
Appeal Decisions

Site visit made on 28 September 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Appeal A Ref: APP/Z0116/C/20/3248081

Appeal B Ref: APP/Z0116/C/20/3248082

104 Pembroke Road, Clifton, Bristol BS8 3EQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Ramzi Shaban (Appeal A) and Mrs Capucine Shaban (Appeal B) against an enforcement notice issued by Bristol City Council.
- The enforcement notice was issued on 29 January 2020.
- The breach of planning control as alleged in the notice is, without the grant of planning permission, the installation of 34 windows in the front elevation, the side elevation facing onto Beaufort Road and the rear elevation of the property.
- The requirements of the notice are: remove all 34 windows and replace them with timber sash windows to replicate the windows removed.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an 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.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed, and the enforcement notice is upheld with a variation.

Appeal A on ground (a)

Main Issue

1. The main issue is whether the development preserves or enhances the character or appearance of the Clifton and Hotwells Conservation Area (the CHCA).

Reasons

2. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
3. The Clifton and Hotwells Conservation Area Character Appraisal and Management Proposals 2010 (the CA) sets out that that the CHCA is centred upon the development of terraces, crescents and streets which rise from Hotwells in the south before meeting the open landscape of the Avon Gorge and Clifton Down to the west and north. It's significance largely derives from the combination of the steeply sloping topography and its historic townscape of Georgian and Victorian terraces and villas.

4. The CA identifies Pembroke Road as a principal route through the CHCA. The townscape is characterised by large, three storey villas set back from the pavement. The palette of prevailing materials in the construction of the villas includes the use of timber sash windows. Whilst the appellant has provided examples of incidences within the CHCA where UPVC windows have been installed, these are limited in their extent and I was able to see from my site visit that the use of timber sash windows continues to be a strong architectural feature of the area.
5. The appeal property comprises a three-storey villa located on the corner of Pembroke Road and Beaufort Road. It sits back from the road behind a low stone wall. The property retains many of the architectural treatments, detailing, proportions and materials which contribute towards the significance of the CHCA. Its location on a key thoroughfare and on the corner of a junction make the property a particularly prominent example of the villas in this part of the area. As a result, I find the appeal property makes a substantial positive contribution towards the significance of the CHCA.
6. The development has resulted in the installation of 34 windows in the front, side and rear elevations of the building. The windows comprise top hung opening casements in UPVC, in stark contrast to the sash windows which they replaced, and which prevail within the CHCA. Indeed, the windows do not provide the lower casement recess that sash windows do and as a consequence lack the sense of depth which the previous timber windows added to the detailing of the property. Moreover, the lower casements are thicker than the top casements which results in each window appearing 'bottom-heavy', in contrast to the more uniform, slender frames of the timber windows.
7. Furthermore, the smoother finish of the plastic frames appears at odds to the traditional timber which is found throughout the CHCA and indeed of those windows which were replaced. Whilst the lower floors are partially obscured by boundary planting, all three elevations are highly visible within the public realm, either from Pembroke Road or Beaufort Road. Windows on the lower ground floor are still visible from some vantage points in gaps between the vegetation and boundary treatment.
8. The appellant points to many examples of UPVC windows having been installed across the CHCA. However, they only serve to demonstrate the harm that their installation can have to the significance of the heritage asset. Allowing the development would only further embellish such harm.
9. I conclude, therefore, that the development fails to preserve or enhance the character or appearance of the CHCA. Consequently, it conflicts with Policies BSC21 and BCS22 of the Bristol Development Framework Core Strategy 2011 which state that development should contribute positively to an area's character and safeguard or enhance conservation areas. It would also conflict with Policies DM26, DM30 and DM31 of the Bristol Local Plan Site Allocations and Development Management Policies (2014) which state that development should contribute towards local character, alterations to existing buildings should respect the form, materials and design of the building, and that development within a conservation area should preserve or enhance its special character.
10. I afford great weight to the harm to the significance of the heritage asset in accordance with paragraph 193 of the National Planning Policy Framework (the

Framework). In finding harm in respect of the significance of a heritage asset, paragraph 196 of the Framework sets out that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this instance, I find that the harm would amount to less than substantial. Thus, in accordance with paragraph 196 of the Framework, it should be weighed against any public benefits of the proposal.

11. I note that the previous windows were in poor condition and in need of replacement. I also note that the windows will result in an improvement of the thermal performance of the building.
12. However, I find the public benefits, either singularly or collectively, do not outweigh the great weight to which I afford the harm to the designated heritage asset. To that end, the balance of paragraph 196 of the Framework falls against the development.

Conclusion

13. 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.

Appeal A and B on ground (f)

14. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
15. The notice does not state which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove all 34 of the windows and replace them with timber sash windows to replicate the windows which have been removed. On that basis, it seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place. The purpose of the notice therefore falls under section 173(4)(a) of the 1990 Act.
16. I am satisfied that the notice does not require the appellant to undertake works which would result in an improvement to the previous condition of the property. The appellant's photographs indicate that the previous frames were timber. On that basis I consider the requirement to install timber windows rather than UPVC windows does not exceed what is necessary to remedy the breach of planning control.
17. Case law has nevertheless established that it is open to me to consider clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant.
18. The appellant suggests that there are some windows which are not easily visible from public viewpoints and thus the lower ground floor windows and those to the side and rear should be allowed to remain. However, as set out in my findings in the appeal on ground (a), I have found that the windows are to some degree visible as a whole from public vantage points, each cumulatively

resulting in the harmful impacts I have identified above. Such 'under-enforcement' would not sufficiently overcome the planning harm.

19. The appellant also suggests it is possible to restrict or limit each of the windows through the installation of window restrictors that would effectively prevent the windows from being opened more than half an inch. It is said this would mean that the windows would not have the visual effect of looking like casement windows. However, this would not overcome the harm arising from the thickness of the casements nor the materials used. As such, this alternative would not overcome the planning harm.
20. Likewise, the use of UPVC sliding sash frames rather than timber would not overcome the harm which I have identified on the appeal on ground (a) which arises from the contrast in the use of PVC has with the prevailing use of timber in the area. I disagree with the appellant that the two materials are indistinguishable from one another. There is a clear difference in the texture of the finish between the two based on the evidence before me. Thus, such an alternative would not overcome the planning harm.
21. The appeals on ground (f) therefore fail.

Appeal A and B on ground (g)

22. The appeals on ground (g) are that the time limit given for compliance with the notice is too short.
23. The appellant argues that a time period of 6 months is more appropriate to allow time to raise funds for the window replacement and to allow the works to be staged, as replacement of all windows at any one time would not be practical.
24. Whilst I appreciate the need for expediency, in the absence of any evidence to the contrary from the Council, I find a period of 6 months a more reasonable time frame to allow the works to be undertaken.
25. The appeals on ground (g) therefore succeed.

Formal Decisions

Appeal A

26. It is directed that the enforcement notice is varied by the deletion of three months and the substitution of six months as the period for compliance. Subject to the variation, 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.

Appeal B

27. It is directed that the enforcement notice is varied by the deletion of three months and the substitution of six months as the period for compliance. Subject to the variation, the enforcement notice is upheld.

J Whitfield

INSPECTOR