



Appeal Decision

Site visit made on 7 October 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/P2114/C/19/3225188

Land at Laburnum Cottage Tea Rooms, 2 Eastcliff Road, Shanklin, Isle of Wight

- 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 Daglish against an enforcement notice issued by Isle of Wight Council.
 - The enforcement notice was issued on 6 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised installation of UPVC windows and doors shown in the approximate positions marked A,B,C,D,E,F,G,H,I,J on the attached photograph to the notice marked 'after works have taken place'.
 - The requirements of the notice are as specified in section 5 of the notice.
 - 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 the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

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

Preliminary Matter

2. A Hearing had been requested by the appellant on the basis that he would like to be heard, action has not been taken against adjacent windows and that he wishes to cross examine the Council. However, the appeal concerns fenestration and the grounds of appeal can be clearly understood. The issues are therefore not particularly complex. I consequently do not consider that injustice would result from proceeding with the appeal on the basis of the written evidence already submitted.

The ground (c) appeal

3. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
4. The site comprises a building of traditional form, materials and character, situated between Eastcliff Road and the High Street. The building is in use as a

- tea-room with residential accommodation above. It is located in a very prominent location.
5. The fenestration attacked by the enforcement notice consists of seven windows and three doors situated on the principle and side elevations of the building, at ground and first-floor levels, facing the highway.
 6. Alterations to the exterior of a building will fall within the meaning of development if they materially affect the external appearance of the building. Such judgment will involve consideration of the change to the external appearance of the building as a whole and not a part in isolation; the degree of visibility by an observer outside the building; the nature of the building; and, the nature of the alterations/works. Owing to Section 55(2)(a)(ii) of the Town and Country Planning Act, 1990, there would then not be a breach of planning control if the operations do not materially affect the external appearance of the building.
 7. There is little evidence to demonstrate on the balance of probabilities that the fenestration enforced against was not installed as part of a single operation. Accordingly, my assessment is whether that operation materially affects the external appearance of the building.
 8. Many elements make up the external appearance of a building, however, fenestration is a particularly important and conspicuous aspect of a building, and this is particularly emphasised in the case of the appeal building given its very prominent location and use as a tea-room. There is therefore a high degree of visibility by an observer outside the building and the nature of the building can be summarised as being of traditional character and one that attracts public custom.
 9. I accept that the windows have common characteristics with those they replaced in terms of their basic shape, size, colour as well as the retention of the cast stone cills. However, the windows are storm proofed which means that the window rests proud of the frame. I have photographic evidence before me which demonstrates on the balance of probabilities that the previous windows were of traditional casement design, where the frame sits flush. This resultant proportioning, allied with the use of UPVC as a material, as well as the three doors which in my view bear little resemblance to those they replaced, in respect of their detailed design, results in an operation that materially affects the external appearance of the building.
 10. The fenestration therefore goes beyond the repair and maintenance of the building and falls within the meaning of development for the purposes of the Act.
 11. The building is not a dwellinghouse and I have no evidence before me to demonstrate on the balance of probabilities that the fenestration would be permitted development, or, that planning permission has been granted.
 12. The appellant has also not brought to my attention specific case law or authorities in support of his contention. He has therefore not discharged the necessary burden of proof that the fenestration is not a breach of planning control.
 13. The appeal on ground (c) therefore fails.

The ground (a) appeal

Main Issue

14. The main issue is whether the fenestration preserves or enhances the character or appearance of the building and the Shanklin Conservation Area (the CA).

