
Appeal Decision

Site visit made on 13 January 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/P1133/C/19/3226057

Land at 72 Fore Street, Chudleigh TQ13 0HT

- 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 Simon Shore against an enforcement notice issued by Teignbridge District Council.
- The enforcement notice was issued on 27 February 2019.
- The breach of planning control as alleged in the notice is without planning permission (i) the unauthorised replacement of all windows on the front and side elevation with uPVC windows, and (ii) the installation of a new uPVC windows *[sic]* as shown on the attached photographs of the building *[attached to the notice]*.
- The requirements of the notice are:
 - (i) Remove the unauthorised uPVC windows to the front and side elevation of the property as shown on the attached photographs marked 1 to 4 on the front elevation and 5 to 11 on the side elevation. These are indicated on the "existing windows photographs sheets 1 and 2".
 - (ii) Install timber windows which match in design, form, materials, glazing and details the original windows as shown on the attached photographs marked 1 to 4 on the front elevation and 5 to 10 on the side elevation. These are indicated on the "original windows photographs sheets 3 and 4".
 - (iii) Install a timber window in the position marked 11 on the attached "existing windows photographs sheet 2" which matches in design, form, materials, glazing and details the window marked 6 on "original windows photograph sheet 4".
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

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

Preliminary Matters

1. I have taken the postcode for the property in my banner heading above from the appeal form as none was stated on the enforcement notice.
2. The enforcement notice contains a typographical error in paragraph 3 as it refers to the installation of 'a new uPVC windows'. The photographs attached to the notice show that only one additional window has been inserted and so I shall correct the notice accordingly.

The Appeal on Ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to demonstrate this on the balance of probability.

Reasons

4. Neither party has contended that the alleged works do not represent development under section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act), and I have no reason to disagree with that approach.
5. Accordingly, the matter in dispute on this ground is whether the installation of the uPVC windows is permitted development (PD) under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
6. Under Class A, planning permission is granted for "the enlargement, improvement, or other alteration of a dwellinghouse". This class of PD is granted subject to a number of conditions and limitations. The condition in dispute is contained in paragraph A.3.(a) which states that "the materials used in any exterior work...must be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse".
7. The comparison to be made is whether the materials used in the uPVC windows are similar (i.e. like but not identical) to those used in the dwellinghouse as a whole, as it existed before installation of the uPVC windows.
8. On the evidence before me, the principal materials previously used in the external construction of the dwellinghouse were render and dark coloured timber, being traditional materials contemporary to the period of the house. Although the appellant refers to the uPVC used as having a 'wood grain' effect, this was not apparent at my site visit. The uPVC used had a smooth texture and finish, unlike any of the materials used in the construction of the previously existing dwellinghouse. The uPVC used is an off-white colour which contrasts with the darker colour of the previous timber windows.
9. The government publication - "Permitted development rights for householders – Technical Guidance" (2019) (Technical Guidance) provides guidance on the operation of PD rights for householders. It refers to the A.3.(a) condition and gives an example that 'it *may* [my emphasis] be appropriate to replace existing windows with new uPVC double-glazed windows even if there are no such windows in the existing house.' However, this Guidance also reiterates that they should give a 'similar visual appearance to those in the existing house'.
10. I have found that the materials used in the construction of the uPVC windows are not of similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Consequently, the installation of the uPVC windows does not accord with Condition A.3 (a).
11. I have noted the email from the Council following correspondence in relation to the Technical Guidance which stated that the use of uPVC is "allowed". However, this email goes on to explain that at the appeal property, the windows inserted were not considered to give a similar visual appearance to those installed previously. This comment must therefore have meant that

uPVC windows are only *potentially* allowed, subject to site specific considerations.

12. I conclude then that the appellant has not shown on the balance of probability that the appeal development is PD under Schedule 2, Part 1, Class A of the GPDO. The matters alleged in the notice constitute a breach of planning control and the appeal on ground (c) fails.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

13. The appeal on this ground seeks to demonstrate that planning permission should be granted for what is alleged in the notice.

Main Issue

14. The main issue is the effect of the uPVC windows on the character and appearance of the host property and the Chudleigh Conservation Area (CA).

Reasons

15. The appeal property is an historic building in the centre of the Chudleigh Conservation Area. Timber multi-paned painted sash windows are a characterising feature within the CA as a whole, contributing to the visual elegance of the historic architecture within the CA.
16. The appeal building forms part of a small group of unlisted buildings which show consistency in their attractive detailing and make a notable contribution to the architectural significance of the CA. Prior to the replacement of the appeal building windows, its attic level windows were of a very similar design to those on the adjoining property.
17. Some of the previous windows at the appeal property were metal, recent additions and/or in need of repair. However, from the photographs seen, the varied previous fenestration at the appeal property added visual interest to both the front and side elevations. The painted timber sash windows were also in keeping with this strong characterising feature of the CA.
18. Although of Georgian style, the uPVC windows installed are an inappropriate feature on this historic building by reason of the homogeneity of their design. The shared attic level fenestration design with the adjacent building has also been lost to the detriment of the group value of the adjacent unlisted buildings.
19. Other buildings in the CA have uPVC windows, some of which are of a fanlight opening single pane design. However I do not have full details of the planning circumstances leading to each of those cases and have considered the appeal development on its merits. The presence of other out-of-character fenestration in the CA is not in any event a good justification to allow further harmful development.
20. The appellant suggests that I could vary the notice to enable the windows on the side elevation to remain. This is on the basis that some of the side windows were not timber and were of varying designs, and as the appellant considers that the side elevation is less important to the significance of the building. However, as detailed above, the variation in design of the previous windows added visual interest, and the side elevation is also readily visible from the public domain and contributes to the appreciation of the building. I

do not therefore consider that this proposal would overcome the harm identified.

21. I therefore conclude on the first main issue that the uPVC windows unacceptably harm the character and appearance of the host building and CA. They conflict with Policies S1, S2, EC9 and EN5 of the Teignbridge Local Plan (2014) (LP) which seek to protect local distinctiveness, historic interest and capitalise on heritage assets including conservation areas. I accept that LP Policy S1A is an overarching policy and there would be no direct conflict with this. There would be conflict also with national policy contained in Sections 12 and 16 of the National Planning Policy Framework 2019 (the Framework) which seek to ensure that development is sympathetic to local character and conserves heritage assets in a manner appropriate to their significance.
22. In making this assessment, I have undertaken my statutory duty pursuant to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area. I have found that this objective is not achieved as harm would be caused.
23. This harm would be less than substantial in the terms of paragraph 196 of the Framework. Nonetheless, this harm carries considerable importance and weight. The only public benefit advanced to counter this harm would be an increase in the energy efficiency. This represents only a modest benefit, and so does not outweigh the harm identified.

Other Matters

24. The appellant highlights that the uPVC windows also offer improved sound insulation and that this, along with the energy efficiency benefits would be broadly supported by LP Policy S1A. Although I have no detailed evidence on this, I accept that some noise reduction is likely, which is a small benefit.
25. The appellant raises the issue of inconsistency in the Council's decision making, referring to uPVC windows approved on the adjacent property. However, each development must be considered on its merits and it would appear in that case that the uPVC windows proposed meant that they would match those on an adjacent building. Here, the windows installed at attic level have meant that they no longer match those on the building adjoining.

Conclusion on Ground (a) and the DPA

26. For the above reasons, I find that the uPVC windows materially harm the character and appearance of the host property and the CA. The less than substantial harm to the significance of the CA would not be outweighed by public benefits identified. There would be conflict also with the development plan, read as a whole, and there are no material considerations of sufficient weight to lead to a decision other than in accordance with the development plan. I conclude that planning permission should not be granted on the DPA and that the ground (a) appeal should fail.

