

Appeal Decision

Site visit made on 23 August 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/Y0435/C/15/3141814

82 Jersey Road, Wolverton, Milton Keynes MK12 5BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Russell Jones against an enforcement notice issued by Milton Keynes Council.
 - The notice was issued on 1 December 2015.
 - The breach of planning control as alleged in the notice is the replacement of timber sliding sash windows with uPVC double glazed windows.
 - The requirements of the notice are
 - i) Remove the unauthorised uPVC windows in the front elevation of the building on the Land at first floor level and at ground floor level
 - ii) Replace the unauthorised windows with either the original windows, if still existing, or with replica timber sliding sash windows to match the originals exactly.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

Ground (a) appeal and the deemed planning application

Main Issues

2. The main issues in this case are
 - a) whether the works preserve the character or appearance of the Wolverton Conservation Area and
 - b) if any harm is caused to the significance of that designated heritage asset whether it is outweighed by public benefits.

Reasons

Character and appearance

3. The Wolverton Conservation Area was principally developed in the 19th and early 20th Centuries. While it has been the subject of subsequent development over the intervening years, the scale, design, layout and detailing of many buildings still reflect the origins of this industrial suburb with its workers' housing, and contribute to the significance of this heritage asset.
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4. In order to protect the character and appearance of the conservation area from harmful incremental change, it has been subject to an Article 4 Direction that brings under the control of the local planning authority various works, amongst which are alterations to the windows and doors of houses.
5. With its bay, cills, and lintels the Appellant's dwelling displays a certain amount of attractive detailing. Moreover, it sits in a terrace of similar properties and so adds to a strong rhythm in the built form along this side of Jersey Road. Its appearance reflects that of earlier 20th century housing, and so it makes a positive contribution to the surrounding streetscape and the conservation area.
6. Until the works subject of this notice the dwelling also had timber sash windows to its 2-storey bay, being 8 panes over 2 on the front facing windows on each floor and 4 panes over 1 on the windows in the angled sides. In my opinion the design, nature and arrangement of these reflected the age and style of the house, and so they added to the contribution it made to the surroundings. Their removal has therefore had a detrimental effect on the dwelling's historic context, diminishing to some degree the significance of the conservation area.
7. Turning to the impact of what is now in place, while traditional sash windows have a pronounced relief due to the way the upper portion projects forward of the section below, this is not apparent on the front windows currently in place, while the angled panes have no horizontal division at all. Moreover, they are devoid of the detailing and style that was present before, while their thicker frames and larger panes of glass appreciably change their proportions. When these factors are taken with the smooth plastic material used I consider that the windows subject of the notice appear distinctly modern and fail to reflect the historic context of the property or the location. As such, their contribution to the area does not offset the harm resulting from the loss of the windows they replaced.
8. The Appellant offered to stick on glazing beads in a manner that he contended would be proportionately identical to the bars on the old windows. However, I have no details of such works and so I am not in a position to consider them suitable, but to my mind it is probable they would be of a relief and detail that would not adequately reflect what was there before. In any event they would not address my concerns about the material, the absence of pronounced relief, the poor detailing and the thickness of the frames.
9. In coming to this view I accept that, in relation to the overall conservation area, the windows were not a sizeable feature. However, in a conservation area of this type the presence of many small elements of detailing contribute cumulatively to the overall character and appearance, and so the loss of such features, although small in themselves, nonetheless result in a general erosion in the significance of the asset.
10. I have noted the Appellant's survey that shows timber windows are at only 19% of houses in the immediate vicinity of No 82 and at only 37% of houses on Jersey Road as a whole, with some of the remainder being aluminium but the majority being uPVC. I am unaware of the background to the non-timber windows, and am unclear as to how many are now lawful. However, although the uPVC windows have not had so great an effect on the conservation area as to mean its historic significance is no longer worthy of protection, if they have

involved a loss of detailing that contributed to the significance of the conservation area that does not justify a further loss in this case.

