The Planning Inspectorate

Appeal Decision

Site visit made on 31 July 2017

by Peter Rose BA MRTPI DMS MCMI

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

Decision date: 21st August 2017

Appeal Ref: APP/M1595/Y/17/3170290
12 Bata Avenue, East Tilbury, RM18 8SD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr Marek Sienkiewicz against the decision of Thurrock Borough Council.
- The application Ref: 16/01151/LBC, dated 4 June 2016, was refused by notice dated 9 January 2017.
- The works proposed are *'to replace existing rotten windows with UPVC double glazed units'.*

Decision

1. The appeal is dismissed.

Procedural matter

2. I noted from my inspection that some of the works had been undertaken. Windows had been replaced to the front elevation, and a new rear door had also been installed[1]. Section 8(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) allows for listed building consent to be sought even though works have been completed. In such circumstances, however, a consent would not be retrospective but would be authorised only from the date of any consent. I consider the appeal on that basis.

Main issues

3. No 12 Bata Avenue is part of a Grade II listed building comprising a pair of semi-detached houses at No 12 and No 14. The building is located within the East Tilbury Conservation Area.

4. The main issues are:

   (a) the effect of the proposed works upon the special architectural or historic interest of the listed building at No 12 and No 14 Bata Avenue and, in particular, whether the scheme would preserve the listed building or its setting or any features of special architectural or historic interest which it possesses, and;

   (b) the effect of the proposed scheme upon the East Tilbury Conservation Area and, in particular, whether the scheme would preserve or enhance its character or appearance.

[1] I note the submitted drawings include replacement doors, but these are not included in the application description

Reasons

Listed building

5. The appeal site forms part of the Bata settlement at East Tilbury. This is a purpose-built industrial village which developed predominantly between the 1930s and the 1960s in conjunction with the British Bata Shoe Company Ltd. The village has a unique character and form, combining Garden City planning and Modernist architecture.

6. No 12 Bata Avenue comprises a two-storey, flat-roofed, semi-detached dwelling. The listed houses feature a rectangular bay to the front with a main entrance to the side and a central chimney stack. The properties along the northern side of Bata Avenue are widely spaced and set in a staggered layout. All have sizeable gardens to the front and back and there are remnants of original privet hedging throughout the development.

7. The wooden fenestration of No 12 would have been a key feature of its original design and composition, and contributed to the significance of its historic form accordingly. The List Entry Description identifies the listed building as forming part of a group with Nos 2-34 (even) Bata Avenue, and I consider the fenestration to be a contributory factor to the group's undoubted uniformity.

8. The proposal seeks to replace timber windows with uPVC features of a sympathetic design. The appellant considers the cost of wooden replacements to be prohibitive and that timber would not provide the long term benefits of uPVC.

9. I noted at my visit that the windows of some other properties have been replaced in wooden form[2], and little evidence is before me regarding the economics of such decisions. The appellant also refers to the timber replacements at No 32 as having caused major damage to the structure of the dwelling but, again, I have little evidence linking wooden windows to such matters.

10. The remaining windows at No 12 are in poor condition and I appreciate how this, in turn, has adverse implications for the living conditions of the occupants, including problems of dampness, condensation and draughts. Reference has also been made to the benefits of noise and heating insulation and to improved security arising from uPVC windows, but I again have little evidence before me drawing comparison with the relative technical merits of timber.

11. Notwithstanding some very general outward visual similarity, the windows already replaced display a contrasting form and design to those at No 14 and to those remaining within the appeal site. The glazing bars make for a bulkier design and appearance to the windows relative to the more slender and more discrete proportions and overall profile of those existing/remaining. The proportions of the main glazing panels to the front also contrast with those at No 14, and the replacements lack the historic integrity of a wooden finish, and an accompanying lack of subtlety of composition in their texture.

12. The proposal would therefore introduce features of a more contemporary and more homogenous form materially different to those existing and with an accompanying loss of historic fabric and aesthetic character. As such, the

[2] No 4, No 6, No 30 and No 32

scheme would be a discordant and incongruous alteration at variance with the significance of the listed building.

13. Internally, I consider the replacement windows would not have a noticeable impact upon the significance of the listed building, but they would still involve the same loss of historic fabric.

14. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) establishes a duty, in considering applications for listed building consent, to have special regard to the desirability of preserving the listed building.

15. I therefore conclude that the proposed works would be harmful to the special architectural and historic interest of the Grade II listed building at No 12 and No 14 and that its significance would not thereby be preserved.

16. Accordingly, the scheme would be contrary to Policy PMD2 and to Policy PMD4 of the *Thurrock Local Development Framework Core Strategy and Policies for Management of Development Adopted January 2015* (the LDF). Policy PMD2 requires all design proposals to respond to the sensitivity of the site and its surroundings, and to contribute positively to the character of the area in which it is proposed and to the creation of a positive sense of place. Policy PMD4 commits the Council to ensuring that the fabric and setting of historic assets, including listed buildings and Conservation Areas, are appropriately protected and enhanced in accordance with their significance.

17. I find these policies to be broadly consistent with the *National Planning Policy Framework* (the *Framework*) which recognises that heritage assets are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance[3]. The *Framework* further states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation[4].

Conservation Area

18. Section 72 of the Act places a duty upon the decision-maker in considering applications for, amongst other things, listed building consent, to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

19. The East Tilbury Conservation Area is an area of rich historic and architectural heritage, and this is well documented within the Council's *Conservation Area Appraisal*[5] *(*the *Appraisal)*. The wider Conservation Area appears to comprise a number of smaller, discrete areas, each reflecting a distinct design and character. Bata Avenue is an older part of the estate and is characterised by dwellings of an historically uniform style and layout. The elevations of properties on the north side of Bata Avenue are finished with painted render in white or cream and wooden windows have been re-painted to an original peppermint green specification following a Conservation Area Partnership Scheme[6]. Most of the properties on the north side are similar to the appeal

[3] Paragraph 126
[4] Paragraph 132
[5] East Tilbury Conservation Area Character Appraisal March 2007
[6] See letter dated 13 December 2016 from Essex County Council Historic Buildings Consultant, and page 10 of the *Appraisal*

site and most are listed, whilst those to the south appear to comprise replica buildings and are unlisted.

20. The East Tilbury Conservation Area has been identified as being in 'very bad' condition and is therefore included in Historic England's *Heritage at Risk Register*[7]. The suggestion is that the area is deteriorating and is now considered highly vulnerable. The appellant similarly refers to various negative changes to the area, including loss of privet hedges, introductions of hardstanding and wooden fences, and incorrect colour schemes. He also refers to a rear and side extension permitted by the Council at No 4, but that scheme would appear to involve materially different works and to a different property[8].

21. I also note that the *Appraisal* refers to a spread in the use of uPVC within the Conservation Area. It advises that the restoration of original features should be promoted, and suggests that uPVC is a material neither sympathetic in appearance nor sustainable in its character and that its use should be checked[9].

22. Although the extent and form of the works may appear modest relative to the wider contribution of the appeal site to the Conservation Area as a whole, the proposed works would still be discernible and would be harmful in their character and appearance. The appeal site contributes towards significant group value in conjunction with other similar properties in the vicinity and the scheme would undermine the uniformity of the listed buildings on the north side of Bata Avenue and, in turn, their contribution to the Conservation Area. The character and appearance of the Conservation Area would be neither preserved nor enhanced by the proposed works.

23. I therefore conclude that the proposed works would be harmful to the character and appearance of the East Tilbury Conservation Area. Accordingly, the scheme would also be contrary in this regard to Policy PMD2 and to Policy PMD4 of the development plan. The *Framework* also recognises the importance of local distinctiveness[10].

Other matters

24. The courts have highlighted the importance of consistency in decision-making and, accordingly, I have regard to other cases as cited by the appellant. Even so, each case will be necessarily fact and context sensitive and the conclusions I have reached here are necessarily based upon the case-specific circumstances pertaining to this appeal as identified.

25. I acknowledge that houses to the south are not listed and would not be subject to the same requirements for listed building consent.

26. I have also had regard to the various representations of support from local interested parties.

27. I also note the Council's recent service of an enforcement notice, but that is a separate matter and not one directly relevant to the planning merits of my decision.

[7] See letter dated 13 December 2016 from Essex County Council Historic Buildings Consultant
[8] Decision Ref: 16/00907/LBC dated 27 September 2016
[9] Page 13
[10] Paragraph 60

Planning balance

28. I find that the special interest of the designated assets would be diminished such that the proposed scheme would fail to preserve the listed building and would fail to preserve or enhance the character or appearance of the Conservation Area.

29. The *Framework* makes a distinction between a proposal causing substantial harm to the significance of a designated heritage asset, such as a listed building or Conservation Area, and a scheme that would lead to less than substantial harm[11]. The government's *Planning Practice Guidance* (the *Guidance*) notes that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm, although even minor works have the potential to cause substantial harm[12]. In this case, I find that the works would cause less than substantial harm, and the *Framework* requires such a scale to be weighed against the possible public benefits of the scheme, including securing optimum viable use[13].

30. There is no evidence that the existing dwelling could not continue as a viable family home in the absence of these particular uPVC works. The public benefits would principally involve creation for the local housing stock of a dwelling providing improved living conditions. Nonetheless, I find no overall public benefits sufficient to outweigh the greater harm which would arise from the scheme as a whole to the listed building and the Conservation Area.

31. The duties arising under sections 16 and 72 of the Act make strong presumptions against proposals incurring harm and thereby not preserving a designated asset. This is because the desirability of preservation is a consideration to which special attention must be paid as a statutory duty, and must be regarded as a matter of considerable importance and weight in any planning balance. I find that the scheme would fall significantly short of the expectations of these duties.

32. Further, I find the proposal would not accord with the development plan as a whole, and nor with the expectations of sustainable development set out in the Framework[14].

Conclusion

33. For the above reasons, the appeal is dismissed.

Peter Rose
INSPECTOR

[11] Paragraph 134
[12] Paragraph ID 18a-017-20140306
[13] Paragraph 134
[14] Paragraph 6