The appeal on ground (f)

27. The appeal on this ground is that the steps required by the enforcement notice go beyond what is necessary. It is appropriate to first consider what purpose(s) that requirement is intended to achieve. This enables a proper

- assessment of whether the steps required are more than is necessary to achieve that purpose/those purposes.
28. Section 173 of 1990 Act states two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy any consequent injury to amenity.
29. As regards the 'replacement' windows, the steps required are to remove the uPVC windows and install windows of the same design as those removed. Thus together the purpose of these requirements is to restore the building to its previous condition and so remedy the breach.
30. The appellant submits that the requirement to install effectively identical windows to those removed is excessive, given the varying designs and materials of these. I concur with that view but given the previous variation in design and materials, I do not consider that I can properly detail what might be an acceptable alternative scheme. The notice would be rendered uncertain if I were to require the submission of a new scheme for approval.
31. There is though an alternative lesser step. It would appear that what the notice attacks is the installation of the replacement windows, rather than the removal of the previous windows. Consequently, the requirement to install timber windows of the exact same design as those removed goes beyond what is necessary to remedy the breach. This would be achieved by simply requiring removal of the newly installed replacement windows.
32. Provided that a sufficient period is given for compliance, this would therefore enable the appellant to seek planning permission for and install new windows, as clearly it is not in the appellant's interests for the property to be left without windows. I shall therefore vary the notice accordingly.
33. As regards the steps related to the 'new' (as opposed to 'replacement') uPVC window, these include removal of the uPVC window and its replacement with a new timber window. The evidence suggests that there was not previously a window in this position and so requiring the installation of a new timber window cannot have been directed at restoring the building to its previous condition. This requirement must thus have been directed at remedying the consequent injury to amenity.
34. Once again, I would accept that some alternative form of window to that stipulated in the requirement might be acceptable. However, it would not be appropriate to stipulate here an acceptable design, without knowing what types of window might be approved to be installed in respect of the other window openings. An appropriate lesser step to remedy the injury to amenity would therefore again be to simply require removal of the new window. Once again, I shall vary the notice in this way.
35. The appellant suggested that I could vary the notice so that the side elevation windows may remain but I found under ground (a) that this would not overcome the harm identified. Thus as regards the 'new' side window, it would not be a lesser step which would remedy the injury to amenity. It would also not remedy the breach of planning control in respect of the installation of the replacement windows.
36. The appeal on ground (f) therefore succeeds only in the respects outlined.

The appeal on ground (g)

37. This ground is on the basis that the time for compliance is too short.
38. The appellant contends in this regard that time would need to be spent in: preparing a planning application for the installation of new windows; determination of that planning application; having the windows made; having these installed; and raising funds for these works to be carried out. A period of between 18 to 24 months is requested.
39. I agree that a fairly significant period would be required for these tasks. It would also be sensible to allow a reasonable period for negotiation prior to any planning application being submitted to enable the application to proceed smoothly. The specialist nature of the work would also mean a reasonable lead in time for constructing the new windows and, for the same reason, fairly significant funds would likely be required.
40. I have little evidence as to the likely lead in time on the window construction nor regarding the need to raise funds. I am conscious though that requirement to remove the windows would affect the occupants' home. The occupants might also prefer these disruptive works to be carried out in better weather. Drawing these considerations together, a period of 18 months would represent a reasonable period for compliance.
41. The appeal on ground (g) succeeds to the extent outlined.

Overall Conclusion

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

Formal Decision

43. It is directed that the enforcement notice be corrected by in paragraph 3 deleting the words "a new uPVC windows" and substituting: "a new uPVC window" and varied by deleting all wording from requirements ii) and iii) in paragraph 5 and deleting the numbering i), ii) and iii) from this paragraph also.
44. Subject to this correction and these variations 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.

V Bond
INSPECTOR