



Appeal Decision

Site visit made on 29 May 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2020

Appeal Ref: APP/D0121/C/19/3241481

42/44 Upper Church Road, Weston-Super-Mare, North Somerset BS23 2DX

- 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 John Edge against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 18/00037/NAP, was issued on 18 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the replacement of traditional timber windows with double-glazed upvc windows within the North and East elevations as shown in blue on the attached plan¹.
 - The requirements of the notice are: Remove all unauthorised upvc framed, double glazed windows within the North and East elevation of the building as shown on the attached plan.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Procedural Matter

2. Whilst I note that there is no disagreement between the parties that the appeal site is within a conservation area (CA), several names have been used for the CA in the submitted documents. The enforcement notice refers to the Melrose CA and the Council's statement suggests that the Melrose CA forms part of the Great Weston CA. The article 4 direction refers to the Weston-Super-Mare (Melrose /Grove Park) CA and the appeal questionnaire refers to the Greater Weston CA.
3. Having regard to the CA plan provided within the appeal questionnaire, it is clear that there is a single, large CA within the central area of Weston-Super-Mare. The name of this provided on that plan and in the appeal questionnaire is the Greater Weston CA (GWCA).

¹ References in this heading to "the attached plan" are to the plan attached to the notice.

Ground (a) – the deemed application for planning permission

Main Issues

4. The main issues are whether or not the development subject of the enforcement notice is an acceptable alteration to the host building and whether or not it preserves or enhances the character or appearance of the GWCA heritage asset.

Reasons

5. The appeal site is within a part of the GWCA where built development is mixed. Whilst there are rows of fairly uniform large Victorian terraced properties opposite the appeal site and to the west, the appeal site is within a short run of more varied buildings, most of which either accommodate an existing commercial use or retain evidence of such a use with some remnants of original shopfronts visible. Being close to the Weston-Super-Mare sea front, some of the Victorian terrace properties have a B&B use, as well as residential.
6. The curve of the road and building lines along this section of Upper Church Road, combined with the mix of building types and uses add interest to this part of the conservation area and its special character. In addition, many properties retain original features including, but not limited to, bay windows, shop fronts and timber glazing.
7. The appeal building is a former public house. Being a corner property the appeal site is prominent, particularly when viewed from Upper Church Road if travelling towards Manilla Crescent. Whilst recent works to the building have resulted in the loss of the public house frontage, its historic use is still part of its character. The building also retains interest with a staggered front elevation (facing Upper Church Road) and original materials and detail, particularly at first floor and eaves level. The extension to the rear is a clearly modern addition to the building. As it has a simple appearance and is subservient in character, it does not detract from the positive contribution the building as a whole makes to the GWCA in this location.
8. The works to replace the windows subject of the enforcement notice took place during the recent change of use of the building to residential flats. The windows have white upvc frames and replace timber framed windows, as confirmed by the appellant. The openings at first floor and one of the openings on the ground floor facing Greenfield Place are more traditional in their size and position on the building. These openings have been fitted with frames that feature a horizontal divide that would be typical with a traditional sliding sash frame. However, the windows do not have a central, vertical glazing bar detail that can be seen in the circa 2009 photographs of the building from the Council², and as indicated on the plans approved by virtue of the 16/P/1866/F planning permission for the change of use³. Furthermore, the bottom sections of the frames are openable, resulting in a bulky bottom section that is not typical of a more traditional sliding sash window.

² Appendix C of the Council's appeal statement.

³ The planning permission granted for the change of use of the appeal building to flats, details of which are provided at appendix D of the appellant's appeal statement and in the Council's questionnaire.

9. As for the openings in the former public house frontage at ground floor, these are more unusual in their size and position on the building. Nevertheless, the continuation of a bulky bottom section in some of these frames together with the upvc sills give these windows an overt appearance that is not sympathetic to the character of the building overall.
10. Many of the frames subject of the notice have also been fitted with a protruding vent on the horizontal divide. This accentuates the modern design and appearance of the windows.
11. That the replaced windows were in a poor condition does not justify the current upvc replacements. New replacement windows, such as those approved by virtue of the 16/P/1866/F planning permission, can be both an appropriate alteration to the building and achieve the necessary standards of efficiency.
12. Whilst the notice is not directed to the upvc frames used in the rear extension, these upvc frames predate the change of use of the building and are, in any event, appropriate for the small window openings in this modern extension.
13. I acknowledge that there are a number of examples of unsympathetic windows in the vicinity of the appeal site. These have somewhat eroded the character of the conservation area in this location. The examples are not, however, so great in number so as to be common place and typical. Indeed, good examples of the more traditional and delicate timber window frames are prevalent in the adjoining and nearby buildings. Examples such as these and those removed from the appeal building still make a significant contribution to the character and appearance of the conservation area. As such, it is desirable to preserve them.
14. In all, the upvc frames that are the subject of the enforcement notice are detrimental to the appearance of the building and are not sympathetic to its character. In view of the positive contribution the appeal building makes to the local area, the windows also cause detriment to both the character and appearance of the GWCA in this location.
15. Having regard to the findings above, I find the harm caused to the heritage asset would be less than substantial. In these circumstances, paragraph 196 of the National Planning Policy Framework (the Framework) makes it clear that where less than substantial harm to the significance of a designated heritage asset would occur then this has to be weighed against the public benefits of the proposal.
16. In this regard the appellant suggests that social and economic benefits result from the development. He has not, however, set out what these benefits are. Nevertheless, the building is already in use as residential accommodation and alternative, more appropriate windows would ensure that this use of the building continues. Furthermore, works to replace windows in such a property can, and often do, take place while a property continues to be occupied. In this regard, I am satisfied that my decision would not interfere with the human rights of any of the occupiers of the building. On a separate note, I have already concluded that the development does not secure an improvement to the appearance of the building. Accordingly, the less than substantial harm to the significance of the Great Weston Conservation Area designated heritage asset is not outweighed by any identified public benefits.

17. To conclude, the upvc windows subject of the enforcement notice are development that is not an acceptable alteration to the host building and does not preserve or enhance the character or the appearance of the GWCA heritage asset⁴. The development does not, therefore, accord with policies CS5 (Landscape and historic environment) and CS12 (Achieving high quality design and place making) of the North Somerset Council Core Strategy adopted 2017. Neither does it accord with policies DM3 (Conservation Areas) and DM32 (High quality design and place-making) of the North Somerset Council Development Management Policies - Sites and Policies Plan (Part 1) Adopted July 2016. The development does not accord with these policies as it is not sensitive to the existing local character, causes harm to the existing character and appearance of the conservation area, and fails to conserve the historic environment of North Somerset. In view of the conflict with the development plan, the development does not benefit from the presumption in favour of sustainable development set out in paragraph 11 of the Framework.
18. Having regard to the conclusions above and all other matters raised, I am satisfied that the appeal on ground (a) should be dismissed and the deemed application for planning permission must be refused.

Ground (f)

19. The purpose of the requirements of the enforcement notice is to remedy the breach of planning control, which in this case is the replacement of the specified windows in the building with double-glazed upvc windows. The requirement to remove these windows achieves that purpose. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control in this case and, having regard to both the nature of the breach and requirements of the notice, it is unlikely that any lesser steps would achieve this purpose. On this basis I can only conclude that the steps required in the notice are reasonable and proportionate.
20. Whilst I acknowledge that compliance with the notice would leave the building without some of its windows, it is for the appellant to seek the necessary approval for the windows to be put in their place. The appellant has not suggested that the notice does not give him sufficient time to do this. In any event, the property has the benefit of planning permission, reference 16/P/1866/F, for replacement windows.
21. Having regard to my conclusions above, the appeal under ground (f) fails.

Conclusion

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

⁴ The general duty as respects conservation areas in exercise of planning functions - Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

Formal Decision

23. 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.

J Moss

INSPECTOR