

Appeal Decision

Site visit made on 19 January 2017

by K R Saward Solicitor

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

Decision date: 3 February 2017

Appeal Ref: APP/N1540/C/16/3161640
18 Bury Road, Harlow, Essex CM17 0ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Josephine Lealand (Firsttask) against an enforcement notice issued by Harlow District Council.
- The enforcement notice was issued on 30 September 2016.
- The breach of planning control as alleged in the notice is without planning permission, alteration to the front of property No.18 Bury Road: removal of original timber framed windows from ground and first floor, and replacement with UPVC framed windows (as shown in Appendix 1 to the notice).
- The requirements of the notice are:-
 - 1) Remove the UPVC framed windows at ground and first floor, at the front of the property (as shown in Appendix 1 to the notice).
 - 2) Insert original and traditionally designed vertical sliding timber framed sash windows or flush timber framed casement windows which match the original windows of properties in the Old Harlow Conservation Area (samples provided in Appendix 2 to the notice).

New windows must be single glazed (secondary glazing may be added to address any thermal performance concerns), must match the original fenestration in detail and profile as exemplified on the adjoining terraced properties. At the time of works, the new windows shall be in painted timber with horns and without trickle vents. The windows shall be permanently maintained as such.
 - 3) Remove from the land to which this notice relates all materials, debris and other paraphernalia which results from complying with steps one (1) and (2).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Formal Decision: The appeal is dismissed and the enforcement notice upheld with corrections and variation

Reasons

The appeal on ground (b)

1. The appeal on ground (b) is that the breach of control alleged in the notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the original timber framed windows have not been removed and replaced with UPVC windows, as alleged.
 2. The appeal property is located within the Old Harlow Conservation Area ('the Conservation Area') where a direction issued pursuant to Article 4 (2) of the
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Town and Country (General Permitted Development) Order 1995 is in place. The Direction, confirmed in 2012, removes certain permitted development rights that would otherwise be available to householders, including the enlargement, improvement or other alteration of a dwellinghouse. Express planning permission is therefore required for any such development. The use of Article 4 directions is a key planning tool utilised by local planning authorities to preserve the character and appearance of conservation areas.

3. The appellant submits that when she purchased the property in March 2016 the windows to the front elevation were a UPVC top hung casement at ground floor and a timber fixed casement with top fan light at first floor level. It is these windows that the appellant says have been replaced and not the original timber framed ones.
4. The Article 4 Direction was in force when the new UPVC windows were installed. The Article 4 Direction removes permitted development rights to undertake alterations to the exterior. The Council thinks the windows clearly do affect the external appearance and are unacceptable in the Conservation Area. It has explained in the notice why it has come to that view. As a matter of fact that part of the allegation referring to replacement UPVC framed windows has occurred. This is not in dispute. It was unnecessary for the allegation to specify the type of windows that had been removed. The notice could merely have alleged the installation of UPVC framed windows.
5. As the removal of windows is not development anyway, there can be no injustice to either party by correction of the notice by deleting reference to the "removal of original timber framed windows from ground and first floor" so that the allegation reads:

"Without planning permission, alteration to the front of property No. 18 Bury Road by the installation of UPVC windows (as shown in Appendix 1)."
6. The notice shall be corrected accordingly and to this limited extent the ground (b) appeal succeeds.

The appeal on ground (a) and the deemed planning application

Main Issue

7. The main issue is the effect of the replacement windows on the character and appearance of the appeal property and whether or not they preserve or enhance the character or appearance of the Conservation Area.

Reasons

8. The appeal property is a two storey end terrace period property in the Conservation Area, being a designated heritage asset.
9. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
10. The Council's Old Harlow Conservation Area Character Appraisal¹ (the Appraisal) provides a detailed assessment of the Conservation Area's special architectural and historic interest. Those qualities derive from a combination of

¹ Adopted as supplementary planning guidance, December 2013

features including Victorian and Edwardian terraces and detached houses of significant architectural and historic interest both individually and in terms of their collective 'group value'. Bury Road together with New Road are stated to contain the largest stock of late Victorian and Edwardian housing in the Conservation Area. They are described as consisting of rows of highly attractive terraced and semi-detached homes which are of significant group value. Rows of similarly designed Victorian terraces and semi-detached houses are identified as a dominant feature of the character of the area and provide the main skeleton upon which the Conservation Area's overall character and compact structure rests.

11. One of the key characteristics of the terrace of which the appeal property forms part is the timber sash windows. Whilst the replacement windows are in similar style, it is very evident from the thickness and finish of the frames that they are UPVC rather than painted timber. They introduce a modern addition to a period property which not only compromises the traditional appearance of the terrace but is also out of keeping with the well-preserved original and attractive characteristics of Bury Road. Thus, they neither reflect nor complement the vernacular of the surrounding architecture and street scene.
12. Indeed, as noted in the Appraisal, where sliding sash windows are present they play a key role in defining the original character of the street and where replaced by UPVC windows this has had a negative impact on the character of the area by introducing modern and discordant elements which reduce the degree of architectural unity.
13. The replacement windows thus detract not only from No 18, but also from the area and thereby diminish the heritage significance of the Conservation Area.
14. Paragraph 132 of the Framework states that great weight should be given to the conservation of heritage assets. As heritage assets are irreplaceable, any harm should require clear and convincing justification. In this case, when viewed in the context of the Conservation Area as a whole, the magnitude of harm can be considered as less than substantial. In such circumstances, Paragraph 134 of the Framework provides that this harm should be weighed against the public benefits.
15. In this case, any merits of the replacement windows in terms of improving the condition of the property would not constitute a public benefit sufficient to outweigh the harm to the heritage asset. I find that the replacement windows have an adverse effect on the character and appearance of No. 18 and fail to preserve or enhance the character or appearance of the Conservation Area. This is contrary to Policy BE9 of the Adopted Replacement Harlow Local Plan, 2006 which seeks to preserve the architectural or historical character or appearance of the Conservation Area and the guidance contained in the Council's Old Harlow Conservation Area Management Plan². There is also conflict with the similar aims within Paragraphs 17, 56, 58, 60 and 131 of the National Planning Policy Framework.
16. In reaching this view, I have noted the letters in support from neighbours who refer to the windows as an improvement on those that they replaced. However, this would not be reason to allow development which is harmful to the Conservation Area.

² Also adopted as supplementary planning guidance, December 2013

Conclusion on ground (a) and the deemed planning application

17. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.
18. Consequently, the notice shall be upheld to require removal of the UPVC framed windows in order to remedy the breach of planning control. The second requirement of the notice is to insert original and traditionally designed vertical sliding timber framed sash windows or flush timber framed casement windows. Where planning permission has not been granted, the power is simply to restore the land to its condition before the breach took place. There is no statutory power to require the appellant to undertake works which would result in an improvement to a previous condition of the property. Thus, the notice cannot require timber framed sash or casement windows if they were not windows of that type beforehand.
19. Although not corroborated, the appellant is clear and precise in stating that whilst there was previously a timber fixed casement window at first floor level with top fanlight, at ground floor level there was a UPVC framed window. There is nothing to contradict what the appellant says. On the evidence before me the windows required to be installed are a different type to all those replaced. Notwithstanding there is no appeal on ground (f), it seems that the Council seeks an improvement on the previous position which is unduly onerous. That being so, I will delete the second requirement of the notice, but extend the period for compliance from 3 to 9 months to afford opportunity for planning permission to be secured for alternative windows before the notice must be fulfilled. If planning permission is granted, section 180(1) of the 1990 Act means that the notice would cease to have effect so far as inconsistent with that permission.

Formal Decision

20. It is directed that the enforcement notice be corrected and varied by:
 - (a) deleting the allegation in paragraph 3 and replacing it with the text "Without planning permission, alteration to the front of property No. 18 Bury Road by the installation of UPVC windows (as shown in Appendix 1)."
 - (b) deleting the text in sub-paragraph 2) of paragraph 5. in its entirety.
 - (c) deleting the words "steps one (1) and (2)" from sub-paragraph 3) of paragraph 5. and replacing it with "step one (1)".
 - (d) renumbering sub-paragraph 3) of paragraph 5. as sub-paragraph 2).
 - (e) deleting 3 months and substituting 9 months as the period for compliance in paragraph 6.
21. Subject to these corrections and variations, 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.

KR Seward

INSPECTOR