Reasons

15. The site is located on a corner plot and the building is very prominent within the CA owing to its positioning, being set at an angle towards the corner. The building is of modest proportions and is said to date from the early to mid-nineteenth century. It is of traditional character and appearance with stone elevations under a tiled roof. The site is close to Shanklin town centre. The deemed planning application relates to fenestration consisting of seven ground and first-floor windows as well as three doors.
16. In determining this appeal, I have duties to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. As a designated heritage asset, it is irreplaceable, and so any harm or loss requires clear and convincing justification. The National Planning Policy Framework (the Framework) advises that any harm which is less than substantial must be weighed against the public benefit of the proposal.
17. The site derives its significance from both its traditional built form and detailing as well as its location within The Chine and Old Village character area of the CA. This is to say that the historic character of the area is enhanced by garden settings and complemented by large landscaped areas and public space. There are said to be vernacular features of the area, including elaborate roofs, tall chimneys and picturesque windows. The appeal site therefore exhibits some of these defining features.
18. I accept that the fenestration, aside from the doors, could be regarded as being close to the originals. However, this is only superficially so. They are constructed of an entirely different material, and in terms of their design and construction are storm proofed which, as I have already outlined, means that the window rests proud of the frame. In my view this represents a fundamentally different window treatment and construction that does not intrinsically smarten the appearance of the site or its setting, given their differing profile and appearance. There are therefore critical differences which make them an unacceptable modern alternative within this building within the CA, and they neither preserve nor enhance character or appearance.
19. Many other buildings in the CA have UPVC fenestration or consist of other styles. I have sympathy for the appellant in this regard, however, the expediency of any enforcement action taken was a matter solely for the Council, and I am now confined to determining the appeal before me. Notwithstanding this, in taking a balanced view, none of the other examples in my view however have the conspicuous combination of a modest building of traditional character being in a very prominent location, with subsequent public views, that the building at the appeal site has.
20. Moreover, even if that were not the case, I am not persuaded that other examples of UPVC fenestration within the CA justifies allowing development that is neither of high-quality design nor conserves the Island's historic environment.

21. I accept that there are some UPVC windows in the appeal building, however these are located in less conspicuous positions, set further back on a side elevation. The Council has also advised that it has not taken enforcement action against these as it believed they might have been immune from any such action owing to the passage of time.
22. I have also considered whether planning conditions could make the fenestration acceptable and the appellant has even suggested painting them. However, given the inappropriate use of materials and storm proofed design, planning conditions could not overcome the harm and objections that I have identified.
23. I conclude that the fenestration fails to preserve or enhance the character or appearance of the building and the Shanklin Conservation Area and contravenes Policies SP5, DM11 and DM2 of the Island Plan, Isle of Wight Core Strategy, March 2012. These policies, amongst other things, require development to protect, conserve and/or enhance the Island's historic environments and the special character of the built environment and support high quality design. For the same reasons the fenestration fails to comply with the achieving well-designed places or conserving and enhancing the historic environment objectives of the Framework. As the Council has confirmed that The Bay Area Action Plan has not been adopted, I have not considered it further.
24. In the terms of the Framework, the fenestration results in less than substantial harm to the designated heritage asset and it must therefore be weighed against any public benefit that would arise from it.
25. I appreciate the fenestration may help improve the amenity of the occupier and perhaps with it make a small contribution towards the tourist trade that the tea rooms rely upon. They were also part of a maintenance programme and thereby an investment in the business which also improved energy efficiency. However, I have very little evidence before me to indicate why that this could not be the case with traditional timber units. I therefore have very little clear or convincing evidence concerning a public benefit to outweigh the harm to the designated heritage asset that I have identified.

Conclusion

26. For the reasons given above I conclude that the appeal on ground (a) should fail.

The ground (f) appeal

27. The purpose of the enforcement notice is to remedy the injury to amenity by means of securing the removal of the fenestration and replacing them with alternatives. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to achieve this.
28. I have sympathy for the position of the appellant as he does not wish to replace the fenestration, but then subsequently find these are still not to the satisfaction of the Council, or perhaps more pertinently, in compliance with the requirements of the notice.
29. I however do not accept that the steps required to be taken by the notice are vague. Indeed, these are detailed steps and include photographs of the

previous fenestration. I appreciate that the appellant is not looking to be argumentative in this regard, and that greater specification would only assist him. But, even without photographic evidence, in many cases an appellant will be the person with the best knowledge of what that previous condition was and therefore what will be required in order to match the previous fenestration.

30. Moreover, whilst an example of a more prescriptive requirement has been provided, I do not have anything specifically before me from the appellant pursuant to the fenestration attacked by this notice, for me to consider. It is also clear from my decision that the use of non-storm proofed windows is a critical factor, but this is already prescribed by the notice.
31. As no other or less steps are before me, the appeal on ground (f) consequently fails.

The ground (g) appeal

32. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
33. The appellant puts forward that 12 months is sought in order to allow him to undertake the works outside of his busy summer trading period and to be able to afford to comply.
34. The costs of compliance are not generally held to be reason to extend the period. Furthermore, and given the date of my decision, extending the period to 12 months would only serve to then encompass the next summer period, which would appear to be of little assistance to the appellant.
35. I am therefore satisfied on the evidence before me that 6 months is adequate to enable the appellant to find someone suitable to undertake the necessary works, and without adversely affecting the running of the business at the site.
36. The appeal on ground (g) therefore fails.

Overall Conclusion

37. 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 deemed application.

Formal Decision

38. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR