Council have wrongly concluded that there is an established built form character of brick-built buildings, this is a lethargic approach and fails to recognise the prevalent lack of consistency in built form styles, ages and finished materials. At this point it is important to point out that the site subject to this appeal is not located in a conservation area or an area with any discernible built form characteristics or features; to insist on the retention of brick

façade is not acknowledging the needs of the end user or occupants who want to protect the building and reduce heating bills.

6.18 Despite the Council failing to acknowledge the fact that the cladding results in reducing energy consumption and has used technical enhancements in building materials to reduce carbon emissions significantly, at the same time reducing living expenses without having a detrimental impact on the existing building and character of the area.

6.19 The Council are preoccupied with the impact of the cladding and state *“In terms of building itself, it is accepted that there is a variety of different building styles in the immediate vicinity, however traditional brickwork is a prevailing pattern which can be seen to dominate the built form along this particular stretch of Nightingale Road albeit with a few exceptions to this and therefore provides a sense of local character and identity to the area.”*

6.20 It is unclear why the Council feel the need to retain brickwork or why they need to preserve a local character that is in real terms mixed and pretty much undefined. The proposal would not result in any quantifiable harm to the undefined character of the area and to a non-heritage asset. It is also important to add that this area is mixed in terms of use with class e uses prominent in the street scene. The mixture of uses mean that buildings need to adapt and change over time to meet the needs of the commercial business in 2025, this will invariably require changes to buildings which has resulted in any character being dismissed many many years ago. Therefore, the proposal is considered to accord with adopted policy D1.

6.21 The Inspector’s attention is directed to The Former Sailor Boy 95 Woolgrove Road Hitchin, SG4 0AU. The site is now home to a Nisa Local Shop and with a number of flats above the shop. The Image below shows that cladding to buildings in areas of brick-built buildings,



6.22 Planning permission was granted for Eternit Cedral Weatherboard Cladding under Non-Material Amendment 18/00884/NMA. These materials were considered acceptable in this instance and the area has many similarities to the site subject to this appeal. In short, the use of weatherboard cladding was considered acceptable in an area where brick built buildings are largely the dominant built form.

6.23 It is incredibly easy to state why a proposal does not accord with policy but is far more

difficult to state why failure to comply with policy is harmful. Further to the above Paragraph 48 of the NPPF (2025) states,

“Planning law requires that applications for planning permission be determined in accordance with the development plan, **unless material considerations** indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.”

6.24 The material consideration in this case is that the cladding materials in situ do not result in any harm to the mixed character of the area and nor would it result in harm to the host building. It is our opinion that the application has not been assessed with regard to the bespoke circumstances of the site and its surrounds.

6.25 In conclusion for the reasons noted above the proposal would not impact the character negatively nor would it result in a development that is out of scale with the original dwelling. Therefore, the proposal is considered to accord with policy D1 and NPPF 2025.

7 LETTERS OF SUPPORT

7.1 The appellant has provided a letter of support that was signed by 12 occupiers or nearby residents. These are attached under Appendix 1 and Appendix 2 (attached as separate document.)

8 ENFORCEMENT

8.1 The appellant received a Letter Before Action on 21st January 2025 from North Herts Council stating the following,

“The Council’s decision to refuse planning permission indicates that the development is unauthorised and unacceptable. Therefore, it falls to the planning enforcement to take action to resolve this matter in line with government and council policy.”

8.2 The Council’s Planning Compliance Officer has not stated whether for full and thorough expediency test has been undertaken. The local planning authority has remained silent as to whether or not it considers it appropriate or "expedient" to take enforcement action against a breach of planning regulations, meaning whether the severity of the breach warrants formal action based on factors like the **harm** caused to the local area and the **public interest**, rather than automatically taking action against every violation; essentially, it's a judgement call on whether pursuing enforcement is the right course of action considering all relevant details.

8.3 We know the Inspector is not being asked to make a judgement on expediency, we relay the information that an expediency test does not appear to be undertaken as yet as such the serving of a Letter Before Action should not be a material consideration for the Inspector.

9. CONCLUSIONS

9.1 The Council have failed to adequately demonstrate the cladding materials are detrimental to the character of the building and the surrounding character of the area. Unfortunately, the Council have failed to assess the application with regards to on-site circumstances (no established character) and most importantly failed to adequately demonstrate what harm has been generated by the installation of the cladding.

9.2 The Inspector is politely requested to **allow** the appeal as the proposal is compliant with policy D1 of the adopted Local Plan and the NPPF 2025.

Prepared by Matt Brown

Brown Boots Town Planning

brownbootsqt@gmail.com

07508 305 766