



Appeal Decisions

Hearing Held on 24 November 2020

Site visit made on 25 November 2020

by Zoë Franks Solicitor

An Inspector appointed by the Secretary of State

Decision date: 11th December 2020

Appeal A: APP/Y2003/C/19/3232224

Appeal B: APP/Y2003/C/19/3232225

Land at Clematis Cottage, 56 Main Street, Saxby all Saints

- 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 A and B are made by Mr David Marshall and Dr Pauline Mitchell against an enforcement notice issued by North Lincolnshire Council.
- The enforcement notice, numbered EN 179, was issued on 5 June 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the installation of uPVC windows and doors to the South and West facing elevations of a dwellinghouse in contravention of a planning control direction under Article 4 of the Town and Country Planning Act – this being The Glanford Borough Council (Saxby- All-Saints Conservation Area) Planning Control Direction (N.10 1978.) These comprise of:
 - Three uPVC windows to the ground floor South facing principal elevation; numbered 7, 8 and 10 on PLAN2 annexed to this Notice,.
 - Two uPVC windows to the ground floor West facing elevations; numbered 9 and 11 on PLAN2 annexed to this notice,
 - One uPVC window to the ground floor South facing principal elevation; numbered 5 on PLAN2 annexed to this Notice,
 - One window to the first floor West facing elevation; numbered 4 on PLAN2 annexed to the is Notice;
 - One uPVC window to the ground floor South facing principal elevation; numbered 12 on PLAN3 annexed to this Notice,
 - One set of bi—fold doors to the ground floor South facing principal elevation; lettered A on PLAN2 annexed to this Notice; and
 - One door to the ground floor South facing principal elevation; lettered B on PLAN2 annexed to this Notice.
- The requirements of the notice are:
 - i. Remove the windows numbered 4,5,7,8,9,10 and 11 from the South and West facing elevations as shown on PLAN2 annexed to this Notice;
 - ii. Remove the window numbered 12 from the South elevation as shown on PLAN2 annexed to this Notice; and
 - iii. Remove the doors lettered A & B from the South elevation as shown on PLAN2 annexed to this Notice; and
 - iv. Supply and install single glazed 6-paned Yorkshire sliding sash windows made to fit the existing window openings numbered 5, 7, 8 and 10 on the South elevation as shown on PLAN2 annexed to this Notice. The window Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be natural timber and identical in dimension, proportion, form and colour to the window shown on PHOTO 1 annexed to the Notice, and
 - v. Supply and install single glazed 6-paned Yorkshire sliding sash windows made to fit the existing window openings numbered 11 on the West elevation as shown on

- PLAN2 annexed to this Notice. The window Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be natural timber and identical in dimension, proportion, form and colour to the window shown on PHOTO 1 annexed to the Notice, and
- vi. Supply and install single glazed 6-paned Yorkshire sliding sash windows made to fit the existing window openings numbered 4 and 9 on the West elevation as shown on PLAN2 annexed to this Notice. The window Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be natural timber and identical in dimension, proportion, form and colour to the window shown on PHOTO 1 annexed to the Notice, and
 - vii. Supply and install single glazed 6-paned Yorkshire sliding sash windows made to fit the existing window openings numbered 12 on the South elevation as shown on PLAN3 annexed to this Notice. The window Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be natural timber and identical in dimension, proportion, form and colour to the window shown on PHOTO 1 annexed to the Notice, and
 - viii. Supply and install a bi-fold (or similar) single glazed multi-paned door made to fit the existing opening lettered A on the South elevation as shown on PLAN2 annexed to this Notice. All Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be natural timber and identical in dimension, proportion, form and colour to the window shown on PHOTO 1 annexed to this Notice, and
 - ix. Supply and install a natural timber external grade door, made to fit the existing opening lettered B on the South elevation as shown on PLAN2 annexed to this Notice. The door shall be the same style as that shown lettered B on PLAN2 and all Frames, Sills, Heads, Jambs, Rails, Stiles and Glazing Bars must be timber and identical in dimension, proportion, form and colour to the window shown on PHOTO1 annexed to this Notice.
- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - a) The deletion of the words "in contravention of a planning control direction under Article 4 of the Town and Country Planning Act – this being The Glanford Borough Council (Saxby-All-Saints Conservation Area) Planning Control Direction (no.10 1978)" from paragraph 3 "The Breach of Planning Control Alleged";
 - b) The deletion of the words in the second bullet point of paragraph 3 "The Breach of Planning Control Alleged" and substitution with the words "One uPVC window to the ground floor West facing elevation numbered 9 on PLAN 2 annexed to this Notice,";
 - c) The deletion of the fifth bullet point in its entirety from paragraph 3 "The Breach of Planning Control";
 - d) The deletion of the words " and 11" from Requirement i and the insertion of the word "and" before the number "10" in the same Requirement;
 - e) The deletion of Requirement ii;
 - f) The deletion of Requirement v;
 - g) The deletion of requirement vii;

and varied by:

