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## Appeal Decisions

Site visit made on 28 November 2016

**by Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

**Decision date: 13 January 2017**

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### **Appeal A: APP/X0360/C/16/3153386**

#### **Flat 1, Acorn House, 61 Peach Street, Wokingham, RG40 1XP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Christine Ann Meyer against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, Ref. 161975 & RFS/2104/00385, was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the material alteration to the appearance of the building by the installation of replacement uPVC windows (annotated 8, 9 and 10 on Photograph 1 attached to this notice)".
- The requirements of the notice are:
  - 1] Remove the unauthorised uPVC windows in the front elevation annotated 8, 9 and 10 on photograph 1 attached to this notice.
  - 2] Install white aluminium casement windows (in positions 8, 9 and 10) to match the windows in photograph 2.
  - 3] Remove all resultant debris and paraphernalia from the Land as a result of the above requirements.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal B: APP/X0360/C/16/3153381**

#### **Flat 2, Acorn House, 61 Peach Street, Wokingham, RG40 1XP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Christine Ann Meyer against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, Ref. 161975 & RFS/2104/00385, was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the material alteration to the appearance of the building by the installation of replacement uPVC doors (annotated 3 and 4 on Photograph 1 attached to this notice)".
- The requirements of the notice are:
  - 1] Remove the unauthorised uPVC doors in the front elevation annotated 3 and 4 on photograph 1 attached to this notice.
  - 2] Install timber folding doors finished dark brown (in positions 3 and 4) to match the doors in photograph 2.
  - 3] Remove all resultant debris and paraphernalia from the Land as a result of the above requirements.
- The period for compliance with the requirements is three months after the notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### **Appeal C: APP/X0360/C/16/3153383**

#### **Flat 3, Acorn House, 61 Peach Street, Wokingham, RG40 1XP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Christine Ann Meyer against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, Ref. 161975 & RFS/2104/00385, was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is: "Without planning permission the material alteration to the appearance of the building by the installation of replacement uPVC windows (annotated 5, 6 and 7 on Photograph 1 attached to this notice)".
- The requirements of the notice are:
  - 1] Remove the unauthorised uPVC windows in the front elevation annotated 5, 6 and 7 on photograph 1 attached to this notice.
  - 2] Install white aluminium casement windows (in positions 5, 6 and 7) to match the windows in photograph 2.
  - 3] Remove all resultant debris and paraphernalia from the Land as a result of the above requirements.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal D: APP/X0360/C/16/3153379**

#### **Flat 4, Acorn House, 61 Peach Street, Wokingham, RG40 1XP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Christine Ann Meyer against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, Ref. 161975 & RFS/2104/00385, was issued on 31 May 2016.
- The breach of planning control as alleged in the notice is: "Without planning permission the material alteration to the appearance of the building by the installation of replacement uPVC windows (annotated 1 and 2 on Photograph 1 attached to this notice)".
- The requirements of the notice are:
  - 1] Remove the unauthorised uPVC windows in the front elevation annotated 1 and 2 on photograph 1 attached to this notice.
  - 2] Install white aluminium sash windows (in positions 1 and 2) to match the windows in photograph 2.
  - 3] Remove all resultant debris and paraphernalia from the Land as a result of the above requirements.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### **Application for costs**

1. An application for costs was made by Wokingham Borough Council against the appellant. This application is the subject of a separate Decision.

### **Ground (c)**

2. The argument advanced for the appellant on this ground with all four appeals is that the new windows and doors have not materially affected the external appearance of the building being similar in colour, glazing pattern and bar design to the windows and doors replaced. The Council contest this claim.
3. The relevant legislative framework can be found in s55 of the Act. S55(1) defines development as including building operations which would include the fitting of the new windows and doors that have taken place being operations normally undertaken by a builder. S55(2)(ii) makes clear that building operations which "do not materially affect the external appearance of the building" shall not be taken for the purposes of the Act to involve the development of land. I would add for the sake of completeness that by virtue of Article 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 a "dwellinghouse", as so defined by that article, does not include a building containing one or more flats or a flat contained within such a building. As a consequence the "permitted development" rights conveyed by Class A of Part 1 of Schedule 2 of that Order do not apply. So the legal test to be applied and considered with the alleged breaches is whether they materially affect the external appearance of the building.
4. All the windows and doors in question are located within the front elevation facing onto Peach Street, a principal road within the town centre one-way system. They are therefore in clear public view and although the doors to Flat 2 and the windows to Flat 4 are in a façade that is set back from the pavement behind a forecourt this is modest and all the fenestration in question is still readily visible to passers-by.
5. Taking the new windows in Flats 1 and 3 first, the 3 new white uPVC coated window modules that have been installed are broken down into 2 elements of a casement style which may be openable. The agent has provided a photograph of one of the white aluminium window modules that was replaced and the Council's Photograph 2 attached to the relevant notices shows all 6 of the former windows in situ. The agent accepts that the new windows do not match the contours or texture of the original aluminium frames but argues that they replicate the size, proportion, colour and basic pattern of what previously existed. I accept that the number and arrangement of individual panes and glazing pattern is either the same or very similar. However, the frames of the old windows were narrower and the openable elements different from the windows that now exist. I consider that this constitutes a material difference which has affected the external appearance of the building.
6. As regards Flat 4, it appears from the photographs supplied by the parties that the 2 old window modules that have been replaced were aluminium-framed sliding sash windows recessed into the opening giving a typical articulated profile for this type of window. The new windows differ in a number of respects. The frames are thicker with less of a recess, the glazing pattern has changed by the addition of two additional rows creating a more vertical

