
Appeal Decision

Site visit made on 7 September 2016

by John Whalley

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

Decision date: 21 September 2016

Appeal ref: APP/Q9495/C/16/3142746

Land and building at Applegarth Villa, College Road, Windermere LA23 1BU

- The appeal was made by Mrs S J Mumford under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Lake District National Park Authority.
- The notice was issued on 3 December 2015.
- The breach of planning control alleged in the notice was: Without planning permission, operational development consisting of the insertion of replacement uPVC windows which have materially affected the external appearance of the building.
- The requirement of the notice is to permanently remove from the land the uPVC windows and frames within the bay window to the east elevation and single first floor uPVC window to the south elevation of the building, as outlined in red on the photographs attached to the enforcement notice.
- The period for compliance with the requirement is four months.
- The appeal was made on grounds (a), (c), (f) and (g) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is varied and upheld

Appeal development

1. The appeal property, Applegarth Villa, is a 4 storey Victorian slate-stone built hipped roofed hotel in College Road, Windermere. It is within the Windermere Conservation Area.
2. The appeal concerns uPVC windows and frames that have replaced traditional timber framed windows within the bay window to the road facing east elevation and a single first floor uPVC window to the south elevation of the building. There are 2 large stained glass windows in the eastern elevation, mixed with the 5 narrow appeal uPVC windows in the first floor bay window and several, older, uPVC windows to other elevations.

The appeal on ground (c)

3. An appeal on ground (c) asserts that there has not been a breach of planning control. The burden of proof in an enforcement appeal on a legal ground such as ground (c) lies with the Appellant. The test is the balance of probabilities to show there has been no breach. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position.

4. The Appellant, Mrs Mumford, said the new uPVC windows had not materially affected the external appearance of the building. Therefore the insertion of the windows did not amount to development. They did not require planning permission. That assertion is based upon s.55(2)(a)(ii) of the Act. That says operations not materially affecting the external appearance of the building shall not be taken for the purposes of the Act to involve development of the land. Mrs Mumford emphasised use of the word "building" in the legislation. The works had to materially affect the appearance of the building as a whole to be seen to be development. It was not just the works themselves that had to produce a materially different appearance for development to be involved.
5. I consider that the most substantial change to the windows in Applegarth Villa was the replacement of the windows in the first floor bay window that faces east on to College Road. That bay, directly above the entrance porch, is a fairly dominant feature in this attractive building. A comparison of the present fenestration and that shown in photographs of Applegarth Villa taken in 2014 show significant differences. In particular, the mullions above the transoms have been lost. Also, I understand, the stained glass to the top casements has not been replaced or duplicated. In addition, all 5 windows constructed with uPVC frames are not much recessed and have obscure glazing. Those alterations are sufficient, in my view, to have materially affected the appearance of Applegarth Villa.
6. In isolation from the bay window changes, the replacement south facing first floor uPVC window has had a lesser effect on the appearance of the Applegarth Villa building as a whole. However, taken as part of the works that include the 5 windows that were replaced in the first floor bay, it has resulted in a material change to the appearance of Applegarth Villa. It is reasonable to conclude that where any part of the work required planning permission, the whole of the work is in breach of planning control where such permission is not granted. The appeal on ground (c) fails.

The appeal on ground (a)

7. The s.174 enforcement notice appeal on ground (a) asks that planning permission be granted on the development described in the notice's allegation. The main issue to be considered here relates to the effect of the uPVC windows on the appearance of the street scene.
8. There is a general duty in respect of conservation areas in the exercise of planning functions in s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
9. The National Planning Policy Framework, (NPPF), requires, amongst others, that local planning authorities assess the significance of any heritage assets affected, including any contribution made by their setting. In determining planning applications, local planning authorities should take account of, amongst others, the desirability of new development making a positive contribution to local character and distinctiveness, (NPPF, para. 131).
10. In setting out their objections to the retention of the appeal windows, the Authority acknowledged that several other windows in Applegarth Villa had been replaced with uPVC units more than 4 years ago and were now immune from enforcement action. In my view, those windows have had a deleterious effect

on the appearance of the Applegarth Villa building and have failed to preserve or enhance the character or appearance of this part of the Windermere Conservation Area. That harm to the main purposes of designating conservation area land and its buildings has been increased by the installation of the appeal uPVC windows. The new windows have an incongruously modern appearance, further eroding the look of the public façades of Applegarth Villa, a building recognised in the Windermere Conservation Area Appraisal and Management Plan as being of special character, (a significant unlisted building). The existence of the now immune uPVC windows in Applegarth Villa is not good reason to accept further erosion of this attractive historic building's appearance.

11. This appeal does not have such similar considerations as those in the case of *Waveney DC v SSLGR All England [2002] (D) 5/11/2002*. There, the Inspector said changes had already taken place within many other buildings in the surrounding area to the extent that uPVC windows had become common place and part of the character of the conservation area. However, in the present instance, nearby buildings, particularly those opposite Applegarth Villa, have almost all retained their original timber windows. Plastic windows have not become characteristic of the area. Fenestration close to Applegarth Villa remains original and appropriate to its historic appearance, its character worthy of continued safeguarding.
12. The s.174 appeal on ground (a) fails. Planning permission is not granted in respect the deemed application to retain the uPVC windows.

The appeal on ground (f)

13. Mrs Mumford said the complaint about loss of glazing pattern in the new windows could be dealt with by adding mullions to their top casements.
14. The minor improvement suggested would be tantamount to an undesirable grant of a planning permission to retain the uPVC windows. Remedy of the breach of planning control should see a return to the previous design and form of windows. Otherwise, there would be a continuing breach. Inexplicably, however, there is no requirement in the enforcement notice as to replacement windows. Nevertheless, I cannot add a new requirement that might be more onerous than that set out in the notice. The appeal on ground (f) fails.

The appeal on ground (g)

15. It was said whilst the windows could be removed within 4 month's notice period, more time would be needed to agree the design of replacements and to get the work done. To help in that matter, I increase the period for compliance to 8 months. To that extent, the appeal on ground (g) succeeds.

FORMAL DECISION

16. The enforcement notice is varied by the deletion of the words "Four months" in line 2 of para. 6 on page 2 of the notice and the substitution therefor of the words: "Eight months". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR