

Appeal Decisions

Site visit made on 15 November 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 15 December 2016

Appeals A & B: APP/T1410/C/16/3149447 & APP/T1410/C/16/3149448 23-25 Royal Parade, Eastbourne, East Sussex BN22 7AN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Heidi Louise Cowderoy (3149447, Appeal A) and Mr Mark Anthony Cowderoy (3149448, Appeal B) against an enforcement notice issued by Eastbourne Borough Council.
- The enforcement notice, numbered SR/118495 & 150965, was issued by the Council on 22 March 2016.
- The breach of planning control as alleged in the notice is: 'Without planning permission, the replacement of timber framed sash windows to the front (facing Royal Parade) and side (facing St Aubyns Road) and rear elevations with UPVC framed windows and doors; and the replacement of the glazed timber framed conservatory on the front elevation of the building with UPVC framed windows'.
- The requirements of the notice are set out in the Schedule attached to these decisions.
- The periods for compliance with the requirements are one year for those relating to lower ground and ground floor level, two years for those relating to first and second floor levels and three years for those relating to third floor level.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the initial appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered in that case. Appeal B is therefore proceeding on ground (g) only.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections.

Application for costs

1. An application for costs was made by Ms Heidi Louise Cowderoy against Eastbourne Borough Council in relation to Appeal A. This application is the subject of a separate decision.

The enforcement notice

2. The alleged breach of planning control refers to the replacement of a glazed timber framed conservatory on the front elevation with UPVC framed windows. However, it is apparent from my site visit and the photographs before me that the original conservatory plinth below cill level remains intact and that the UPVC windows in question form only part of a reconstituted conservatory. Moreover, the requirements specify the replacement of the UPVC windows set within the existing conservatory with a full timber framed conservatory, which is an impossibility.
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3. These discrepancies are best resolved by amending the relevant part of allegation to refer to UPVC windows 'within the conservatory' and adjusting the relevant requirement so as to specify their replacement with 'timber framed fenestration' rather than a 'timber framed conservatory'. I will correct the notice accordingly at sections 3 and 5 and am satisfied that no injustice to any party is so caused.
4. The period during which the Council understands the targeted works to have taken place has not been specified in the notice. This would usually be included in the 'reasons for issuing' and would make reference to the relevant time bar on enforcement action set out in section 171B of the 1990 Act as amended, thus assisting any prospective Appellant in deciding whether there is cause to appeal against the notice on ground (d). The omission does not render the notice a nullity in this case as a copy of section 171B has been attached thereto, thereby providing those served with the necessary information concerning immunity by reason of the passage of time.
5. The attachment is incomplete as a copy of section 171BA, which addresses time limits in cases involving concealment, has not been included. However, there is no suggestion within the body of the notice that there has been any attempt to conceal the breach in question. It is thus reasonable to assume that the relevant time bar is four years, pursuant to section 171B(1). In any event, there is no dispute that the works in question were carried out during 2015. Accordingly, the notice as issued has effect in law. Nonetheless, in the interests of clarity I will correct it so as to refer to the relevant time bar in section 4. Again, no injustice arises as a result.
6. The Council has requested by means of a letter dated 12 October 2016 that, in the event that it is upheld on appeal, the notice be varied to require the replacement of six additional windows not referred to in the original allegation, it having become aware of additional alterations to the building since the notice was issued. Reference is also made in an earlier Council submission to the post-notice installation of UPVC front doors at the property and the erection of an outbuilding to the rear.
7. However, the notice relates to a particular point in time (22 March 2016) and cannot by law be broadened in scope to target additional works that have been undertaken after that date. Moreover, irrespective of when the works in question took place, were an Inspector to broaden the scope of a notice so as to embrace additional matters not initially referred to, the Appellants would have been denied the opportunity to address those matters at appeal. This would clearly be unjust and thus outside the Inspector's remit as set out in section 176(1) of the 1990 Act as amended.
8. I therefore decline the Council's request. Should it wish to pursue enforcement action against the additional replacement windows, doors and outbuilding it will need to issue an additional notice.

The appeal on ground (a) – Appeal A only

Main issue

9. The main issue in determining the appeal on ground (a) is whether the UPVC windows and doors preserve or enhance the character or appearance of the

host property and the Town Centre & Seafront Conservation Area in which it is located.

Planning policy

10. The development plan includes the Eastbourne Core Strategy Local Plan 2013 (CS) and certain policies of the Eastbourne Borough Plan 2001-2011 (BP), adopted in 2003, which have been saved by a Direction made by the Secretary of State. Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it.
11. I find no significant conflict between the Framework and the development plan policies cited in this case. Accordingly, I will give them full weight insofar as they are relevant to the appeal scheme. Reference is also made to the Council's *Eastbourne Townscape Guide* Supplementary Planning Guidance (SPG), published in 2004.

Reasoning

12. The appeal property is a large five storey detached building dating from the 19th century. Originally three terraced dwellings, it is now occupied as a single unit by the East Beach Hotel and is designated as a Building of Local Interest¹ by the Council's SPG. It occupies a very prominent seafront location on the corner of Royal Parade and St Aubyn's Road, set within a long run of predominantly terraced development of similar usage, vintage and architectural style that extends to the north-east and south-west.
13. This stretch of seafront is one of the most prestigious and historically notable built-up frontages in the conservation area, within which architectural detailing and traditional materials play an important part in defining local heritage. In this context the appeal property stands out in terms of its historic worth by reason of original features that are absent from most of its neighbours, including decorative balcony railings and intricate canopy pelmets above some of the ground and first floor bay windows. It also falls within the Seaside Neighbourhood Area (SNA), for which CS Policy C3 sets out a vision promoted by, amongst other things, protecting the historic environment.
14. Photographs supplied by the Council demonstrate that, until recently, the property's most notable elevations (facing Royal Parade and St Aubyn's Road) retained their traditional timber fenestration, featuring single glazed sash windows and balcony doors of complementary design. However, many of these have now been replaced by the unauthorised UPVC installations targeted by the enforcement notice. The timber-framed fenestration of a prominent conservatory spanning the main hotel façade, said to date from the 1950s, has also been replaced in UPVC.
15. There are examples of UPVC fenestration in the seafront façades of other 19th century buildings in the immediate vicinity. However, timber continues to predominate within the prestigious frontage between the junctions of Royal Parade with Marine Road and Cambridge Road, to such an extent that UPVC

¹ The Appellants query the appeal property's worth as a Building of Local Interest. However, that status is a matter of fact and, in the absence of any cogent argument as to why it should not apply I must accept it at face value. The glossary at Annex 2 to the Framework makes it clear that for the purposes of national policy the term 'heritage asset' includes local listings made by the local planning authority.

cannot reasonably be said to be characteristic of the locality or to subsume the alterations that have taken place at the East Beach Hotel. Indeed, the prevalence of timber helps to preserve an important vestige of the original street scene and the wider locality's architectural heritage and consolidates a pleasing sense of traditional uniformity. This in turn makes an important contribution to the overall character and appearance of the conservation area.

16. Moreover, where it has been used in the locality, modern fenestration tends to be relatively delicate and thus not dissimilar in appearance to its historic counterparts. In comparison, the replacement installations at the East Beach Hotel lack elegance. Their framing is heavy and bulky, with a flat smooth finish that fails to replicate the texture of painted wood. The sections of the surrounds and meeting rails are thicker and there is a paucity of detailing. The windows and doors therefore appear clumsy in comparison with their timber counterparts and some of the modern alterations to neighbouring properties and sit uncomfortably within otherwise well-preserved Victorian front elevations. Their incongruity is exacerbated by the fact that at least some of the windows can be opened on a horizontal pivot.
17. I am mindful that the much-altered conservatory on the front of the property was, by reason of its more recent origins, of lesser worth in historic terms than most of the property's external windows and doors. I have also noted that prior to the alterations targeted by the enforcement notice its timber framing was masked by the application of plastic strips². However, even then the relatively lightweight form of the structure remained readily apparent and complemented the traditional fenestration in the vicinity to a certain degree, rather than detracting from it in the manner of the heavy-framed installation now in place. Whilst there are a number of unsightly conservatories on the front elevations of other properties in the vicinity, these are not so numerous as to be characteristic of the area and, in any event, are unworthy of replication.
18. During the course of my visit I noted that replacement UPVC windows have also been installed in the rear elevation, facing Latimer Road, which have not been targeted by the Council. However, although prominent, this elevation is far less prestigious than those facing Royal Parade and St Aubyn's Road and reads in the street scene in juxtaposition with properties of less historic significance and largely outside the conservation area. It does not therefore mitigate the extent to which the subject alterations detract from the historic environment to any significant degree.
19. The Appellants point out that the relevant planning policies do not specifically preclude the use of UPVC. However, I give little credence to the notion that this should be taken as an indication that the use of modern fenestration of this kind is acceptable in principle in a heritage setting. For the reasons set out above I conclude that all of the replacement UPVC fenestration targeted by the enforcement notice fails to preserve or enhance the character or appearance of the appeal property or the conservation area. Its retention would therefore be contrary to CS Policies B2, D10 and D10A, saved BP Policies

² In their initial grounds of appeal the Appellants state explicitly that plastic strips were applied to the timber frame of the original conservatory but retract this in a later submission. However, I am satisfied that a photograph taken when the original conservatory fenestration was being removed, included at Appendix 9 to the Council's statement, confirm that the Appellants' initial assertion was correct. No appeal on ground (f) has been lodged to the effect that the provision of replacement timber fenestration to the conservatory exceeds what is required to remedy the breach of planning control. I therefore find no reason to pursue that question further.

UHT1³, UHT4, UHT15 and UHT18, the Council's SPG and the relevant provisions of the Framework.

Other matters

20. I have considered all the other matters raised. I acknowledge that for the purposes of applying national policy the subject alterations amount to 'less than substantial harm to the significance of a designated heritage asset', namely the conservation area and Building of Local Interest. However, that in itself does not signify that such harm is acceptable. Rather, paragraph 134 of the Framework advises that in such circumstances it should be weighed against the public benefits of the proposal. In this regard the Appellants attach much importance to the perceived advantages of UPVC in upgrading guest accommodation to meet the present day aspirations of visitors and thus shore up an ailing hotel market and tourist industry, in turn helping to safeguard the local economy in the public interest.
21. The long term economic decline of UK seaside resorts is well-documented and I find no reason to refute the Appellants' more localised account of the financial challenges that they and other hotel operators in Eastbourne face. Rising costs associated with staff, utilities and other overheads, plus increasingly vigorous competition for a shrinking customer market, are difficulties with which many such businesses now have to contend. Nor do I question my colleague's finding in determining an appeal relating to Courtlands Hotel⁴ that the Eastbourne tourist accommodation sector may well be 'dominated' by or 'saturated' with lower standard hotels.
22. I take note of the less than complimentary comments received from some of their guests and the level of support for the appeals forthcoming from others working in the industry, visitors, Eastbourne residents and the local Member of Parliament. In particular, the account of long term losses at the East Beach Hotel over a ten year period paints a depressing picture. However, I am also mindful that the financial circumstances of individual businesses and their owners will seldom outweigh other material planning considerations.
23. In any event, I am not persuaded that UPVC is the solution to such problems. I accept that it can sometimes be advantageous in comparison with painted timber in terms of insulation and energy conservation. Nonetheless, there is no reason why well-constructed wooden windows and doors should not be weather resistant and durable if properly treated and subject to a regular maintenance programme, even in a seafront location. This being so I give little credence to the notion that glass falling from rotting frames is an unavoidable hazard.
24. Secondary glazing applied to timber fenestration can also often assist in maintaining adequate heat and noise insulation in a manner which complies with rather than undermines aesthetic objectives whilst still meeting the aspirations of hotel management and guests. I note that the superior security afforded by modern UPVC fenestration has prompted the Appellants to remove unsightly external grilles from the hotel's lower ground floor windows.

³ The Appellants contend that saved BP Policy UHT1 is not applicable as it relates to the design of 'new development'. However, the wording of the policy in fact refers to 'all development proposals' and I am mindful that external alterations and additions to an existing building constitute 'development' as defined by section 55 of the 1990 Act as amended.

⁴ Appeal decision APP/T1410/W/15/3005155, dated 27 July 2015.

However, adequate security could be ensured by other, less aesthetically harmful means.

25. I appreciate that CS Key Spatial Objective 5 encourages the retention of existing holiday accommodation and supports its upgrading and that other policies, both national and local, aim to assist the tourist industry, including CS Policy D3 and saved BP Policies TO1, TO2 and TO4⁵. Such objectives also form part of the Council's 'vision' for the SNA set out in CS Policy C3, which is promoted by, amongst other things, 'defending existing tourist accommodation from losses and inappropriate development'. Moreover, the Appellants are correct in pointing out that some policies and guidance aimed at safeguarding the historic environment include the caveat that this will 'normally' be a primary aim.
26. Nonetheless, nothing in the Framework or development plan suggests that measures that might aid the local hotel market or tourism generally should be applied at the expense of the town's architectural heritage. Indeed, saved BP Policy TO4 makes it clear that alterations which upgrade and improve the quality of accommodation will be granted planning permission subject to the visual amenity considerations set out in Policy UHT4, with which I have already found there to be non-compliance. In any event, for the reasons set out above these objectives, although diverse, are not necessarily in conflict. I do however consider that the detriment caused to the appearance of this building by the subject alterations work against tourism objectives by diluting the attractiveness and historic worth of both the hotel and the wider seafront.
27. I am not aware of the full circumstances that have led to UPVC fenestration being installed in other seafront properties in the vicinity. I do not question the Eastbourne Hospitality Association's contention that some examples have not been recorded in the Council's survey of seafront properties and have no way of knowing why enforcement action has been pursued in this case but not in others. However, even if these were known to me, each scheme must still be dealt with primarily on its own merits.
28. This principle applies to the two residential properties in South Cliff, at the western end of the conservation area, that have been drawn to my attention where UPVC windows were allowed on appeal⁶. Moreover, both exhibit modern fenestration far lighter in frame and moulding than the installed at the Appellants' hotel, such that it is virtually indistinguishable from painted timber. They also occupy a fringe conservation area location far less important and prestigious than Royal Parade.
29. The Appellants suggest that the Council has not applied correctly the presumption in favour of sustainable development inherent in national policy, suggesting that, in that context, 'the economy is key'. However, as paragraph 7 of the Framework makes clear, the economic dimension of

⁵ The Appellants appear to suggest that as some of these tourism policies were adopted 13 years ago they are now less than fit for purpose, the local tourism industry having deteriorated markedly since that time. However, in the absence of any cogent evidence to the contrary I am satisfied that they remain sufficiently stringent to be applied effectively in the context of present day circumstances, there being nothing in current national policy or guidance endorsing local policies that seek to prioritise tourism over safeguarding the historic environment, whatever the circumstances.

⁶ Appeal decisions APP/T1410/A/12/2175277, dated 17 October 2012, and APP/T1410/A/14/2211151, dated 24 July 2014. The Appellants have also made reference to planning permissions granted for UPVC windows at Ayra Court and the Langham Hotel. However, although both addresses are listed in the Council's 'survey of relevant seafront properties', details of the decisions or schemes in question have not been supplied.

sustainable development is but one of three roles that the planning system must perform. Considering all three in the round, I find that the environmental role is not fulfilled in this case and that, accordingly, the appeal development is not sustainable.

30. I have taken into account the considerable costs associated with the works that have taken place and the implication that being obliged to rectify matters might lead to the sale and/or closure of the hotel. However, the likelihood of that unfortunate scenario coming to fruition has not been demonstrated by means of cogent financial evidence. Moreover, investment in such extensive and expensive works without first obtaining the necessary authority inevitably carries with it a high element of risk. I am not persuaded that the hotel could not fair well in terms of upkeep and profitability under careful management.
31. Nonetheless, in this regard I am mindful that Article 8 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 affords everyone the right to respect for their private and family life and home. On the evidence before me, it seems that the hotel may be the Appellants' sole place of residence. This being so, loss of their home would inevitably interfere with their Article 8 rights. Nonetheless, any interference must be balanced against the public interest and, for the reasons I have already explained, I find the latter to be best served by upholding planning policy to protect the historic environment.
32. This is particularly so given that means of refurbishment and upgrading the appeal property in a manner that would meet the aspirations of visitors other than the use of UPVC are available. Moreover, there is nothing before me to suggest that the Appellants would lack sufficient resources to enable them to secure accommodation elsewhere. Consequently, I am satisfied that a refusal to grant planning permission on the ground (a) appeal would be proportionate in the terms of the 1998 Act and would not lead to an unacceptable violation of the Appellants' Human Rights.
33. I have noted the dissatisfaction expressed by the Appellants and others regarding the manner in which an application for planning permission⁷ for some of the appeal development and the subsequent enforcement process have been handled by the Council's officers and Planning Committee, including allegations of inconsistency and discrimination. However, such concerns are not within my remit to address in the context of determining this appeal and fall to be pursued if necessary by other means⁸. Therefore, neither these nor any other matters are of such significance as to outweigh the considerations that have led to my conclusion on the main issue. Accordingly, the appeal on ground (a) fails.

The appeals on ground (g) – Appeals A & B

34. In appealing against the enforcement notice on ground (g) the Appellants must demonstrate that the periods for compliance specified therein fall short of what should reasonably be allowed. In this regard they draw attention to their own financial circumstances and the heavy costs of reinstalling timber fenestration,

⁷ Planning application ref no PC/150965, refused by the Council on 22 March 2016.

⁸ I am however able to address some of these concerns in determining Ms Cowderoy's application for an award of costs, which is subject to a separate decision.

asserting that an extended period of six years would be necessary to undertake all the work required whilst still safeguarding the business.

35. However, neither the estimated costs nor the claimed vulnerability of the business are properly substantiated by cogent evidence such as bank statements and quotes for the necessary works. Moreover, I find that the phased compliance regime already presented by the notice is already very generous and clearly formulated to guard against financial hardship to as great an extent as is reasonably possible.
36. Indeed, the 12 month period allowed for works at lower ground and ground floor level is the maximum that would usually be deemed appropriate for works on this scale, whilst the three year period applied to works at third floor level is more akin to an unconditional grant of temporary planning permission. This in itself already strikes a more than reasonable balance between the needs of an ailing business and the importance of safeguarding the historic environment.
37. I conclude in the absence of substantiated evidence to the contrary that the periods for compliance specified in the notice as issued are not too short. The appeals on ground (g) therefore fail. It remains within the Council's power to further extend the compliance periods under section 173A(1)(b) of the 1990 Act as amended in the event that this proves to be necessary and can be properly justified.

Conclusion

38. For the reasons given above I conclude that the appeals should not succeed. I will uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal decisions

39. It is directed that the enforcement notice be corrected by:
- (i) in section 3, the deletion of the words 'glazed timber framed' and the substitution therefor of the words 'timber framed fenestration within the';
 - (ii) at the beginning of section 4, immediately below the heading, the insertion of the words 'It appears to the Council that the above breach of planning control has occurred within the last four years.'; and
 - (iii) in paragraph ii) below the heading '**LOWER GROUND AND GROUND FLOOR LEVEL**' in section 5, the deletion of the words 'on the ground floor' and the substitution therefor of the words 'in the conservatory' and the deletion of the words 'a timber framed conservatory' and the substitution therefor of the words 'timber framed fenestration'.
40. Subject to these corrections, the appeals are 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 1990 Act as amended.

Alan Woolnough

INSPECTOR

SCHEDULE

The requirements of the enforcement notice as issued are as follows:

LOWER GROUND AND GROUND FLOOR LEVEL

- i) Replace the UPVC windows and doors that have been installed and identified on Photographs 1, 2, 3 and 4 (Windows number W26, W27, W28, W29, W30, W31, W44, W45 and W46) with white painted timber framed sliding sash windows and doors as previously existed on the building and identified on Photographs 5, 6, 7, 8, 9 and 10 (Windows numbered G26, G27, G28, G29, G30, G31, G44, G45 and G46). In terms of the proportions of the frames, glazing bar detail and their detailed design the replacement sash windows should replicate those that were previously installed at the premises. For the avoidance of doubt, the type of each replacement window or door shall be that set out in table 1.
- ii) Replace the UPVC windows installed on the ground floor at the front of the property at ground floor level as identified on Photographs 3 and 4 (marked C1 and C2) with a timber framed conservatory with similar proportions and frame dimensions as previously existed and identified on photos 9 and 10 and marked CG1 and CG2.

FIRST AND SECOND FLOOR LEVEL

- i) Replace the UPVC windows and doors that have been installed and identified on Photographs 1, 2, 3 and 4 (Windows number W19, W20, W21, W22, W23, W24, W25, W32, W33, W34, W35, W36, W37, W38, W39, W40, W41, W43) with white painted timber framed sliding sash windows and doors as previously existed on the building and identified on Photographs 5, 6, 7, 8, 9 and 10 (Windows numbered G19, G20, G21, G22, G23, G24, G25, G32, G33, G34, G35, G36, G37, G38, G39, G40, G41, G43). In terms of the proportions of the frames, glazing bar detail and their detailed design the replacement sash windows should replicate those that were previously installed at the premises. For the avoidance of doubt, the type of each replacement window or door shall be that set out in table 1.

THIRD FLOOR LEVEL

- i) Replace the UPVC windows and doors that have been installed and identified on Photographs 1, 2, 3 and 4 (Windows numbered W1, W2, W3, W4, W5, W6, W7, W8, W9, W10, W11, W12, W13, W14, W15, W16, W17, W18, W42) with white painted timber framed sliding sash windows and doors as previously existed on the building and identified on Photographs 5, 6, 7, 8, 9 and 10 (Windows numbered G1, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G16, G17, G18, G42). In terms of the proportions of the frames, glazing bar detail and their detailed design the replacement sash windows should replicate those that were previously installed at the premises. For the avoidance of doubt, the type of each replacement window or door shall be that set out in table 1.