emphasis with smaller panes of glass and the openable elements now appear to be two top hung elements in the upper half of each module which pivot outwards rather than 2 overlapping sliding elements forming the whole. These differences are significant and again lead me to conclude that the new windows have resulted in development which has materially affected the external appearance of the building.

7. In respect of the two modules installed to Flat 2 at ground floor level, they have replaced dark stained timber framed doors which contained solid panels in the lower part. The new white uPVC coated aluminium modules differ in terms of their form, glazing pattern, materials and colour. The glazing now goes down to sills which are almost to ground level. It also appears that the parts that open are materially different and what may have been just doors now seem to include smaller top-opening window elements in the upper part of one of the modules with a noticeable overlap of the lower section of framing.
8. Taking these findings together I conclude that the fenestration that has been installed in each of these flats facing Peach Street has materially affected the external appearance of the building. As a consequence development has occurred in each instance for which there is no planning permission. Hence the appeals on this ground do not succeed.

## **Ground (a)**

### ***Main issue***

9. This is whether the development that has taken place preserves or enhances the character or appearance of the Wokingham Town Centre Conservation Area.

### ***Reasons***

10. The Council's statement explains why the developments have been opposed and lists the policies that are said to be contravened. The claim is that the design and materials of the fenestration fail to conserve or enhance the character of the Conservation Area or retain and enhance the traditional character of the building. For these reasons it is said that the development is detrimental to the character and appearance of the building and the Conservation Area. It is also asserted that the building is one of Local Importance as identified in the relevant Conservation Area Document (CAD)<sup>1</sup> and included in the local list of Buildings of Traditional Local Character which are subject to Policy TB26 of the Council's Managing Development Delivery Local Plan (LP). The appellant's agent has responded commenting that the plan entitled "Opportunities for Conservation Area enhancement" included in the CAD appears to show that only Flats 1 to 3 are within the part of the building defined as being a Building of Local Importance. From my reading of the plan this does appear to be the case and if so Policy TB26 would not apply to Flats 2 and 4. I have taken account of all the other policies cited by the Council and I consider that Policies TB24 and TB26 of the LP are the most relevant to these appeals.
11. The appellant's agent argues that the surrounding area is characterised by buildings which contain windows of a variety of ages, styles, designs and materials and that in this context the windows that have been installed not only

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<sup>1</sup> Wokingham Town Centre and Langborough Road Conservation Areas Study

preserve but in some cases enhance the character and appearance of the building and the Conservation Area, being more in keeping than the aluminium frames that existed previously. Points are made that given the pavement width on this side of the road and the set back of the windows to Flats 2 and 4 it would be difficult to distinguish any difference in materials. In addition it is argued that the windows installed were chosen to provide sufficient degrees of noise insulation to protect the living conditions of the occupants of the flats as required by Condition 4 attached to the planning permission (Ref F/2013/0463) for the conversion of the building from offices to 7 flats. The Council response is that there is no record of these details being submitted and the approved plans do not show any of the front windows or doors being replaced.

12. On my inspection I was able to observe the nature of the windows in front façades of nearby buildings which contribute to the character and appearance of the Conservation Area. In this respect, as asserted for the appellant, there is a wide variety with no particular consistency in terms of design, form or appearance. No.67/65 is a shop with black metal-framed shopfront and timber sash windows at first floor level. No.63 has timber sash windows at ground and first floor levels. Nos.53-59 is timber-framed building called "The Overhangs" which is a listed building. It was probably originally in residential use but now comprises individual office units. The windows at ground and first floor level are timber-framed broken into a series of small panes. No.51 is a modern infill development with dark painted timber framed sash windows with larger panes. No.49 is a restaurant which appears to have retained the original timber-framed shopfront but with single paned timber-framed replacement windows at first floor level. The land on the opposite side of Peach Street is currently being redeveloped for housing and to its south-west is a modern, 2 storey shopping parade.
13. In terms of the windows that have been installed those serving Flats 1 and 3, although having some material differences in appearance to those replaced, have a glazing pattern that is either the same or very similar to what previously existed and the material, white aluminium is also of a similar appearance. Considering the age of the building I find it is likely that the windows that were replaced were themselves not original. Moreover in the context described above I consider that the new windows preserve or at least conserve, to use the wording set out in Policy TB24 of the LP, the character and appearance of the Conservation Area. In terms of Policy TB26 given the nature of the windows that have been replaced I consider that the new windows retain the historical character of the building that existed immediately prior to the work taking place and have not compromised its setting.
14. As regards the new fenestration installed to serve Flat 2, not only is this materially different from what previously existed but has introduced a form of window and door module which has a marked modern appearance which contrasts with the dark stained timber-framed doors that have been replaced. The half-height windows installed in the right-hand module when facing the building appear to open by pivoting outwards and are a radical departure from what has been replaced. I therefore find that the fenestration in this case has failed to preserve or enhance the character or appearance of the building or the Conservation Area but instead has caused harm in these respects. Consequently there is conflict with Policy TB24 of the LP.

15. In respect of the windows installed for Flat 4, they are markedly different from the slender aluminium framed sash windows they have replaced. The frames are thicker and this difference in appearance is compounded by the introduction of what appear to be top-hung pivoting windows in the top half of the windows. When open they would be noticeably different from the overlapping sash form that has been replaced. Moreover, new rows of glazing with smaller panes have been added. All of the changes are considerable and I am led to conclude that the new windows fail to preserve or enhance the character or appearance of the building or the Conservation Area but instead have caused harm in these respects. Consequently there is again conflict with Policy TB24 of the LP.
16. In coming to these conclusions I have taken account of the nature of the windows in the surrounding buildings. Whilst as already explained there is a wide variety I did not see anything comparable to windows and doors that have been installed at Flats 2 and 4 which have a striking modern appearance, at odds with the character of the predominantly older buildings found on this side of Peach Street. I have also had regard to the claims about the need to provide a certain level of sound insulation within the flats but have not been provided with evidence which clearly demonstrates that this can only be achieved by allowing the windows installed to remain. Consequently I do not consider this to be an overriding reason for allowing the appeals.
17. Bringing these findings together I conclude that the appeals on ground (a) in respect of the developments at Flats 1 and 3 should be allowed but the appeals on ground (a) in respect of the developments at Flats 2 and 4 should be dismissed.

### **Ground (g)**

18. Given the success on ground (a) for the developments at Flats 1 and 3 this ground is only relevant to the developments at Flats 2 and 4. The request is that the period for compliance be extended to 6 months. I have noted the point that the flats are rented out by the appellant to tenants but do not consider that arranging access to the two flats in question to allow the work to be carried out would require a period greater than the three months allowed. I have also considered the argument that it will be necessary to source windows and doors which have the necessary standard of sound insulation. However, I consider that a time period of 3 months should be sufficient to do so and then install new windows and doors to accord with the requirements of the notice. The Council also has discretion to extend the period for compliance if it is evident that progress is being made towards compliance and have stated that they would be willing to do so. The appeal on this ground consequently fails.

### **Conclusions**

19. For the reasons given above I conclude that Appeals A and C should succeed on ground (a) and planning permission will be granted in both cases. The Council have not requested the imposition of any planning conditions and I consider that none are necessary. I also conclude that Appeals B and D should not succeed. I shall uphold the enforcement notices in these respects and refuse to grant planning permission on the deemed applications.

## **Formal Decisions:**

### **Appeal A: APP/X0360/C/16/3153386**

20. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of replacement uPVC windows on land at Flat 1, Acorn House, 61 Peach Street, Wokingham, RG40 1XP, referred to in the notice.

### **Appeal B: APP/X0360/C/16/3153381**

21. 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 1990 Act as amended.

### **Appeal C: APP/X0360/C/16/3153383**

22. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of replacement uPVC windows on land at Flat 3, Acorn House, 61 Peach Street, Wokingham, RG40 1XP, referred to in the notice.

### **Appeal D: APP/X0360/C/16/3153379**

23. 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 1990 Act as amended.

*NP Freeman*

INSPECTOR