
Appeal Decision

Site visit made on 31 July 2017

by Peter Rose BA MRTPI DMS MCM

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

Decision date: 21st August 2017

Appeal Ref: APP/M1595/Y/17/3168942
28 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 Mrs Valerie Sewell against the decision of Thurrock Borough Council.
 - The application Ref: 16/1645/LBC, dated 3 December 2016, was refused by notice dated 27 January 2017.
 - The works proposed are described as '*retention of existing windows/joinery that did not have listed building consent when fitted*'.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The application description refers to retention of works which I noted from my inspection had already been undertaken. 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 28 Bata Avenue is part of a Grade II listed building comprising a pair of semi-detached houses at No 28 and No 30. 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 28 and No 30 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.

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 28 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 28 would have been a key feature of its original design and composition, and so contributed to the significance of its historic form accordingly. This is also evident from my inspection of other similar listed dwellings in Bata Avenue and which continue to display wooden windows. More particularly, 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 consent for replacement of previous windows with uPVC features of a sympathetic design¹. The appellant refers to the rotten, distorted and draughty condition of those replaced and I appreciate how this, in turn, would have had adverse implications for the living conditions of the occupants, including such problems as security, condensation and noise. Whilst alluded to, and notwithstanding maintenance implications of wooden windows, I have little evidence before me regarding the relative technical merits of wood and uPVC, or of relative cost.
9. The windows to No 30 have been replaced in wooden form, and the appeal proposal seeks to closely mimic those features in uPVC. I accept that, outwardly and from some distance, the windows have some visual similarity with those at No 30. I particularly note the evidence submitted in relation to dimensional similarity, and also note the similarity of colour.
10. Nevertheless, and notwithstanding advances in uPVC products in recent years and the scheme's surface grain effect, the replacements lack the integrity of a wooden finish as expected of historic windows, and lack an accompanying subtlety of composition in their texture.
11. I note that the appellant refers to the previous windows as only dating from 2000, but I have little specific information before me of those details. A photograph of previous windows from the Historic England website dated September 1999 was submitted by the Council. This would appear to show that the proposed replacements are of a contrasting design to those at that time. The appeal proposal contrasts with the more slender and more discrete proportions and profile of those shown. The width of the glazing bars and frames of the appeal scheme make for a bulkier design and appearance to the windows, and the proportions of the main front glazing panels are also

¹ I note the submitted drawings also include replacement external doors

different. Although I accept that the replacements are similar in their general profile to the wooden replacements authorised by the Council at No 30 and at No 32, the replacements at No 28 are still of a contrasting form to the previous windows and to the wooden fabric of those at No 30.

12. I also saw at my visit that the windows of some other properties have been replaced in wooden form².
13. The proposal therefore introduces features of a more contemporary and more homogenous form materially different to the historic counterparts. As such, the scheme is a discordant and incongruous alteration at variance with the significance of the listed building.
14. Internally, I consider the replacement windows do not have a noticeable impact upon the significance of the listed building.
15. 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.
16. I therefore conclude the works to be harmful to the special architectural and historic interest of the Grade II listed building at No 28 and No 30 and that its significance is not thereby preserved.
17. Accordingly, the scheme is 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.
18. 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 significance³. 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 conservation⁴.

Conservation Area

19. 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.
20. 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*

² No 4, No 6, No 30 and No 32

³ Paragraph 126

⁴ Paragraph 132

*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 Scheme⁶. Most of the properties on the north side are similar to the appeal site and most are listed, whilst those to the south appear to comprise replica buildings and are unlisted.

21. 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 also refers to the adverse implications for the locality which are considered to arise from a rear and side extension permitted by the Council at No 4⁸, and to inconsistency in the authority's assessment of the appeal scheme. Notwithstanding the details of that scheme, it relates to a different property some distance from the appeal site and involves a materially different proposal.
22. The *Appraisal* refers to a spread in the use of uPVC within the Conservation Area⁹. It suggests that restoration of original features should be promoted and discourages uPVC as a material which, contrary to the appellant's contentions, is described as neither sympathetic to the appearance of the Conservation Area, nor sustainable in its form.
23. 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 are still discernible and 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 undermines 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 is neither preserved nor enhanced by the proposed works.
24. I therefore conclude that the proposed works are harmful to the character and appearance of the East Tilbury Conservation Area. Accordingly, the scheme is also contrary in this regard to Policy PMD2 and to Policy PMD4 of the development plan. The *Framework* also recognises the importance of local distinctiveness¹⁰.

Other matters

25. 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

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*

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

I have reached here are necessarily based upon the case-specific circumstances pertaining to this appeal as identified.

26. I acknowledge that houses to the south are not listed and would not be subject to the same requirements for listed building consent. The appellant also refers to the reversibility of the works, but I regard the replacements as permanent, long-term features.
27. I have also noted the background to the appellant's involvement in the case by way of an inheritance, the appellant's allegation of a lack of collaborative working on the part of the Council, and the authority's subsequent service of an enforcement notice. These are not matters directly relevant to the planning merits of the scheme and have no bearing upon my assessment of the main issues.
28. I have also had regard to the various representations of support from local interested parties.

Planning balance

29. I find that the special interest of the designated assets is diminished such that the scheme fails to preserve the listed building and fails to preserve or enhance the character or appearance of the Conservation Area.
30. 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 harm¹¹. 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 harm¹². In this case, I find that the works 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 use¹³.
31. 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 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 arises from the scheme as a whole to the listed building and the Conservation Area.
32. 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 falls significantly short of the expectations of these duties.

¹¹ Paragraph 134

¹² Paragraph ID 18a-017-20140306

¹³ Paragraph 134

33. 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 Framework¹⁴.

Conclusion

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

Peter Rose
INSPECTOR

¹⁴ Paragraph 6