



Appeal Decisions

Site visit made on 2 October 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2019

Appeal A: APP/H1705/W/18/3218254

62 and 64 New Road, Basingstoke RG21 7PW

- 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 Shorthouse and Martin against the decision of Basingstoke & Deane Borough Council.
- The application Ref 18/02492/RET, dated 19 August 2018, was refused by notice dated 15 November 2018.
- The development proposed is described as "retention of replacement uPVC windows in front elevation".

Summary of Decision: The appeal is dismissed.

Appeal B: APP/H1705/C/18/3218255

62 New Road, Basingstoke RG21 7PW

- 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 Shorthouse and Martin against an enforcement notice issued by Basingstoke & Deane Borough Council.
- The enforcement notice was issued on 28 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the installation of 3 UPVC double glazed windows to the front elevation of the building, as shown on the attached photograph 1 marked "A", "B" and "C" ("the windows"). Windows "A" and "B" are at first floor level; window "C" is at ground level and is in three parts.
- The requirements of the notice are to:
 - (i) Permanently remove the 3 existing unauthorised UPVC double glazed top hung casement windows in the front elevation;
 - (ii) Install 3 no. replacement white painted timber, single glazed, vertical sliding sash windows to the front elevation of the building of a form and finish that match the original windows as previously installed to the satisfaction of the Local Planning Authority; and
 - (iii) Make good any damage to the masonry, window heads, sills or rendering of the building caused by complying with steps (i) and (ii) and in doing so ensure that any new materials match adjacent work in terms of colour, texture and type of material.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Appeal Ref: APP/H1705/C/18/3218256
64 New Road, Basingstoke RG21 7PW

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- The appeal is made by Shorthouse and Martin against an enforcement notice issued by Basingstoke & Deane Borough Council.
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- The period for compliance with the requirements is 3 months.
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Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Preliminary matter

1. The phrase "to the satisfaction of the Local Planning Authority" is not appropriate in the requirements of an enforcement notice as it is open ended and thus insufficiently precise. There is no certainty as to what would "satisfy" the authority. Nonetheless, the requirements of both notices are specific as to what is to be removed and what is to be put in its place. The inappropriate phrase can, therefore, be struck out of both notices without any injustice arising. I therefore intend to vary the notice exercising my power under s176 of the Act.

Appeals B and C – ground (c)

2. The ground of appeal is that the matters alleged do not constitute a breach of planning control.
3. There is no disagreement between the parties that the installation of replacement windows would amount to a building operation as defined by s55(1) of the Act. Section 55(2), however, goes on to clarify at subsection (a)(ii) that the carrying out of operations which do not materially affect the external appearance of the building shall not be taken to involve development of the land. The issue in dispute is a narrow one, limited to whether the operations, involving replacement front windows to each property, has materially affected the external appearance of the building.
4. A judgement is to be made depending on the facts of the case. Whilst the changes have clearly affected the exterior of each property, it is the effect on the external appearance and not just the exterior that must be considered and

that effect on the external appearance is to be judged in relation to the building as a whole and not by reference to a part of the building taken in isolation.

5. Nos.62 and 64 originally comprised a pair of handed, semi-detached properties constructed in the mid-19th century. Changes over time include a 19th century side extension to No.64 and a modern building attached to the side of No.62 and alterations and additions to the rear. Given the position at the junction with Red Lion Lane and with a public car park to the rear, public views of the properties are not confined to the front. Nonetheless, it is the original principal front elevation of the pair that is the most impressive element of the building and this is a prominent feature in the New Road street scene. That façade remains largely unchanged with the exception of the replacement windows.
6. Although the replacement windows have been installed within the existing mullions; they are double glazed as opposed to the pre-existing single glazing, they have uPVC frames as opposed to painted timber frames, large panes with mock internal dividing glazing bars at first floor level as opposed to genuine divisions between small panes as existed on most of the first floor windows, and comprise top-hung casements as opposed to sliding sashes. All these changes, when taken together, result in windows of a significantly different appearance than those which previously existed, and this would be even more pronounced if the windows were to be opened.
7. It is of no relevance under this ground as to whether the changes would improve the appearance of the two properties or not. Nevertheless, windows are an important element of the building and the pattern of those on the front façade can be appreciated in views along New Road in both directions where the change to modern materials and design is very apparent within the largely unaltered and traditional 19th century façade.
8. In my view, notwithstanding that the alterations under consideration are confined to the front, the change to the principal elevation which has occurred has had a consequential effect on the appearance of the building as a whole. I therefore conclude as a matter of fact and degree that the replacement windows have materially affected the external appearance of the building and are thus not excluded from the definition of development by way of s55(2)(a)(ii). The installation of the windows to each property comprises development within the meaning of s55 of the Act for which planning permission is required. No such permission has been granted and thus a breach of planning control has occurred. The appeals on ground (c) fail.

Appeal A

9. The appeal building is situated within the Basingstoke Town Conservation Area. That being the case, and having regard to the duty set out in Section 72(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the main issue is whether the installation of the windows has preserved or enhanced the character or appearance of that area.
10. In looking at the special interest of the Conservation Area, it is centred on the character and historic development of the town. The Conservation Area Appraisal identifies five distinct character areas ranging from the urban town centre to late Victorian developments and surviving open spaces reflecting the former margins of the town. The appeal site sits within character area 4 which is a small sub-area with a suburban character containing detached, semi-

detached and terraced residential properties, some of which are now in commercial use.

11. Most of the buildings within the sub-area are identified as “notable structures” which the Council consider make a positive contribution to the character or appearance of the Conservation Area. Along New Road, these include modest terraced houses, the appeal building and a similar, but smaller building, at No.60 together with the single storey infill between. As noted by the Appellant, hardly any of the terraced houses have retained their original timber sash windows.
12. The appeal building, however, stands apart from the terraces, occupies a particularly prominent location in the street scene and is of a much grander design. In my view, therefore, it should not take its cue from the modest terraced houses. Indeed, and in contrast, a substantial part of the sub-area comprises Chequers Road and this contains many attractive “notable” buildings, a good proportion of which have retained timber sash windows.
13. On the front elevation of the appeal building, the windows are a significant and important element which make a substantial contribution to its character and appearance. The pre-existing window frames were finely detailed, slender and elegant and were appropriate to, and in keeping with, the period façade albeit that some glazing bars on two of the first floor windows had been lost to large single panes.
14. In contrast, the replacement windows have bulky frames which result in a cruder and heavier appearance. This is particularly apparent at the horizontal meeting rails and on the narrow side sections of the ground floor windows. At first floor level the internal spacers between the panes of glass rather than subdividing glazing bars is an obvious sham detail, as are the fake horns on the upper casements at ground floor level. The method of opening with top hung casements is particularly unfortunate and most inappropriate for a building of this period and the incongruous nature of opening would be extremely apparent when windows were ajar. The replacement windows are out of keeping with the period architectural detailing of this façade and overall have damaged the character and appearance of the host building. In so doing they have eroded the contribution that the building makes to the character and appearance of the Conservation Area as a whole.
15. On the main issue, I conclude that the installation of the windows has failed to preserve the character and appearance of the Basingstoke Town Conservation Area and in this respect there is conflict with local and national policies concerned with the protection of conservation areas and in particular with Policy EM11 of the Council’s Local Plan.
16. In terms of the National Planning Policy Framework (NPPF), the harm to the heritage assets, the conservation area (designated heritage asset) and the building (asset identified by the LPA), would be less than substantial. That being the case, NPPF paragraph 196 advises that the harm should be weighed against the public benefits of the proposal, including securing optimal viable use. In this respect, I have noted the argument that the windows were rotten and beyond repair. Whilst that might be so and replacement windows might well have been necessary to keep the building in viable use, it seems to me that the desired outcome could have been achieved with windows of a better design and more in keeping with the façade in which they were to be installed.

The need to replace the windows does not, therefore outweigh the harm identified in this case nor indicate that the proposal should be determined otherwise than in accordance with the Development Plan.

17. The Appellant says he was advised by the Council that no permission for replacement windows was necessary. If that is indeed so then it is a matter to be taken up with that authority – it is not something with which I can become involved and neither does it provide justification for harmful development. There is a formal process available under s192 of the Act for a determination as to whether a proposed operation is lawful or not. I have also been made aware that the windows on the first floor were installed in 2015. However, the Council has 4 years from substantial completion within which to take action and it has done so.

18. The appeal fails.

Appeals B and C – ground (f)

19. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary. I have already explained that the phrase “to the satisfaction of the Local Planning Authority” should be deleted. The steps otherwise simply require the new windows to be taken out and replaced by windows to match those which were removed. The Appellant says they may not have been “original” but it seems to me that that could be easily overcome by the deletion of that word. I note that it is claimed for the Appellant that he might not know what to put in but he is in the best position to know what was taken out and the Council has assisted by providing a photograph for reference. It is not excessive for a notice to require the breach to be remedied by restoring the land to its condition before the breach took place which is what is required here.

20. The Appellant suggests double glazed sash windows would be an appropriate alternative but no details of such a proposal are available.

21. The appeals on ground (f) fail.

Appeals B and C – ground (g)

22. The ground of appeal is that the time given to comply with the requirements falls short of what should reasonably be allowed. In this respect I do not consider it reasonable to extend the period for 24 months because a scheme for the redevelopment of the site is being contemplated by the Appellant. Such a scheme seems, at the moment, to be nothing more than a suggestion and there is no indication that the loss of the building would be accepted by the Council.

23. I do, however, find 3 months to be a particularly tight period within which to carry out the steps specified and, given the Appellant’s suggestion that a design incorporating double glazed sash windows could be achieved without harm to the Conservation Area, consider it would be reasonable to provide time to enable the acceptability of this option to be explored with the Council. I therefore intend to extend the period to 6 months.

24. To this limited extent the appeals on ground (g) succeed.

Formal Decisions

Appeal A: APP/H1705/W/18/3218254

25. The appeal is dismissed

Appeal B: APP/H1705/C/18/3218255

26. It is directed that the enforcement notice be varied by:

the deletion from paragraph 5 (ii) of the words "original" and "to the satisfaction of the Local Planning Authority"; and

the deletion from paragraph 6 of the words "3 months" and the substitution therefor of the words "6 months" as the period for compliance with the requirements of the notice.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/H1705/C/18/3218256

27. It is directed that the enforcement notice be varied by:

the deletion from paragraph 5 (ii) of the words "original" and "to the satisfaction of the Local Planning Authority"; and

the deletion from paragraph 6 of the words "3 months" and the substitution therefor of the words "6 months" as the period for compliance with the requirements of the notice.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

B M Campbell

Inspector