- h) The deletion of Requirement iv and substitution with the words: "Supply and install 4-pane box-sash windows with frames and casements made solely from natural timber and made to fit the existing window openings numbered 5, 7, 8 & 10 on the South elevation as shown on PLAN2 annexed to this Notice in accordance with Planning Permission PA/2019/1003, and";
 - i) The deletion of Requirement vi and substitution with the word "Supply and install windows with frames and casements made solely from natural timber and made to fit the existing window openings number 4 & 9 on the West facing elevation as shown on PLAN" annexed to this Notice, and";
 - j) The deletion of Requirement ix and substitution with the words: "Supply and install a natural timber external grade door, made to fit the existing opening lettered B on the South elevation as shown on PLAN2 annexed to this Notice in accordance with Planning Permission PA/2019/1003"; and
 - k) The deletion of the number "6" in paragraph 6 "Time for Compliance" and substitution with the number "18".
2. Subject to the corrections and variations the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The Glanford Borough Council (Saxby-All-Saints Conservation Area) Planning Control Direction (No.1) 1978, made pursuant to Article 4 of the Town and Country Planning General Development Order 1977 disappplies the permitted development rights for various works including those relating to windows and doors at the appeal premises. It does not prohibit development but removes the permitted development rights. The allegation in the notice has been corrected to remove the reference to the Article 4 Direction because the alleged breach of planning control is the installation of the windows and doors without planning permission.
4. During the course of the appeal, the appellants stated that not all of the windows had been timber framed prior to replacement in 2018 (both in their written submissions and orally at the hearing). In particular, the appellants' case is that Windows 11 and 12 (as identified on the notice) had uPVC frames and that Windows 4, 5, 9 and 10 had metal frames prior to the installation of the current windows. The Council have not disputed this and I see no reason not to accept the appellants' account.
5. The replacement of windows and doors will be development under section 55 of the 1990 Act if the works materially alter the appearance of the building. On balance, it is likely that the replacement of Windows 11 and 12 with similar windows (i.e. 6 pane windows made of uPVC) would not have materially altered the appearance of the building and would not constitute development, and had the appellants appealed on ground (c) (that the matters stated in the notice do not constitute a breach of planning control) that they would have succeeded on that ground. I have therefore corrected the notice to take out references to those windows to reflect the fact that they had similar uPVC frames before they were replaced, to put the notice in order.

6. The appellants state that Windows 4, 5, 9 and 10 had metal frames prior to the installation of the uPVC frames. PLAN2 attached is a photograph which shows the previous windows and it can be seen that they are noticeably different in design and construction to the box sash windows that have been installed which have therefore materially altered the appearance of the building, irrespective of the frame material. The replacement of these windows is therefore development that requires planning permission, in the absence of which it is a breach of planning control.
7. Ground (g), that the period for compliance in the notice falls short of what should reasonably be allowed, was not pleaded but was raised and discussed at the hearing. I have agreed that it should be added to the grounds of appeal and I am satisfied that doing so causes no prejudice to the parties.

Permission PA/2019/1003

8. Planning permission PA/2019/1003 to erect wooden gates and replace 8 windows on principal elevation with timber sash, replace side door and retain existing bi-folding doors was granted for the appeal property on 27 August 2019 ("the 2019 Permission"). The permission included conditions that the window frames and casements shall be made solely from timber, and that the windows shall have the outward appearance of a four-pane sash, and shall at no time be able to open outwardly unless otherwise agreed in writing. There was also a condition that the development shall be carried out in accordance with the approved plans and the elevation plan identified the elevation and location of the windows, and stated that the windows were to be replaced with box sash windows. The appellants state that they have commenced works in accordance with the 2019 Permission as they have installed 4 windows in accordance with the permission and conditions. The Council did not say whether the 2019 Permission had been implemented but did agree that the installation of a window in accordance with it would be sufficient for the purposes of proving commencement. It appeared during the site visit that the windows as identified numbers 1,2,3 and 6 on the notice had been fitted with wooden sash windows and I am satisfied that works under the 2019 Permission have commenced.
9. Section 180 provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the 2019 Permission was granted after the service of the notice and as it has now been commenced Door A benefits from this provision and the notice ceases to have effect in relation to it.
10. If the requirements of the notice were varied to exclude those parts of the development for which planning permission has been granted, this could give rise to two inconsistent permissions, one being granted under section 173(11) as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed in section 180 to mitigate the effect of the notice in so far as it is inconsistent with the 2019 Permission (i.e. regarding Door A).