11. While the Appellant said he has tried to match the uPVC windows at neighbouring houses that is not a justification for the works, as to my mind windows that reflect the historic significance of the area would not appear discordant even if those around were different. In any event the plastic windows in the vicinity are of a range of styles and designs with no strong pattern discernable. His uPVC front door is recessed and so seeking to match that again cannot be seen as a basis to accept what is now before me.
12. Of the existing timber windows in Jersey Road many were said by the Appellant to be '*not original*'. I am unaware as to the basis for that assertion, and whether he meant they were windows that had been so extensively repaired they could no longer be deemed original, whether they had replaced the originals though were of a similar design, or whether they were of a totally different design to the originals. To my mind though their appearances and styles commonly sympathised with this historic context and so, even if they were '*not original*' that tended not cause harm.
13. He went on to contend that uPVC windows now comprise part of the character of this section of the conservation area. However, a conservation area is, by definition, an area '*of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance*¹. Furthermore, in the *National Planning Policy Framework* (the Framework) one of the core planning principles is the need to conserve heritage assets in a manner appropriate to their significance. It then defines a heritage asset as including an '*area ... identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest*', while the significance of a heritage asset is given as '*the value of a heritage asset to this and future generations because of its heritage interest*².
14. Therefore, while I accept that an assessment has to be made against the state of the conservation area today, it nonetheless concerns weighing whether the works preserve or enhance its historic interest and its heritage significance. Such an approach is not seeking to '*turn back the clock*' as suggested by the Appellant and require the re-instatement of elements that have long-since been lost, but rather to preserve the character and appearance of the area's historic interest from further harm.
15. The character of the conservation area is derived from a composite of many factors of which windows are just one. As such, the loss of windows that contribute to the historic nature of the surroundings, even if non-traditional windows are otherwise common, could still erode the historic interest and heritage significance of the area and so still be harmful.
16. Specific reference too was made to an appeal decision that allowed the retention of uPVC windows at 128 Church Street³. In that case though the windows very much retained the profile and appearance commonly found with a traditional timber sash and maintained a visual continuity with what had been

¹ Section 69(1)(a) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*

² The Framework Annex 2

³ Appeal Ref APP/Y0435/C/15/3008293 dated 18 August 2015.

present. To my mind these are decisive differences between what is now before me and what was considered in that case.

17. Accordingly I find that harm, albeit less than substantial, has been caused to the significance of the conservation area as a result of the loss of the previous windows and the impact of the new ones that have been installed.

Public benefits to outweigh harm

18. Paragraph 132 of the Framework says great weight should be given to the conservation of a designated heritage asset, and any harm (presumably whether substantial or less than substantial) requires clear and convincing justification. In paragraph 134 it goes on to state that where a development would lead to less than substantial harm to the significance of such an asset that harm should be weighed against the development's public benefits.
19. In this regard the Appellant said that the previous windows were drafty, rotten and insecure, and they provide poor ventilation and noise insulation. He also stated they were beyond repair. He contended as well that refusing permission would be denying him his basic human rights to a warm, safe and quiet home.
20. I accept that the replacement of the windows would have been 'permitted development' had the Article 4 Direction not been in place, but that of course is the nature of such Directions. His position though seems to be based on the view that the only options are to retain the previous windows in their apparently rotten state or to have the windows now in place. With regard to the former point, there is no requirement to keep the original windows in a conservation area. Rather, the windows should preserve or enhance the area's character or appearance. A certain amount of repair can be undertaken and this could include addressing their efficiency with regard to noise, security and drafts, while new timber windows of a suitable style could well prove acceptable. In this case no evidence of the condition of the previous windows was submitted and so I have nothing to show their condition meant their replacement was inevitable and their repair was unduly expensive.
21. In any event, even if the Appellant wanted to opt for uPVC, noting the appeal decision at 128 Church Street it is possible there may be more sympathetic designs than those now before me that would be considered acceptable.
22. Given these other options, I am therefore of the view that the effect of upholding the notice on the Appellant's human rights does not lead me to different findings. Moreover, such a decision need not be standing in the way of securing the optimum viable use for the property.
23. While the Appellant said there was local support for the scheme, that cannot be seen to outweigh the adverse impact of the works I have identified.
24. Accordingly, even if taken together these matters do not constitute a public benefit to outweigh the harm.

Other matters

25. The Appellant said he was misled by the Local Authority Search on his property in relation to the conservation area status. Even if that was the case, to my mind it should be taken up separately with the Council and does not offer a basis for me to consider enforcement action is not possible in this instance.

26. He has questioned whether the Article 4 Direction was subject to proper consultation and confirmation, but I have no sound basis to challenge its validity. He was also of the opinion that the Article 4 Direction was contrary to the views of residents but that is not a matter for me to address.
27. Finally, he considered there were many similar unauthorised works in the conservation area that have not been subject to enforcement. However, I am unaware as to why that is, and it is open for the Council to pursue whatever action it considers to be possible and expedient.

Conclusions

28. Accordingly I conclude that the works fail to preserve the character or appearance of the Wolverton Conservation Area, causing less than substantial harm to the significance of this designated heritage asset. In the absence of any public benefits to outweigh this harm I conclude the works conflict with Policy HE6 in the *Milton Keynes Local Plan* and the Framework. Therefore the appeal under ground (a) is dismissed and the application deemed to have been made under section 177(5) of the Act as amended is refused.

Ground (f) appeal

29. An appeal under ground (f) contends that the steps required by a notice exceed what is necessary to remedy the breach of planning control or remedy any injury to amenity, whichever the case may be.
30. The Appellant's ground (f) appeals rest on the possibility of sticking glazing bars onto the glass. However, they would not remedy the breach of planning control. Moreover, as stated above I have no details of those works and consider it likely they would not adequately remedy any injury to amenity.
31. Therefore, the appeal under ground (f) fails.

J P Sargent

INSPECTOR