



Appeal Decision

Site visit made on 15 October 2019

by **Jessica Graham BA(Hons) PgDipL**

an Inspector appointed by the Secretary of State

Decision date: 5 November 2019

Appeal Ref: APP/P1133/C/19/3220229

Land at Byron House, 37 The Strand, Dawlish, Devon EX7 9PT

- 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 Peter Hands against an enforcement notice issued by Teignbridge District Council.
- The enforcement notice was issued on 10 December 2018.
- The breach of planning control as alleged in the notice is: *The insertion of two white polymer coated metal windows indicated by numbers 1 and 2 on the front elevation of the property as shown on the attached photograph of the building marked photograph 1.*
- The requirements of the notice are to
 - a) Remove the unauthorised white polymer coated metal windows (numbered 1 and 2) on the front elevation of the above property as shown on the attached photograph of the building marked photograph 1
 - b) Install timber windows which match in design, form, materials, glazing and details as indicated by numbers 3 and 4 of the front elevation of the adjoining property at 38 The Strand, Dawlish shown on the attached photograph of the building marked photograph 1.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Procedural matter

1. While the only grounds of appeal indicated on the appeal form were (a) and (c), some of the arguments made in the accompanying documents effectively constitute an appeal on ground (f). I am mindful that the Appellant's wife has prepared and submitted the appeal in very difficult circumstances, and without the benefit of professional representation. I also note that the Council has had (and taken) the opportunity to address all of the matters raised. On that basis, I am satisfied that no injustice would be caused if I were to consider the appeal as also having been made on ground (f), and I shall proceed accordingly.

The appeal on ground (c)

2. The ground of appeal is that the matters set out in the enforcement notice do not constitute a breach of planning control. The Appellant has explained that the advice of the local window specialist who undertook the work was that planning permission was not required.

3. Unfortunately, that advice was wrong. Building works or other operations which (as in this case) materially affect the external appearance of a building constitute development, for which planning permission is required.¹ Permitted Development Rights² exist for alterations to a dwellinghouse, such that (subject to various conditions and limitations) the replacement of windows can be carried out without the need for an express grant of planning permission. However, the evidence before me is that at the time when the windows were replaced, No. 37 was not a dwellinghouse but an osteopathic clinic and office.
4. In the interests of clarity it is perhaps worth noting here that planning permission has subsequently been granted for the change of use of the rooms on the ground floor to a flat.³ However, that does not alter the position regarding the non-availability of the Permitted Development Rights afforded to dwellinghouses because (a) such rights cannot be applied retrospectively, and (b) do not in any event apply to a building containing one or more flats, or a flat contained within such a building.⁴
5. The installation of the new windows did not therefore benefit from Permitted Development Rights; rather, an express grant of planning permission for this development was required, but not obtained. The appeal on ground (c) must therefore fail.

The appeal on ground (a)

6. The ground of appeal is that planning permission should be granted for the breach alleged by the notice. The main issue is the effect of the development on the character and appearance of the area.
7. No. 37 is not itself a Listed Building, but forms part of a terrace which contains other Listed Buildings. It is located on the northern side of The Strand, which is the main thoroughfare running through the town centre, and lies within the Dawlish Conservation Area. In considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker has a statutory duty to have special regard to the desirability of preserving the building or its setting. A similar statutory duty applies in respect of buildings within a conservation area: special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area.
8. The Appellant rightly observes that the street contains a variety of building styles, with different decorative treatments and window types. I saw at my site visit that the premises adjoining the right hand side of No. 37, which currently house a gift shop and ice cream parlour at ground-floor level, have been painted an eye-catching blue and yellow, and the travel agent close to the junction with Queen Street has uPVC windows at ground- and first-floor.
9. However, the majority of the buildings along this part of The Strand have retained a great deal of their original joinery and, while somewhat degraded in places, this makes a very important contribution to the historic and architectural character of the area. This was clearly once a fashionable

¹ S.55(1) and (2)(a)(ii), and S.57(1), of the 1990 Act

² Under Article 3(1) of *The Town and Country Planning (General Permitted Development) (England) Order 2015*, and its predecessors ("The GPDO")

³ Ref 18/02114/FUL, December 2018

⁴ Article 2(1) of the GPDO, which defines (for the purposes of the Order) the term "dwellinghouse"

thoroughfare in an elegant seaside resort, and while some of the alterations made to accommodate modern commercial uses at ground-floor level have resulted in harmful changes, the 19th Century origins and refined detailing of its architecture remain clearly apparent. For example, the curved sash windows at No.33, and the classical proportions of “The Moorings” and “Littlehame” (adjoining the appeal site).

10. In this context, the polymer-coated windows at No. 37 have an incongruous and discordant appearance. Their frames and glazing bars are very much thicker and flatter than the slender moldings of traditional joinery, as can be readily seen when they are viewed in conjunction with the timber-framed windows of the properties to either side, and this gives them a disproportionate bulk and prominence in the street scene.
11. I appreciate that the windows they replaced were not timber, like those of the adjoining buildings, but had crittall-style metal frames, and I discuss the implications of that below in the context of the appeal on ground (f). For present purposes, it is relevant to note that while probably not contemporaneous with the construction of the property, the previous windows (as shown in the photograph supplied by the Council) were not themselves out of keeping with the character of the area. The narrow width of the metal glazing bars, and the incorporation of opening mechanisms within the pattern of the frames, resulted in a well-proportioned appearance congruent with the classical appearance and historic character of the surrounding buildings.
12. Taking all of this into account, I conclude that the development here at issue conflicts with the aims of Policies S2, EC9 and EN5 of the Teignbridge Local Plan 2013-2033. Respectively, these policies seek to ensure that new development is of a high-quality design which responds to the characteristics of the site and surrounding area; within town centres, enhances the immediate physical environment, taking advantage of heritage assets to promote an improved shopper and visitor experience; and respects and draws inspiration from the local historic environment, responding positively to the character and distinctiveness of the area.
13. I note the Appellant’s contention that the windows which have been installed were the closest which could be found to those that were removed. However, no information has been provided as to the factors which informed that decision-making process, or the alternatives that were considered. If there are valid reasons why the installation of timber frames or crittall-style windows are not feasible here, there are nevertheless a variety of other windows available, many of which have been designed to reflect the frame-to-glazing proportions characteristic of buildings from specific eras. On the evidence currently before me I am not persuaded that the windows currently installed are the best, or only, option.
14. For similar reasons, while I appreciate the Appellant’s point that many would view the current windows as a visual improvement on the dilapidated windows they replaced, I do not consider this a “public benefit” to set against the harm caused to the character and appearance of the Conservation Area and the setting of the adjoining Listed Buildings.⁵ A greater visual improvement could be achieved through the installation of windows of more appropriate materials

⁵ Paragraphs 195 and 196 of the National Planning Policy Framework (February 2019)

and design, without then causing any attendant adverse impact on the character and appearance of the wider area.

15. In conclusion, I have found no other material considerations of sufficient weight to overcome the clear conflict with national and local policy. I therefore determine that the appeal on ground (a) should fail, and the deemed application for planning permission should be refused.

The appeal on ground (f)

16. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.
17. The notice seeks the removal of the unauthorised windows and their replacement with windows matching those of the neighbouring property, which are timber. However, in its Appeal Statement, the Council accepted that the windows in the front elevation of No. 37 were, prior to their removal, not timber-framed windows but crittall-style metal windows. The Council has produced a photograph of those windows dated March 2011, so while it is highly unlikely (given that the property appears to date from the early 19th Century) that they were the original windows, they had clearly been in place for a sufficient length of time to become immune from enforcement.⁶
18. In situations where planning permission has not been granted for the development at issue, the scope of an enforcement notice is limited to restoring the land to its previous condition.⁷ There is no statutory power to require the Appellant to undertake works which would result in an improvement to that previous condition. In this current case, then, the second requirement of the notice is excessive in that installing windows to match those of No. 38 goes beyond restoring the land to the condition it was in prior to the breach of planning control.
19. As the Inspector appointed to determine an appeal against the notice, I have wide-ranging powers to correct any defect, error or misdescription in the notice, provided that doing so does not cause injustice to either the Appellant or the Council.
20. I have given very careful consideration to the options available to me in this regard. It would not be appropriate to amend the second requirement to specify the installation of new windows matching those that were removed because, on the undisputed evidence of the Appellant, the windows that were removed were "rusty and dangerous"; such a requirement would therefore result in an improvement upon (rather than a restoration to) the previous condition of the property. The alternative of amending the second requirement to specify the reinstatement of the rusty and dangerous windows would clearly make no sense.
21. However, the simple deletion of the second requirement would in my judgment serve to put the notice in order. It is not unusual for enforcement notices concerning unauthorised replacement windows simply to require their removal: it is for the Appellant then to seek planning permission for such replacement windows as they consider appropriate. I am satisfied that in this case, deleting the requirement to install windows matching those of No. 38 would not cause

⁶ 4 years, per s.171B(1) of the 1990 Act

⁷ S.173(4)(a) and (b) of the 1990 Act

injustice to the Council, because it would still achieve the aim of removing the unauthorised development. Nor would there be any injustice to the Appellant who has been able, in the context of this appeal, to seek planning permission for the current windows.

22. In the event, I have determined that planning permission for the current replacement windows should be refused, and the enforcement notice will be upheld. However, the compliance period specified by the notice is 12 months, which should be sufficient for the Appellant to consider alternative options and make a further application for planning permission.
23. I shall therefore correct the notice by deleting its second requirement. To this limited degree, the appeal on ground (f) succeeds.

Conclusion

24. For the reasons given above I conclude that other than to the very limited extent detailed in connection with ground (f), the appeal should not succeed. I shall uphold the enforcement notice with correction, and refuse to grant planning permission on the deemed application.

Formal decision

25. It is directed that the enforcement notice be corrected by deleting sub-paragraph 5(b) in its entirety. Subject to this correction the appeal is dismissed and 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.

Jessica Graham

INSPECTOR