



Appeal Decision

Site visit made on 19 November 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 27 January 2021

Appeal Refs: APP/K2230/C/20/3254162

11 Wilfred Street, Gravesend, Kent DA12 2HA

- 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 Samson Falola against an enforcement notice issued by Gravesend Borough Council.
 - The enforcement notice was issued on 21 May 2020.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the installation of two UPVC windows within the front elevation of the Property.
 - The requirements of the notice are to:
 - (i) Remove the two UPVC windows in their entirety, including their framework from the front elevation of the Property.
 - (ii) Remove all resultant debris and associated materials from the Property.
 - The period for compliance with the requirements is within nine calendar months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fee has been paid, 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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Formal decision

1. The enforcement notice is corrected by the deletion of Requirement (i) and its replacement with the following:

‘(i) Remove the UPVC window at ground floor level in its entirety, including its framework from the front elevation of the Property’.

Subject to this correction the notice is upheld.
2. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended insofar as it relates to the installation of the UPVC window at first floor level.
3. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused in respect of the installation of the UPVC window at ground floor level.

Preliminary Matter

4. When the appeal was made, an identical appeal was lodged by Miss Clarissa Reid. However, as this appeal (APP/K2230/C/20/3254162) was also limited only to submissions under Ground A, reliance has, instead, been placed on Mr

Falola's appeal as this is one for which the requisite fee has been paid. Accordingly, Miss Reid's appeal has since lapsed.

Background

5. In January 2019 the Council refused planning permission for the retention of two oak coloured UPVC windows installed. It is understood that the windows remained regardless, and this prompted the Council to consider it expedient to take formal enforcement action requiring for their removal.

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

Main Issue

6. 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

7. The site falls within the King Street Conservation Area, designated in 1980, but since extended. The conservation area is based around its 19th century urban character, with Wilfred Street comprising terraces of small dwellings built up to the back edge of the footway.
8. The development involved the removal of two windows, one at ground and one at first floor level, and their unauthorised replacement. At ground floor level, the previous white coloured timber casement has been replaced with a brown coloured UPVC casement type window whilst, on the first floor, the previous timber casement has been replaced with a vertical sliding sash window. It is understood, though, that the windows removed were not those originally installed, which would have both been timber vertical sliding box-framed sashes with margin lights.
9. At my site visit I walked along the street and noted, on both sides, that the windows and doors to virtually all the dwellings had been replaced, with a significant number, unsympathetically. As a consequence there is a random, wide variety of window styles, profiles and glazing in evidence along the street. Having been installed over time in an apparent piecemeal fashion there is little cohesion or uniformity and, given that the Council has not indicated that any other such installations in Wilfred Street are currently subject to enforcement investigation, it is likely that the other properties' windows have acquired immunity from enforcement action over the passage of time. Many of these UPVC replacements are white framed – the colour being one of the Council's concerns - although those installed at No 12, one of the immediate neighbouring dwellings, are a darker shade than that of the appeal property.
10. Notwithstanding that the frame of the first floor sliding sash window is slightly wider and heavier than would have been the case with the original timber sash, the fact that it is a vertical slide arrangement means it is more akin to the original arrangement than many of the replacement windows along the street; certainly those at Nos 10 and 12.
11. In comparison, the ground floor casement window is something of an anomaly. Fitting into the arched opening the heavy UPVC frame surrounds three separate panes; the vertical section, which is split by means of a central divide, and the overlying hemispherical top section. The central divide is particularly jarring.

One of the two vertical sections opens outwards and, to allow for this, there is an notable absence of symmetry between the width of the two sections and their vertical divides. A single lower pane would have worked better in this regard. Apart from the light oak shade of the windows' UPVC frames there is little in common between the two windows which the enforcement notice targets; the upper being a sash and the lower, a casement. Further, from my site visit observations, I did not find any other examples of this type of casement window along Wilfred Street. In an attempt to support his case the appellant has provided a photograph of an aluminium window, the lower section of which opens outwards. However, given its form, type and appearance, this example does not realistically assist.

12. 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. It has previously been held in court judgements that in instances where it can be considered that the appearance or character has a neutral effect on the conservation area this is sufficient to '*preserve*'.
13. In the current case I am satisfied that there is a material difference between the respective visual effects of the two windows installed. Whilst neither window matches those that would have been in place when the property was built the upper window, with some common features, is more redolent of the period age, and certainly more so than is largely evident locally. The window's side margins might be missing but, although speculating on the exact profile and detailing of the original fenestration and specifying the differences, it is perhaps unrealistic to now expect identical copies. Further, in its context I find that the presence of this window has a neutral effect on the King Street Conservation Area, as a whole. In contrast the form, profile and glazing of the lower window is an uncharacteristic and inappropriate development which is harmful to the conservation area.
14. In the circumstances, and given the situation as I have described, it would be somewhat iniquitous to make an example of the appellant and require the removal of both windows and the frames in their entirety. My findings suggest that a distinction should be drawn; the upper window can remain but the lower one should be removed in accordance with the notice's requirement in this part. It is then open to the appellant to use the adequate compliance period to make a formal approach to the Council with a view to arriving at an appropriate and approved re-installation. Although the Council objects to the colour, as I have mentioned, No 10's window frames are darker. If a match cannot be found with the upper frame then some form of treatment might need to be applied in this regard.
15. 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 Framework), the degree of harm would not be outweighed by any public benefits arising. I note the appellant's representations, especially as to the financial burden of complying with the enforcement notice's requirements and also the energy savings which the unauthorised development has brought about. The appellant also indicates that the windows were replaced at the time the house was being renovated but none of these properly justifies having proceeded with the installation. That said, weighing up all factors, I have been even-handed in reaching my decision.

16. For the above reasons, and having had regard to all matters raised, I have drawn a distinction between the two windows, and I conclude that the lower window is harmful to the conservation area and contrary to the design and heritage objectives of policies CS19 and CS20 of the Gravesham Local Plan Core Strategy, saved policy TC3 of the Gravesham Local Plan First Review, and relevant advice in paragraph 192 of the Framework. On balance, I also conclude that the upper window's retention in this particular instance does not unduly compromise the said objectives and advice in this regard.
17. Accordingly, I have corrected the enforcement notice, with the DPA made under section 177(5) allowed in part. Subject to this correction the enforcement notice is upheld. The appeal, therefore, succeeds in part.
18. S180 of the 1990 Act says 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 is inconsistent with that permission. That is the case here with the first floor window.

Timothy C King

INSPECTOR