The Planning Inspectorate

Appeal Decisions

Site visit made on 11 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal A: APP/H0724/C/18/3215099
32 The Front, Seaton Carew, Hartlepool TS25 1BS

- 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 Mr Leslie Hodgman against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice was issued on 23 October 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the installation of a uPVC replacement window.
- The requirements of the notice are (i) Remove the uPVC first floor bay window. (ii) Provide traditionally constructed, double hung, purpose made canted bay window consisting of vertical sliding sash windows including box constructed in softwood to the specification below: a) Centre window and side windows one over one with horns detailed and profiled similar to 16 or 29 The Front; b) Provide bay head, consisting of frieze, cornice including cornice mould, edge mould and lead cloak in code 5 lead with lead rolls to allow for expansion to conform to recommendations of Lead Sheet Association; c) Provide side pilasters in solid timber, fixing plinth blocks and capital moulds. Head and pilasters to match similar to 33 The Front; d) Windows to be one over one constructed with horns in softwood using cords and counterbalance weights, timber sill to window in hardwood. Windows to be constructed with internal ovolo or ogree moulding detail to stiles, rails and glazing bars properly formed not routed after manufacture; e) Windows shall be painted.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Appeal B: APP/H0724/W/18/3214115
32 The Front, Seaton Carew, Hartlepool TS25 1BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Leslie Hodgman against the decision of Hartlepool Borough Council.
- The application Ref H/2018/0284, dated 9 July 2018, was refused by notice dated 4 October 2018.
- The development proposed is Installation of replacement windows (retrospective application).

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. With regard to Appeal B, I have taken the description of development from the Council's decision notice as reflected on the appeal form.

Appeal A on ground (a) and Appeal B

Main Issue

2. The main issue is the effect of the development on the character and appearance of the Seaton Carew Conservation Area (CA).

Reasons

3. The CA, along The Front is characterised by a variety of building styles, typically including commercial uses at ground floor level. The appeal site is part of a three-storey terrace, in which the units are generally rendered and painted and have projecting bay windows at first floor level. It was apparent from my visit that many properties within the CA have had windows replaced in more modern materials, including uPVC. However I consider that traditional timber sliding sash windows, such as those apparent at Nos 29 and 36 The Front, remain sufficiently represented for this to continue to depict the heritage of the buildings in question and to be an important characteristic of the CA. I am also mindful that the Council's representation that the CA is formally recorded in Historic England's Heritage at Risk register, due to an accumulation of unacceptable minor alterations, has not been disputed.

4. It is also undisputed that the development comprises the replacement of a traditionally detailed timber bay, incorporating uPVC mock sash windows with a uPVC bay and casement windows. The Council states that a traditional timber bay would incorporate a narrower fascia and moulding to create a more subtle profile between it and the windows, so that there are no apparent gaps. Furthermore it says that the pilasters to the side of the new bay lack the finer detail of a timber bay and appear to be separated from the bay head by a gap, rather than appearing as a single entity. The appellant does not specifically seek to challenge the Council's description of the comparative characteristics of the windows, as set out in the officer report, statement and photographs. I have no reason to take a contrary view to the Council in terms of the higher quality detailing of the timber bay.

5. From my visit it was evident that new uPVC frames are relatively thick and heavy in appearance. In addition, the use of uPVC for the bay, which tends to be a uniformly smooth material, would be a departure from the textured, traditional appearance of painted timber. I am in no doubt that the windows lack the narrow, more elegant proportions associated with traditional timber framed, vertical opening windows, such as those evident elsewhere on The Front. Although the previous mock sliding sash windows were also made of uPVC, and were not therefore to this standard, from the comparative photographs provided, they do appear to have incorporated a more traditional profile when considered in vertical section.

6. Despite the apparent symmetry of the bay and that the previous window units themselves were not constructed in a traditional material, from the information before me, when taking into account the bay development as a whole, although the visual impact of the changes to the front elevation would be relatively minor, they would nevertheless draw the eye to a degree in what is a

prominent location. The development constitutes a harmful change to the overall visual cohesion of the appeal property and the wider CA.

7. Notwithstanding that there are a significant number of cases within the surrounding area where more modern materials have been used to replace traditional designs, I am not persuaded that this justifies the harm that I have identified in this case, which I must consider on its own merits. Any similar breaches of planning control would be a matter for the Council to investigate.

8. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I conclude that the development on the front elevation causes less than substantial harm to the character and appearance of the building and wider CA. However in terms of the guidance in the National Planning Policy Framework (the Framework), there would still be real and serious harm which is a consideration of significant weight.

9. In such circumstances, where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that this harm is weighed against the public benefits of the proposal. I acknowledge that it is likely that the replacement window would bring benefits in terms of better weather and noise insulation to the property and that the requirements of the notice will inevitably result in financial loss. However I have not been provided with a compelling argument that there are no other solutions available to improve insulation whilst allowing for satisfactory maintenance, even when taking into account the sea-front location of the site. The residential, as opposed to business, use of the property does not excuse the development. A convincing case has not been made that there would be public benefits from the scheme, sufficient to outweigh the harm I have identified.

10. For the aforementioned reasons the development to the front elevation would be in conflict with the Framework and also with Policies HE1 and HE3 of the Hartlepool Local Plan 2018, insofar as they seek to promote high quality design and conserve or enhance the appearance, character and setting of heritage assets.

11. Although there have not been objections from third parties, and a number of supporting representations, this would not overcome the conflict with planning policy that I have identified.

Appeal A on ground (f)

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by restoring the land to its condition before the breach of planning control took place (s173 (4) (a)).

13. The Council requires, amongst other things, the replacement of the first-floor windows with painted timber sliding sash windows. The appellant's case is that many other buildings in the area have uPVC windows; that over the 30 years the appellant has occupied the property it has not had sash windows and that the sea front location of the property means that the maintenance requirements are that much greater.

14. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition. In this context I am mindful that the Council has confirmed that the previous window units were constructed in uPVC, in a mock sliding sash design.

15. I therefore concur with the view that some of the requirements of the notice, which are concerned with securing a particular specification of window are excessive.

16. However I consider that the notice can be corrected, to require the window, including bay, to be restored to its condition before the breach took place, without resulting in injustice to the parties. The ground (f) appeal therefore succeeds to this limited extent.

Conclusion

Appeal A

17. For the reasons given above I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice, with corrections, and refuse to grant planning permission on the deemed application.

Appeal B

18. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

19. It is directed that the enforcement notice be corrected by deleting the text at paragraph 5(ii) (including parts a) to e) inclusive) and substituting the following paragraph instead:

    "5(ii) Restore the window, including bay, to its condition before the breach took place."

20. Subject to these corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

21. The appeal is dismissed and planning permission is refused.

Roy Merrett

INSPECTOR