Ground (d)

11. An appeal under this ground is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The appellants' case is that Window 12 as identified on Plan 2 on the notice was installed more than 4 years prior to the service of the notice. In light of the correction that I have made to the notice, which removes the reference to Window 12 from the notice, this ground no longer falls to be considered.

Ground (f)

12. In this case, the appeal on this ground is on the basis that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The purpose of the notice is to remove the unauthorised development and restore the land to its previous condition.
13. Requirements i – iii require that the windows and doors as identified on the plan attached to the notice are removed. As set out previously, Door A as identified on the notice now benefits from the 2019 Permission and Section 180 of the 1990 Act provides that the notice shall cease to have effect so far as it is inconsistent with that permission.
14. The appellants have argued that Windows 11 and 12 had similar uPVC frames prior to the installation of the current windows and I have corrected the notice to take this into account. The replacement of windows 4, 5, 7, 8, 9 and 10 was a breach of planning control and requiring their replacement does not exceed what is necessary to remedy the breach.
15. However, the 2019 Permission does allow for the installation of box-sash windows in relation to Windows 5, 7, 8 & 10, which would match with the wooden framed windows which have already been installed pursuant to that consent. Following discussion during the hearing, the Council agreed that they would be content for the Requirements to be amended to provide for the implementation of the 2019 Permission in relation to these windows. The Council were satisfied with that course of action as fulfilling their requirements in the conservation area but also reflecting the wishes of the appellants in terms of the detail of the future works. The appellants felt that it was unfair to place a time period on them in which they had to implement the 2019 Permission, as that consent benefits from an unlimited implementation period because the works have already commenced. However, the variation of Requirement iv to require works to Windows 5, 7, 8 & 10 pursuant to the 2019 Permission does not impose a more onerous requirement on the appellants when compared to the requirements in relation to those windows as originally included on the notice, and this variation can therefore be made without causing any injustice to the parties.
16. Similarly, the appellants have not disputed that Door B on the notice was previously a wooden door that was replaced with one made from uPVC. The 2019 Planning Permission allows for the replacement of the uPVC door with a wooden door as specified on the permission. Requirement ix) in the notice does not exceed what is required to remedy the breach of planning control but I have amended the notice to require that the door is replaced in accordance

with the 2019 Permission following discussion with parties during the hearing (as set out in the previous paragraph). The variation of Requirement ix to require implementation of the 2019 Permission does not impose a more onerous requirement on the appellants and can be made without causing injustice to the parties.

17. Window 4 & 9 were previously metal framed, 3-pane windows. It was agreed by both parties at the hearing that it would not be possible to install Yorkshire sliding sash type frames into these window openings as they are too narrow. I have therefore amended the notice to require timber casement frames which does not exceed what is necessary to remedy the breach of planning control in relation to those windows.

Ground (g)

18. It was clear from the submissions made by the appellants that they were extremely concerned about the 6 month period for compliance stated on the notice, although they had not formally appealed the notice on ground (g). I can extend the period for compliance, if there is no injustice to the parties, by exercising the powers of variation under section 176(1)(b). The possibility of an extension was discussed during the hearing and the Council confirmed that in light of the current uncertainties associated with the Coronavirus Pandemic they had no objection to the compliance period being extended (and that they did not wish to suggest an alternative period). The appellants stated that they intend to fully implement the 2019 Permission in time but that any set timescale would be unfair, particularly in the current situation when it is impossible for anyone to have certainty as to what will happen or how long it will last.
19. I am very sympathetic to the appellants view regarding the current uncertainties but the notice must, as a statutory requirement, include a time period for compliance. In normal circumstances 6 months would be an appropriate period for compliance, but taking into account the personal circumstances of the appellants and the ongoing global situation, I have varied the period to 18 months. I have already corrected and varied the terms of the notice, as set out above, so that it is now Windows 4, 5, 7, 8, 9 & 10 and Door B that need to be replaced, and I believe that an 18 month period for compliance is a proportionate timescale taking into account the harm caused to the conservation area, the personal circumstances of the appellants and the ongoing Pandemic.
20. It was also discussed during the hearing that the Council has the discretion to waive or relax any requirement of an enforcement notice and in particular may extend any period for compliance in accordance with s173A(1)(b).

Zoë Franks

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr David Marshall and Dr Pauline Mitchell

FOR THE LOCAL PLANNING AUTHORITY: Mr Martin Wilson and Mr Eddie Rychlak