



Appeal Decision

Site visit made on 4 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/M3835/C/19/3237537

41 Warwick Street, Worthing, West Sussex BN11 3DQ

- 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 D Dancy against an enforcement notice issued by Worthing Borough Council.
- The enforcement notice, numbered 01353-Im-we/0068228, was issued on 15 August 2019.
- The breach of planning control as alleged is stated in Appendix 1 attached to this Decision below.
- The requirements of the notice are stated in Appendix 1 attached to this Decision.
- The period for compliance is stated in Appendix 1 attached to this Decision.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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 a variation. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 11 March 2020.

Decision

1. It is directed that the enforcement notice is varied by the deletion of nine bullet points in paragraph 3 of the notice and replacement with the following:
 - Demolition and re-construction of the front (south) bay at first and second floor and installation of replacement timber sash windows;
 - Formation of a flat roof construction in place of former 'butterfly' roof involving removal of 2 no. former chimney stacks (with pots) straddling east side boundary, and formation of built-up 'upstands' to east and west sides;
 - Demolition and re-construction of front (south) dormer and installation of replacement timber sash window;
 - Alterations to size and proportions of first and second-floor window/door openings on north elevation;
 - Installation of external vents at first and second-floor on front (south) elevation
 - Fixing of TV aerial and bracket to front (south) elevation.

In paragraph 5, step 2), the deletion of the words 'with size and proportion of window opening, position of window head and cills, profile of cill and depth of

reveal to match that existing at No.43 Warwick Street - as shown on photograph C' and substitution with the words 'with one that is the same as that existing immediately prior to the breach taking place'; and the complete deletion of step 11).

2. Subject to the 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.

Background and procedural matters

3. There have been a number of planning applications since 2008. Most relevant is an application in 2012 under reference WB/0913/12/FUL. This granted planning permission for the conversion of the first second and third floors from offices (part vacant), to four self-contained flats with internal alterations and bicycle and bin storage (re submission of application ref WB /09/0704). This was granted conditionally on 12 October 2010. Details were submitted to discharge conditions 5 and 6, although these were not found acceptable by the Council.
4. The appellant argues that this permission has been implemented, and the works targeted by the Council are variations to those approved plans. The Council are of the view that the changes are so significant they represent works carried out without planning permission. The enforcement notice is framed in this way, by seeking to remedy the breach of planning control. The 2012 permission did not include any external alterations, other than the provision of bin and cycle storage. To my mind the works that have been carried out therefore go beyond the scope of that permission and I will proceed on this basis.
5. My attention has been drawn to a number of errors in the notice, where matters that formed part of the allegation at paragraph 3, are not carried through to the requirements to remedy the breach at paragraph 5. These include the automatic opening vent to the north roof slope; the various alterations to the east elevation; the demolition and rebuilding of the rear dormer (north); and the removal of and replacement of the external staircase to the north elevation. I note that the notice requires only the dormer on the south elevation to be altered, by the re-instatement of the original pitched roof. I consider that paragraph 3 of the notice can be corrected to reflect these errors, without causing injustice to the parties.
6. The first and second floor windows on the north elevation have been completed since the Council carried out their initial investigation. Although included in the both the allegation and requirements of the notice (No 11)), these windows have been completed with timber sliding sash windows inserted. A first floor window now replaces the former door opening. The Council have indicated in their evidence that these windows, together with the repositioning of the windows on this elevation, are characteristic of the traditional timber sliding sash windows. As they are therefore no longer of concern, I consider that the requirements of the notice can be varied by the removal of this step without causing injustice or making the terms any more onerous than first issued.
7. It is agreed by the Council in their evidence, that the re-instatement of the first floor opening to the left hand side of the bay window is their preferred option, rather than replacement with a window design that matches the original. Whilst

there is no ground (f) appeal, I consider that this step goes beyond the requirement, for the land to be restored to its condition before the breach took place. I have therefore varied the notice accordingly and will consider the appeal on the basis.

Ground (a) – The deemed application

Main Issue

8. I have had regard to the Council's reasons for issuing the notice. I consider that the main issue is the effect of the development on the character and appearance of the building, and whether it preserves or enhances the character or appearance of the South Street Conservation Area (SSCA)

Reasons

9. The site is located within a pedestrianised shopping street in Worthing town centre. The appeal property comprises a mid-terrace three storey building with roof accommodation and a two storey rear projection on the north side. In common with other properties in the area the ground floor is in retail use with the upper floors having been converted into four self-contained flats and one studio flat. The main access to the site is from Warwick Street and there is a rear access from Ann Street to the north of the property.
10. My attention has been drawn to the South Street Conservation Appraisal that gives additional information about the origins and characteristics of the SSCA. It emphasises Warwick Street's key position, providing pedestrian links into and from the centre of the town. The buildings are characterised by elevations that include bays, dormers, mansard and pitched roofs in slate, together with timber sash windows which provide the important vertical emphasis to the street scene.
11. Warwick Street is narrow with a generally tight urban grain, with a combination of shops, restaurants, cafes and public houses at street level, with a mix of uses on the upper levels. The pedestrianised nature of the street makes it very attractive, with outside seating that encourages people to linger and enjoy the historic buildings that make the area important. In contrast Ann Street to the rear also has a mix of commercial and residential properties, but is more utilitarian in nature, with the general character of a service road.
12. The development that has been carried out has significantly altered the main south elevation in a number of ways. The replacement windows are of different proportions to both the originals and those at No 43. This reduced window height has resulted in a loss of the vertical emphasis, that give these buildings their sense of height. The addition of the TV aerial, the angled guttering, and modern wall vents, all result in a cluttered appearance to the frontage which draws attention to the other changes.
13. I acknowledge that the loss of the twin pitched 'butterfly' roof is to some extent concealed from street views, given the narrowness of the streets. Nonetheless, due to the tight grain of the area there are clear views of the roof from surrounding buildings and raised public vantage points. The replacement of this traditional roof feature, with the flat roof results in an incongruous and unusual feature in the SSCA. Moreover, the loss of the original chimneys further erodes the character and appearance of the SSCA.

14. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires Local Planning Authorities to pay special attention to the desirability of preserving and enhancing the character or appearance of conservation areas.
15. The National Planning Policy Framework (The Framework) states that harm to a heritage asset might be defined as 'substantial' or 'less than substantial.' However, Planning Practice Guidance (PPG) advises that in general terms, substantial harm is a high test and that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. In finding harm to the Conservation Area, due to the small-scale nature of the development, I would quantify its extent to be less than substantial.
16. Nonetheless, I attach considerable importance and weight to that harm, and in applying the test set out in the Framework, I note that the identified benefits for the development relate to the restoration of the building. Whilst I acknowledge the public benefit of this to the building and the wider SSQA, I do not consider that this is sufficient to offset the identified harm.
17. Overall, I find that the development results in an untraditional and inappropriate treatment for the host building, which is unsympathetic and harmful to its original design and appearance. I find that the development fails to maintain or enhance the building and is therefore an inappropriate alteration in the SSQA. It therefore conflicts with policy 16 of the Worthing Core Strategy (2011). In summary, this policy aims to ensure that development maintains, and enhances existing assets and the buildings that represent the historic character of Worthing.

Ground (g)

18. It is the appellant's case that the requirements of the notice will require time for the planning and tendering of the contract. It is also contended that the works will require the tenants to vacate the property. A period of 12 months has been suggested as being more reasonable. Although I acknowledge that the tenants are likely to need to secure suitable alternative accommodation, which could take several months. Nonetheless, I see no reason why negotiations with builders could be done at the same time as the tenants notice period, with the works commencing as soon as the flats are vacated.
19. I therefore consider that a period of six months is an appropriate time for compliance with the notice. The appeal on ground (g) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I have upheld the enforcement notice with variations and refused to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appendix 1

The Alleged Breach of Planning Controls

The breach of planning control as alleged in the notice is development involving internal and external alterations in connection with the conversion of the upper floors of the building on the land to provide 3 no. 1 bedroom flats and 1 no. studio flat (Class C3).

The steps required to comply with the enforcement notice are:

- 1) Reinstate the feature bay on the south elevation with continuous eaves height to gutterline, size and proportions of window openings, position of 1st and 2nd floor window heads and cills, profile of window cills and mullions, depth of reveal and detailing below the 2nd floor window cill all to match that existing at No.43 Warwick Street - as shown on photographs A & B.
- 2) Reinstate first-floor window opening on south elevation to left hand side of bay with size and proportion of window opening, position of window head and cills, profile of cill and depth of reveal to match that existing at No.43 Warwick Street - as shown on photograph C.
- 3) Remove angled section of plastic downpipe at second-floor between gutter and main downpipe on south elevation (currently draining roof of feature bay) - as shown on photograph B.
- 4) Reinstate white painted timber vertical sliding sash windows in the feature bay within the altered window openings as described in 1) above,
Either: of a detailed design, proportion and profile to match those which existed previously as shown in Google maps photograph 1
Or: to match those at No.43 Warwick Street - as shown on photographs C & D.
- 5) Install white painted timber vertical sliding sash window within the altered first-floor window opening as described in 2) above,
Either: of a detailed design, proportion and profile to match that which was there previously as shown in Google maps photograph 1
Or: to match the one at No.43 Warwick Street as shown in photograph A & C.
- 6) Remove vents fitted at first and second-floor on south elevation as shown on photographs A & G.
- 7) Remove aerial and bracket fitted to second-floor blind window on south elevation - as shown on photograph F.
- 8) Remove flat roof and upstands and reinstate 'butterfly' roof (dual ridge with central valley) with terracotta ridge tiles as previously existed - as shown on photograph J.
- 9) Reinstate 2 no. chimney stacks with 3 terracotta pots on north stack and 2 terracotta pots on south stack - as shown on photograph J.
- 10) Remove sections of gutter to east and west sides of roof on front (south) dormer as shown on photographs A & B and reinstate pitched hip roof with decorative ridge tiles as previously existed as shown on Google maps photographs 2 and 3.

- 11) Alter the size, proportion and position of the head and cill of the second floor window opening on rear (north) elevation and reinstate white painted vertical sliding timber sash window of a detailed design, subdivided proportion (3 over 6) and profile all to match that previously existing - as shown on photograph J.
- 12) Reinstate white painted vertical sliding timber sash window in rear (north) dormer of a detailed design, sub-divided proportion (3 over 3) and profile to match that previously existing – as shown on photograph J.
- 13) Alter the size, proportion and position of the head and cill of the first floor window opening on the rear (north) elevation to that as shown on Drg. No. 6408:1B Title: Internal Alteration and COU upper floor to flats permitted under AWDM/0913/12 and install a white painted vertical sliding timber sash window of a detailed design and sub-divided proportion (6 over 6) as shown on Drg. No. 6408:1B Title: Internal Alteration and COU upper floor to flats

The period of compliance with the requirements is 6 months.

End.