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# Appeal Decision

Site visit made on 1 June 2021

**By Terrence Kemmann-Lane JP DipTP FRTPI MCMI**

an Inspector appointed by the Secretary of State

**Decision date: 25 June 2021**

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**Appeal Ref: APP/D1590/W/20/3261209**

**18 Parkgate, Westcliff-on-Sea, SS0 7NY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Dr Alistair England against the decision of the Southend-on-Sea Borough Council.
  - The application Ref. 20/00393/FUL dated 27 May 2020, was refused by notice dated 27 July 2020.
  - The development proposed is replace single glazed timber windows with double glazed uPVC windows to first floor flat (retrospective).
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. The application form stated that the development was 'replacement windows retrospective'. However, the council revised this description to read 'Replace single glazed timber windows with double glazed uPVC windows to first floor flat (retrospective)'. I note that this description has been adopted on the appeal form. Since this is a more accurate way to describe the proposed development in this appeal, I have used it in the heading above.

## Main Issue

3. The main issue in the case is the effect of the replacement windows, in respect of their design and materials, on the character and appearance of the appeal property and the street scene and the wider Milton Conservation Area of which it forms a part.

## Reasons

4. The appeal concerns the first floor flat of a detached two storey house located on the western side of Park Road. The site is within the Milton Conservation Area. The Milton Conservation Area Character Appraisal notes that "*16-18 Parkgate is a large detached two storey house built slightly later than its neighbours. Red brick to ground floor with render above and a hipped red clay tile roof with prominent chimneys. Corner turret with steep roof provides a mini landmark to the street. Two storey canted bay with boarded gabled top forms a secondary feature on the frontage. Square bay to first floor side supported by decorative columns providing open porch to what appears to be the main entrance. Additional simpler entrance porch to the front. Modern replica timber casement windows with stained glass detail to fanlight*".

5. Milton Conservation Area is covered by an Article 4 Direction which seeks to protect this character. The Direction removes householder permitted development rights, including in relation to the alteration of any window which fronts a highway.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan policies that are most relevant to the issues in this case are Core Strategy Document (2007) Policies CP4, and Policies DM1, DM3 and DM5 of the Development Management Document (2015), and advice contained within the Southend Design and Townscape Guide (2009).
7. In brief, Policy CP4, at item 7 provides for the safeguarding and enhancing of the historic environment, heritage and archaeological assets, including listed buildings, conservation areas and ancient monuments. Policy DM1 supports Good design including, at item (ii), providing appropriate detailing that contributes to and enhances the distinctiveness of place. Policy DM3, at item 5, requires that alterations and additions to a building will be expected to make a positive contribution to the character of the original building and surrounding area. Policy DM5 sets out detailed policies on Southend-on-Sea's historic environment. Item 2 of this policy is particularly relevant, including the statement that "*Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal, and will be resisted where there is no clear and convincing justification for this*".
8. These policies are in accord with the policies in the National Planning Policy Framework (the Framework). The appeal proposal must be considered in the context of Framework section 16, which concerns 'Conserving and enhancing the historic environment'. The first paragraph (184) sets the direction of policy. It includes "*These assets (which include sites and buildings of local historic value to those of the highest significance) are an irreplaceable resource, and should be conserved in a manner appropriate to their significance...*". It gives guidance on levels of harm and how this should be weighed in paragraph 196, which states: "*Where a development proposal will lead to less than substantial harm (rather than substantial harm which signifies a greater degree of harm) to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*".
9. The appellant's case can be summarised as the need to replace single glazed rotten timber windows, that resulted in excessive damp and mould in the flat; the replacement windows are double glazed and are energy efficient and easier to maintain than wooden windows; there is a lack of companies that repair wooden windows, and their upkeep and replacement is prohibitively expensive; the definition of 'fronts the highway' is questioned; the windows do not detract from the character and look of the building; and a substantial number of examples of uPVC windows within the conservation area are cited, including the downstairs flat that has uPVC windows that were granted planning permission.

10. At my site visit I went to see many of the examples of uPVC windows that are referred to. Generally it was not necessary for me to be careful about looking at the house numbering, because these examples were easy to pick out. Whilst I fully recognise the indignation that the appellant feels, in my judgement these examples for the most part fully demonstrate the harm to the character and appearance of the conservation area that results from inappropriate replacement windows.
11. Turning to the windows the subject of the appeal, they are clearly visible, for instance when looking across the entrance to Parkgate from the south. I appreciate that this is looking against the flow of traffic in the one-way Park Road, but such detail is much more apparent on foot than in a vehicle. They are certainly windows that 'front a highway'. I understand the advantages of modern materials, and of uPVC windows in particular, but living in an attractive historic conservation area, in a building that helps to contribute to its qualities, will often bring additional expense and sometimes a little inconvenience.
12. The council's Design and Townscape Guide provides good advice about dealing with traditional timber windows in relation to the character of conservation areas. Paragraph 309, which is quoted in the officer's report, suggests ways in which original windows can be overhauled, with draft proofing and secondary glazing. The replacement windows subject of this appeal conflict with the guidance and policy set out. They are prominent in the turret feature, and stand out as incongruous because of the different character of plastic to painted timber, and the difference in profiling and detailing and the appearance of the glazing.
13. The council has given an explanation for some of the windows that are drawn to my attention, including its attitude to those windows at ground floor level in this building, taking account that they are located at the rear elevation of the property, aside from two small sidelight windows to a blank bay-like projection located towards the rear. This, it appears to me, demonstrates that the council takes a considered and sensible approach to these matters. It is, of course, regrettable that a more proactive lookout for unauthorised and inappropriate replacements has not been achieved, but there are probably reasons for this that have nothing to do with my consideration of this appeal. The Article 4 direction, in place since 1989, would have been well publicised and certainly should be revealed on any property searches since then.

## Conclusion

14. National planning policy, as well as that in the development plan for the borough, places considerable weight on avoiding harm to conservation areas. In addition, there is a general duty placed on a planning decision maker, including myself, under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, with respect to any buildings or other land in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
15. In drawing a conclusion on this appeal, my judgement is that the subject windows bring 'less than substantial harm' to the character and appearance of the appeal property and the street scene and the Milton Conservation Area due to their design and materials. There is nothing put before me, in terms of public benefits of the proposal, that overrides this harm.

16. I have taken account of all other matters raised, including the fact that some of the appellant's messages to the council have gone unanswered, but these are not considerations for me. In view of my conclusion, reached on the basis of the considerations that I have set out, I dismiss the appeal.

*Terrence Kemmann-Lane*

INSPECTOR