



Appeal Decision

Site visit made on 1 December 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 21 December 2020

Appeal Ref: APP/G5180/C/20/3245942

8 Park Road, Chislehurst, Kent BR7 5AY

- 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 Paul Fellows against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 6 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of a ground floor front bow window at the above land.
 - The requirements of the notice are to:
 - a) Remove from the above Land the bow window described in paragraph 3 together with the lintel above and;
 - b) Reinstall a window of similar scale and design to match the existing windows on the host building together with the reinstatement of the sill;
 - c) Reinstall the soldier course brickwork on the host building reduce the opening to match the existing window openings on the host building;
 - d) Remove from the above Land all resulting debris.
 - The period for compliance with the requirements is within 3 months after this Notice takes effect.
 - The appeal 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 as amended, and falls to be considered.
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Summary of decision

1. The appeal is dismissed and the enforcement notice is upheld with variations and a correction, the terms of which are set out below in the Formal Decision.

Preliminary Matter

2. Since the appeal was lodged the Council's earlier decision to refuse planning permission for the retention of the front bow window installed was upheld following an unsuccessful s78 appeal (*APP/G5180/D/19/3241670*). Given that the current appeal involves a deemed planning application due to the Ground (a) appeal made the said decision represents a clear material consideration to now be taken into account.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issue

3. The main issue is the development's effect on the character and appearance of the surroundings, with particular regard to the conservation area location.

Reasons

4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The previous appointed Inspector, in dismissing the appeal, found that the development in situ was harmful thereto, stating in paragraph 8 of his decision letter:

"In my view, the bow window appears as a discordant addition to the host dwelling and disturbs the architectural consistency of the terrace of properties of which it forms part. It is noticeably wider than the front ground floor windows of the dwellings directly adjacent and the thick white plastic header and window joinery stands out in the street scene. These elements appear overly dominant and detract from the attractive Victorian character of the street."

5. I have not been made aware of any material changes made to the external, front elevation of the dwelling subsequent to the appeal decision of 26 March 2020. Neither has there been any relevant planning policy changes which might necessitate a significant reappraisal of the development's impact. Indeed, from my site visit observations, I see no reason to disagree with the previous Inspector's reasoning. The existence of the bay window at No 13, which the Inspector correctly referred to as an anomaly in the street scene, does not justify the installation of a similar feature at the appeal site. Whether or not the bay window at No 13 is now immune from formal enforcement action does not confirm the acceptability of such a feature in this particular contextual setting.
6. The development thereby detracts from the street scene and is in material conflict with the design and heritage objectives of policies 6, 37 and 41 of the Bromley Local Plan, policy 7.4 of the London Plan and also relevant advice contained within the Chislehurst Conservation Area Supplementary Planning Guidance.
7. Although I find that the proposal would result in 'less than substantial harm' in the words of paragraph 196 of the National Planning Policy Framework, the degree of harm would not be outweighed by any public benefits arising. In this connection, the previous Inspector indicated that, although the appellant claimed there had been a need to renovate the dwelling which detracted from the street scene – and the bay window was installed as part of these works – the benefits of cosmetic improvements did not justify the installation of uncharacteristic and prominent fenestration. I agree with this approach.
8. For the above reasons, and having had regard to all matters raised, I conclude that the development is harmful to the character and appearance of the surroundings and also the conservation area within which it is located. Accordingly, the appeal is dismissed and the DPA does not succeed.

The Appeal on Ground (f)

9. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary

purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place.

10. The appellant points out that, as there is no Article 4 Direction in place, permitted development rights have not been cancelled, and it remains possible to replace existing windows with an alternative design/and or materials without the need for planning permission. That may be the case to a point, allowing, for instance, the replacement of windows with those of a similar or sympathetic profile. The key, rather, is whether the replacement window(s) would alter the dwelling's external appearance to such a material degree as to require the benefit of planning permission. In a conservation area location such as this, where there is a characteristic of general uniformity, the bar is heightened given the desirability of preserving the character or appearance of the conservation area itself. Accordingly, any fall-back position mentioned has limited latitude and scope.
11. In this particular instance, the removal of the characteristic front window and the installation of an untypical, bogus period-age bay window arrangement goes significantly beyond what might be considered as development not requiring the benefit of planning permission. The appellant says it is excessive to require the appearance of the dwelling to be returned to its original state. However, the enforcement notice does not require for this, saying only that a window of a "similar scale and design to match the existing windows" should be installed, along with the cill and soldier course.
12. Moreover, no clear alternative proposals have been put forward which might have been assessed under the DPA. Any fall-back measures which the appellant might consider as permitted development should perhaps firstly be tested with the Council to provide clarification on this point. Proposals might, therefore, be the subject of a s192 application submitted to the Council for a lawful development certificate.
13. Given my findings, the appeal under Ground (f) fails.

Thee Appeal on Ground (g)

14. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
15. The appellant indicates that the stipulated period of three months is too short given that the property is let out and the ground floor tenant will require notice for the works to be undertaken. He has requested that the compliance period be increased to at least twelve months.
16. Having had regard to the current wider circumstances, and in also giving consideration to the individual circumstances involved, I would consider that a period of three months is likely insufficient. That said, the totality of the works involved would not be extensive and the requested extension of time is unnecessarily lengthy in this respect. Nonetheless, to allow for the appellant to perhaps enter into negotiations with the Council for the purposes I have described, I would consider that a period of six months is more appropriate for the necessary arrangements to be made and compliance achieved.
17. The Ground (g) appeal succeeds to this extent, and I will vary the notice, accordingly.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and a correction and refuse to grant planning permission on the DPA.

Formal Decision

19. It is directed that the enforcement notice be varied by the deletion of 3 months with the substitution of 6 months as the period for compliance. In view of an apparent typographical error Requirement c) is also deleted and replaced with the following wording:

"Reinstate the soldier course brickwork on the host building, and reduce the opening to match the existing window openings on the host building."

Subject to this variation and correction 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.

Timothy C King

INSPECTOR