
Appeal Decision

Site visit made on 19 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 30 October 2019

Appeal Ref: APP/X1118/C/18/3218613

The Smugglers Rest, North Morte Road, Morteheo, Woolacombe, Devon EX34 7DR

- 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 William Jones against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 27 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years, unauthorised Operational Development consisting of the installation of uPVC windows in place of timber framed windows and the replacement of iron balustrades with wooden balconies on the first and second floors of the east elevation of the Building.
 - The requirements of the notice are: 1. Replace the unauthorised uPVC framed windows in the projecting bays on the first and second floors of the east elevation of the building with traditional single pane timber vertical sliding sash windows; 2. Paint the replacement windows with two coats of undercoat and two coats of gloss paint; 3. Replace the wooden balconies on the first and second floors of the east elevation with traditional cast iron balustrades replicating the design shown in the attached photograph; 4. Make good any damage caused from complying with Steps 1, 2 and 3 above and remove the uPVC windows/wooden structures and any associated debris from the land shown edged red on the Location Plan.
 - The period for compliance with the requirements is: 6 months from the date when this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by deleting "6 months" from the paragraph under section 5 and replacing that with "9 months". Subject to this variation, 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.

The ground (a) appeal

2. The main issue is whether the development has preserved or enhanced the character or appearance of the Morteheo Conservation Area (CA) and, if there is harm, whether that is outweighed by any public benefits of the development.
3. The appeal building is a tall building with Victorian origins located in a prominent position opposite the post office and the entrance to the public car

park in the heart of the village. Previously the main front façade had timber sliding sash windows to the canted first and second floor bays that sit aside central lancet style narrow doors that provide access out onto small balconies between each pair of bay windows. The painted timber windows and their traditional sash method of opening were in keeping with the era of this part of the building. The balcony balustrades were iron with intricate decorative detailing that again befitted the building's original design. The description of the Smugglers Rest in the Morteohoe CA Character Appraisal notes the iron balcony and the timber sashes. The building's position and previous detailing made a significant positive contribution to the character and appearance of the statutorily designated CA.

4. In contrast the new windows are modern synthetic manufactured replacements. They contrast unfavourably with the retained ground floor timber sashes on the front elevation in that they fail to replicate the finesse and integrity of hand painted timber joinery which is integral to the sincerity of the building's traditional appearance. Moreover, the top hung method of opening is alien to a building that was designed to have sashes that slid one pane over the other and gave the windowpanes two planes. The new timber balustrades have a blunt suburban outdoor decking style that depicts none of the intricate ornamental tracery of the former iron railings. They look entirely out of place on this prominent façade. The Victorian authenticity of the building has been significantly harmed.
5. I can appreciate that the Smugglers Rest has a front roof dormer with uPVC windows and there are other buildings in Morteohoe and nearby, including the attached later addition, that also have plastic windows. I do not know how these came to be. However, the attached later extension has a more modern appearance where uPVC frames do not necessarily look out of keeping in contrast with the historical part of the premises. They do not justify the degradation of the historical design quality of the appeal property, particularly given the prevalence of existing timber sashes to most of the windows on the other side wall, or the incremental undermining of the appearance of the CA. I see little merit, therefore, in unifying the appearance of the windows to uPVC.
6. In view of the above, the appeal development has, in the context of the National Planning Policy Framework (NPPF), caused less than substantial harm to the significance of the designated heritage asset.
7. There is no substantive evidence to show that uPVC window frames are better able to withstand coastal weather conditions compared to regularly maintained timber windows. The existing front and side timber windows appeared to be in good order. Scaffolding needed for painting the previous timber frames may have been needed. However, it appears that some of the frames could have been painted from the balconies thus minimising the time needed for scaffolding hire. Also, well painted frames can last a relatively long time before needing repainting. I give little weight to this cost matter.
8. I note that it is claimed the previous windows were in a poor state of repair. However, there is no evidence to show that the costs of having them repaired compared unfavourably with the replacement windows. There is also nothing to show that the comfort of guests from sound and thermal insulation perspectives could not have been equally secured by, for example, secondary glazing. In terms of the balustrades, it is of course critical to ensure the safety

- of persons using the balconies. Nevertheless, the evidence that the balconies could not have withstood the weight of potentially heavier railings is not substantive and there is nothing demonstrating that an alternative metal was explored that may have been lighter and which could have been designed and painted to maintain the design of the original balustrades.
9. There are no details such as plans or brochures of potential alternative uPVC sash windows instead of wooden frames. I cannot grant planning permission for vaguely proposed development. This is not an obvious alternative that I can seriously contemplate. The alleged breach of planning control also defines the scope of the deemed planning application which, in this case, is the windows that have been installed.
 10. I acknowledge the recent history of the premises and that it was on the market for four years before the current owners purchased it. I note too the investment they have made, that this is a tourism reliant area and the support expressed by a local Councillor, the Parish Council and the local tourism association. I also have no desire to dent the aspirations of the owners or to affect the financial viability of the business. However, there is no strong evidence showing that the use of the building or the continuation of the business is at serious risk such as to jeopardise the benefits it provides to the local economy, residents and holidaymakers.
 11. Having regard to the above, these public benefits and all the other matters raised, including that the works were carried out without knowing planning permission was needed, do not outweigh the great weight that must be given to the conservation of the designated heritage asset irrespective of the level of harm caused to the significance of the CA. They do not provide a clear and convincing justification to allow the retention of the uPVC windows and timber balustrades. Furthermore, the development attacked in the enforcement notice has failed to preserve or enhance the character and appearance of the CA. Consequently, it conflicts with the conservation aims of policies ST15 and DM07 from the North Devon and Torridge Local Plan 2011-2013.
 12. Although the site is in a designated Area of Outstanding Natural Beauty (AONB), given the nature of the development within the built limits of Morteohoe, I am satisfied that the uPVC windows and wooden balustrades have not harmed the landscape and scenic beauty of the AONB. That though does not outweigh my finding of harm to the CA.

The ground (f) appeal

13. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. The notice alleges the installation of uPVC windows and a wooden balcony. The steps require the unauthorised windows and balconies to be removed and replaced with materials and designs that match what was there before. As such, the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its condition before the breach took place. The steps require no more and no less. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. I note the case set out under this ground of appeal. However, I have considered those points earlier in my decision.
14. In view of the above, the ground (f) appeal must fail.

The ground (g) appeal

15. It may be possible execute the works required by the enforcement notice within 6 months, but I note the appellant's point that it may take a while to cost the works and have them carried out. I am also mindful that what is required will have a cost impact on the business which, if a longer time was allowed, might be better absorbed. With reference above to possible alternative uPVC sash windows, a longer time period for compliance would also allow the appellant to explore this option with the Council. I do though make no comment about the acceptability of such a proposal.
16. Eighteen months would be too long given the on-going harm to the CA, but 9 months would strike a more appropriate balance. To this extent the ground (g) appeal succeeds and I intend to vary the notice accordingly.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR