



Appeal Decision

Site visit made on 5 November 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/A4520/C/19/3219635

Flat E, Quadrant, 55 Mill Dam, South Shields NE33 1EQ

- 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 Stephen Kenneth Robertson against an enforcement notice issued by South Tyneside Metropolitan Borough Council.
 - The enforcement notice was issued on 27 November 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the installation of four sliding sash windows with composite frames in the front elevation of the property, in the locations shown on the photograph attached to the enforcement notice at appendix 2.
 - The requirements of the notice are: a. Remove the four composite sliding sash windows in the front elevation of the property (in the locations shown on the photograph attached to the enforcement notice at appendix 2. b. Replace the removed windows with four timber framed sliding sash windows, each of which is to accord with the two specifications at appendix 3 respectively called '*Proposed Window Replacement – 55E the Quadrant, S Shields – Drawing No. 0752/7540/185*' and '*Sash window details – 1:2 scale section*'.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (b)

2. The appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
3. There appears to be no dispute between the main parties that the previous windows have been replaced with uPVC windows at the appeal site, and these windows were evident at the time of my site visit.
4. I am therefore satisfied that the development has occurred as a matter of fact. Accordingly, the appeal under ground (b) must fail.

The appeal on ground (a) and the deemed planning application

Main Issue

5. The main issue is the effect of the development on the character and appearance of the locally listed building, and the conservation area.

Reasons

6. The Mill Dam Conservation Area (CA) is a compact area located close to the river. The Council's document entitled 'Mill Dam Conservation Area Character Appraisal' highlights the important riverside heritage that is embodied in the CA, and the important commercial role that it historically played in the town.
7. The appeal site at Flat E is within The Quadrant, a locally listed building which is identified in the Council's document entitled 'South Tyneside Local Development Framework - SPD 21: Locally Significant Heritage Assets' (SPD). According to the 'Technical Appendices' to the SPD, The Quadrant was formerly known as the 'Chandlers' Buildings'. It is described as a neat, three-storey late Victorian terrace designed to face the central hub of the area.
8. At ground floor level, the terrace retains its timber shop fronts. The upper floors are faced in pale brick, with white faience panels and decorative eaves and string courses. On the first floor are tall sash windows, with smaller, more squat windows on the second floor. The unified appearance of the building derives from the consistent use of materials across the curved frontages, and from the regular rhythm of the window openings.
9. The majority of the upper floors still have the characteristic timber windows with a distinctive pattern comprising a plain sash on the bottom, and a two light sash above. Although the appellant states that the windows are not original, they nonetheless appear to be historically accurate, and in keeping with the character of the building. Despite alterations, and notably its conversion to flats, the building retains its historic form and much of its fabric. I am thus satisfied that it makes a positive and valuable contribution to the significance of the CA.
10. The new windows at Flat E have been fitted within the existing window openings. They retain the pattern of two lights over one, and the vertical opening mechanism, so that extent, they reflect the character of the previous windows.
11. However, uPVC is a synthetic material whose smooth, shiny, modern appearance does not satisfactorily capture the character of the traditional painted timber finish of the existing windows at the neighbouring flats. I accept that new uPVC windows are bright in appearance, as are freshly painted timber windows. Nonetheless, it is well established that uPVC and painted timber do not age in the same way. Unlike uPVC, painted timber tends to take on a mellow patina of age that complements the natural materials of historic buildings. The Council's 'Mill Dam Conservation Area Management Plan' (MP) notes that uPVC can degrade and discolour, and advises that it is not considered an acceptable material for use in conservation areas.
12. In addition, the new window frames are thicker than the previous frames, and those of the surrounding windows. Even a relatively modest increase in the frame size results in windows that appear notably more bulky than the fine,

elegant dimensions of the historic windows. Other features, for example, the applied glazing bars and visible joints, depart markedly from the character of traditionally constructed sash windows. I observed on my visit that the new windows can be seen clearly from the street. Even at second floor level, the use of a modern material and the greater size are clearly obvious to all but the most casual of observers.

13. The appellant argues that all the windows within the building are different. However, at the upper floor levels, the uniformity of window design is striking. For the reasons discussed above, the appeal windows appear discordant and out of keeping within this context, and so any minor differences between the other windows are insufficient to mitigate the harm I have identified.
14. Timber also offers the flexibility to be painted in a variety of colours. The appellant contends that the remaining windows will eventually be painted a 'new white', but this may not necessarily be the case. If the other windows in the façade continued to be painted in an off-white shade, the colour difference with the appeal windows would remain evident.
15. Taking these factors in combination, I conclude that the development unacceptably harms the character and appearance of the locally listed building, and in turn, the significance of the wider CA. Accordingly, the development conflicts with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight. In addition, the scheme fails to comply with Policy DM6 of the South Tyneside Local Development Framework Development Management Policies (DMP), which seeks to protect heritage assets, including locally significant assets, and DMP Policy DM1, insofar as it requires development to reinforce local identity, having particular regard to use of materials and architectural detailing. It is also at odds with the advice given in the MP.
16. Paragraph 197 of the National Planning Policy Framework (NPPF) states that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
17. Although serious, the harm in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
18. I note the appellant's position that it is difficult to commission new timber windows of a historic design. However, he previously secured planning permission¹ for the replacement of the old windows with timber double glazed windows. This circumstance suggests that he had at least some expectation of being able to have such windows manufactured and fitted.

¹ ST/0611/17/HFUL

19. I have taken into account the appellant's concerns about the poor condition of the previous timber windows. They no longer opened, and as a result, he was understandably concerned about escape from his property in the event of a fire. However, the benefit of having fully functioning, weather-proof windows could equally have been achieved with timber replacements, and is not dependent on the use of uPVC. This factor thus does not weigh in favour of the appeal scheme.
20. I therefore find that insufficient public benefits have been identified that would outweigh the harm I have identified to the heritage assets. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance.
21. The appeal on ground (a) fails, and the deemed planning application is refused.

The appeal on ground (f)

22. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections.
23. In support of his case, the appellant has supplied photographs of the appeal site and a number of other properties. However, he has not clarified why he considers the requirements to be excessive, or suggested any lesser steps that might overcome the objections considered above. I have concluded that, due to their materials and design, the new windows are inherently unacceptable in terms of their impact on the locally listed building and the wider CA. Therefore, it seems to me that no measures short of their removal and replacement with windows of a more appropriate design would remedy the breach. The appeal on ground (f) therefore fails.

Conclusion

24. For the reasons above, the appeal is dismissed, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR