
Appeal Decision

Site Inspection on 17 June 2019

by Graham Self MA MSc FRTPI

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

Decision date: 08 July 2019

Appeal Reference: APP/Y3940/C/18/3218694

Site at: 67-69 Fisherton Street, Salisbury SP2 7SU

- The appeal is made by Ms Angela Ockenden under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Wiltshire Council.
- The council's reference is 15/01181/ENF.
- The notice is dated 23 August 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the unauthorised installation of uPVC framed double glazed windows and doors to the ground, first and second floor levels of the premises."
- The requirements of the notice are:
 - "(i) Replace the six unauthorised uPVC windows on the front elevation (elevation facing Fisherton Street) with white painted, vertical sliding sash, timber windows of the same proportion, design and detail as those shown in photograph 1 (attached to this notice) that were in place prior to the unauthorised development taking place.
 - (ii) Remove the five uPVC windows on the side elevation (elevation facing Water Lane)."
- The period for compliance is nine months.
- The appeal is proceeding on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The enforcement notice is varied. The appeal fails and the notice is upheld as varied.

Procedural Matters

1. A key aspect of this case is the fact that the site is within the Salisbury City Conservation Area. After my inspection of the site and surroundings, I sent a message through the Planning Inspectorate to the council (with a copy to the appellant's agent), raising some questions and inviting comments about the past history of conservation area designation. I have taken the responses into account and mention them below.

Ground (a) and Deemed Application

2. Under ground (a) and the deemed application, planning permission is sought for the development enforced against. The disputed window frames are on the first and second floors of the appeal property facing the street and on three floors in the side elevation facing west towards the adjacent river and Water Lane.

3. There is a wide mixture of window types in this part of Fisherton Street, not only comparing buildings with each other but also within the frontages of some individual buildings. Many PVC windows have been installed, mostly with hinged openings, although one or two properties appear to have PVC sash windows. The buildings and shop-fronts also vary greatly in age and design. Some of the materials, colour and lettering in shop fascias have little or no historic character. Where timber windows are in place, several look poorly maintained and have flaking paint.
4. Part of the appellant's case is that the planning authority has been unfair in taking action against the windows at the appeal property when so many other PVC windows have been installed without any apparent objection or action. I can well understand the appellant's point. One of the reasons I sent questions to the council is that its evidence about the historical background concentrated on the period after December 2014, when the council evidently adopted an "appraisal" document. Indeed, the council's statement refers to the character of the conservation area "at the point of adoption of the appraisal", and stated that "it would be reasonable to take action in respect of unauthorised window replacement since the adoption of the conservation area appraisal".
5. These statements clearly imply that in the council's view, December 2014 was a key point in time for starting to apply conservation area policy and statutory requirements. The council's statement also referred to various premises in Fisherton Street where PVC windows were installed before 2009, as if nothing which happened before 2009 had any bearing on planning policy or law relating to the conservation area.
6. Until I raised a question about it there was no mention in any of the council's evidence that Fisherton Street has been in a designated conservation area since 1976. It was apparently transferred to, or merged with, the City of Salisbury Conservation area in 1990, but this seems to have been not much more than a change of name. Thus Fisherton Street has evidently been part of a conservation area for over 40 years, not just since 2009 or 2014. Even going back only 29 years or so to 1990, the Planning (Listed Buildings and Conservation Areas) Act of that date required that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Despite the council's statement that each development is considered on a case by case basis there is scant evidence that the planning authority or its predecessor has applied such special attention elsewhere in Fisherton Street for a long time.
7. It is not necessary to look far to see this. Premises opposite the appeal site have two floors of PVC-framed windows, including first floor bay windows. Most of the windows on the north side of the street near the appeal site are PVC framed. On the south side, the majority to the west of the site are PVC; towards the east there is more of a mixture.
8. The council's claim that national policy guidance since 2012 has introduced a more "proactive approach" by local planning authorities towards the conservation of the historic environment is clutching at a thin straw in an attempt to justify what has happened, or rather not happened, in the past. The general principles of planning control in conservation areas go back to the 1967 Civic Amenities Act and its related circular, and have not changed to the extent suggested by the council. The adoption of an appraisal document is not a good reason suddenly to pay attention to law and policy on conservation areas.
9. Moreover, the council has failed to provide any real reply to my question: if the conservation area status of Fisherton Street dates back to 1976, why did the

council not mention this in its evidence about background history? I note the council's "speculation" that different personnel at the council may have been more vocal about championing the historic environment than was the case in the past. That in effect admits to inconsistency. Reasonably consistent application of planning controls should not depend on who happens to be employed by the planning authority at any one time.

10. In view of those points I have considered quashing the enforcement notice on grounds of unfair inconsistency. On balance, however, I have decided that what might be called normal planning considerations should have more weight. The main issue I have to consider is the effect of the development on the appearance or character of the area, having regard to the policies and legislation which apply because of the location of the site within a conservation area.
11. There is disputed evidence about the previous window frames in the projecting bay window on the first floor front of the appeal property. The council says all the upper floor front windows were timber sash-type. The appellant states: "the large oriel window on the front elevation was not a sliding sash and was aluminium framed". The photographic evidence is not of good enough quality for me to be sure, and because the appeal is being decided by written representations I cannot test the evidence by oral questioning; but as far as I can tell, neither party is correct - the submitted photographs (including the photograph attached to the enforcement notice) suggest to me that the front-facing part of the bay may have been aluminium whilst the two angled side parts were timber sashes. If so, the presence of a non-sash aluminium window in the front elevation provides some support for the appellant's case. The PVC windows are also likely to provide better insulation than the previous windows, as well as having maintenance advantages.
12. Other factors weigh against the appeal. Although the presence of many non-traditional window types and changes to building frontages has eroded the historic quality of this part of the conservation area, its character has not been completely lost. The unauthorised windows have an appearance significantly different from traditional sash windows. The outer parts of the PVC frames are wider, the central divider where two panes meet is thicker and when open, the top-hung hinged opening is obviously not characteristic of sliding sash windows. The windows also have a "flatter" appearance than traditional sash windows because the lower panes are not set back behind the upper panes. Because of those features the windows do not preserve or enhance the appearance or character of the area.
13. The gap in the street frontage where Fisherton Street bridges over the river gives the appeal property a fairly prominent location, and the side (west) elevation is more readily visible than is the case with many other buildings in Fisherton Street. The fact that the appeal site is also next to a group of listed buildings (odd numbers 59-65) also increases the sensitivity of its location, even though there are different styles of windows in the group of listed buildings. In these circumstances, permitting the disputed windows would be a major setback for any efforts to prevent further similar erosion of the area's remaining historic character.
14. Policies 57 and 58 of the Wiltshire Core Strategy (part of the development plan for this area) seek to ensure that areas of historic significance are protected and enhanced. This development conflicts with that aim. The submitted photographs and other evidence indicate that including the side elevation, the windows in the appeal property were previously a mixture of styles and materials, and the disputed windows provide a more unified appearance for the building as a whole;

but that does not mean that the historic appearance or character of the conservation area has been preserved or enhanced. The degree of improvement obtained by the unauthorised development does not outweigh the objections to it.

15. I have noted the evidence about the council's failure to respond to a telephone call and email from the appellant's architect before the windows were installed. The council says the appellant has not produced any record of these contacts, but does not deny receiving them. I believe the appellant on this matter, taking into account that specific evidence has been provided including the date and the name of the person to whom the email was sent (Mr Andrew Minting). I can appreciate the frustration caused by the council's lack of response, but this evidence does not materially strengthen the appellant's case, since it suggests that she or her agent realised, or should have realised, that there was a risk in going ahead with the development without planning permission in the hope that no action would be taken. In the event an application for retrospective planning permission was later refused, and enforcement action followed.
16. I conclude that despite failures by the planning authority and the inconsistent way the authority has treated the installation of non-traditional types of windows in this area, the planning case against these windows is basically sound for the reasons I have explained; and I find that planning permission should not be granted. Therefore the appeal on ground (a) does not succeed.

Requirements of the Notice

17. Although ground (f) of Section 174(2) has not been pleaded, I have decided to use my discretion to consider the requirements of the enforcement notice. I can see why in the notice as issued, the requirements for the windows in the side elevation differ from those in the front by only specifying the removal of the windows. The frames of the side windows were evidently a mixture including aluminium and it would be pointless to require replacement with frames like those previously installed.
18. However, PVC "imitations" of timber sash windows are available and the council appears to have accepted these elsewhere in Fisherton Street as well as in nearby locations - planning permission has been granted for PVC sash frames at premises evidently within the conservation area in Exeter Street and St John's Street. The council also seems to have left this as an option for the side elevation of the appeal property by not requiring timber replacements; and I note the Civic Society's view that PVC frames "might well have been acceptable".
19. In the circumstances I consider that the possibility of non-timber windows should at least not be ruled out. I am also concerned that the requirement referring to replacement with "windows of the same proportion, design and detail as those.... that were in place prior to the unauthorised development" could cause problems, in view of the disputed evidence I have mentioned in paragraph 11 above.
20. I have therefore decided to make the requirements for the front elevation the same as the side elevation, so that only the removal of the unauthorised windows is specified. In view of this change, and to allow more time for possible consideration of alternatives, for an application or applications to be processed, and for the work to be carried out, I have also decided to extend the compliance period from nine months to 12 months. It would obviously be undesirable if the window openings were to be left without frames and glazing; that is a matter I leave to the common-sense of all involved.

Formal Decision

21. I direct that the enforcement notice be varied in the following ways:
- (i) by deleting the text in sub-paragraph (i) of the requirements and substituting: " Remove the six unauthorised uPVC windows in the front elevation (facing Fisherton Street).";
 - (ii) by deleting "9 months" from the text specifying the period for compliance and substituting "12 months".
22. Subject to those variations, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector