



Appeal Decision

Site visit made on 7 December 2021

by M Madge DIPTP, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 13 January 2022

Appeal Ref: APP/Y2003/C/21/3277455

Land at 26c Chapel Lane, Barton-Upon-Humber DN18 5PJ

- 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 Mrs Valerie Mason against an enforcement notice issued by North Lincolnshire Council.
- The enforcement notice, numbered EN195, was issued on 11 June 2021.
- The breach of planning control as alleged in the notice is without planning permission, the installation of 6 uPVC windows in the front elevation of a dwellinghouse.
- The requirements of the notice are:
 - i) Remove the 6 uPVC windows from the front elevation of the dwellinghouse.
 - ii) Supply and install single glazed windows made to fit the appropriate existing window opening on the principal elevation (3 at ground floor and 3 at first floor) The window Frames, Sills, Heads, Jambs, Stiles and Glazing Bars must be white painted natural timber and identical in dimension, proportion and form to that previously installed in the building as shown on the images annotated Plan 2, Plan 3 and Plan 4 annexed to this notice.
- The period for compliance with the requirements is 18 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out in the Formal Decision.

Matters concerning the notice

1. The allegation and step (i) of the requirements both refer to 6 uPVC windows in the '*front*' elevation of the dwellinghouse. For consistency, step (ii) should also refer to the '*front*' rather than the '*principal*' elevation. Both appeal parties understand which elevation is referred to and no injustice will arise from my variation of step (ii) in accordance with s176(1)(b) of the 1990 Act.

Appeal on ground (d)

2. The appeal is that at the date the enforcement notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant period for assessing immunity of the matters alleged is four years and the material date is therefore 11 June 2017. Any 4-year period on or before that date is relevant.
3. The burden of proof is on the appellant and they must demonstrate, on the balance of probability, that the 6 uPVC windows in the front elevation of the dwellinghouse ("the windows") were installed on or before the material date. The appellant claims that the windows were installed in approximately November 2013. It is also argued that the windows could have been installed

no later than 7 January 2014, which is the date of the Council's letter stating that the windows had been installed without the necessary planning permission.

4. Following a refusal of planning permission to retain the windows¹, an enforcement notice was issued against the breach of planning control on 14 June 2017 ("the first notice"). An appeal was lodged against the first notice. During that appeal process the Planning Inspectorate advised the Council that the first notice was likely to be found a nullity, due to imprecision in the requirements. The Council withdrew the first notice on 22 February 2018.
5. S173A(4) confirms that the withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice. Such further notice was issued on 11 June 2021 ("the second notice"). The second notice does not require a scheme to be submitted for approval by the Council, which addresses the identified imprecision in the first notice.
6. In respect of timescales, s171B(1) confirms that no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. S171B(4)(b) confirms that s171B(1) does not prevent the *'taking of further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach'*.
7. The precise date that the windows were installed is not known, but the evidence shows that they were installed by 7 January 2014. The first notice was issued approximately 3½ years later. Even if I were to accept the claimed earlier installation date of November 2013, having regard to s171B(1), the notice would need to have been issued after November 2017. The windows were not therefore installed 4 years before the first notice was issued on 14 June 2017. The windows had not achieved immunity from enforcement before the first notice was issued.
8. Issuing the first notice stopped the clock in respect of achieving 4 years immunity from the date the windows were installed. As the first notice was withdrawn, having regard to s171B(4), the start date for calculating the 4 year period now begins on the date the first notice was issued. Immunity from enforcement could, therefore, still be achieved if a period of 4 years elapsed between the issuing of the first and second notices. The second date after which immunity could have been achieved would therefore have been 14 June 2021. The second notice was issued on 11 June 2021, some 3 days before immunity could have been achieved. Despite having been installed for over 7 years, the windows have not achieved immunity from enforcement due to the passage of time.
9. For these reasons, the ground (d) appeal fails.

Appeal on ground (a)

10. The appeal property is identified as a 'Building of Townscape Merit' and it is located within the Barton-Upon-Humber Conservation Area. The Council has supplied development plan policies and supplementary guidance relating to design, character and heritage. The **main issue** is whether the development

¹ PA/2014/0054 refused 29 July 2014

preserves or enhances the character or appearance of the host property and the Barton-Upon-Humber Conservation Area ("the CA").

11. The CA Appraisal² document confirms that the site lies within '*The Commercial core: Market Place to High Street*' character area, where street frontages are generally closely packed with terraced properties, although Chapel Lane has several large buildings set in gardens. Activity is concentrated in the main shopping streets, whereas Chapel Lane is identified as a '*back-water*'. The 19th century houses and cottages along the north side of Chapel Lane provide a high-quality streetscape and are either Listed Buildings or identified as '*Buildings of Townscape Merit*', which are non-designated heritage assets.
12. The CA Appraisal and the supplementary planning guidance³ ("the SPG") identify that Buildings of Townscape Merit ("BTM") are of local importance, due to their age and architectural interest, which contribute positively to the character of the CA. The SPG requires that special attention be paid to proposals to alter BTM and the use of modern materials should be avoided. The Article 4 Direction⁴ provides that proposed changes in window type require a specific grant of planning permission, which reinforces the need to pay special attention to the alteration of BTM in the CA.
13. The original window openings and the white painted headers and sills have been retained. The overall proportions of the glazing are like those shown in Plan 2, Plan 3 and Plan 4. However, that is where the similarity ends. The pronounced profile of the former timber frames has been replaced by plain uPVC frames, single glazing has been replaced by sealed doubled glazed units and the coloured glass in the upper lights at first floor level has been replaced by clear glass. Features making a positive contribution to the building's architectural interest have been removed, to the detriment of the character and appearance of the host building and the appearance of the street scene.
14. The development fails to preserve the character and appearance of the BTM, the non-designated heritage asset. I give the harm to the significance of the BTM moderate weight. Similarly, the development fails to preserve the appearance of the CA, the designated heritage asset. I find the harm to the CA's significance to be less than substantial, and I give this harm considerable importance and weight.
15. Where development leads to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits derived, including, where appropriate, securing its optimum viable use. The host building is in use as a dwelling house, whether this is the optimum viable use is not disputed. No public benefits arising from the development are claimed by the appellant.
16. The appellant has however brought to my attention the fact that several adjacent properties also have uPVC windows installed, but I need to assess the merits of this case. The CA Appraisal and the SPG acknowledge that unsympathetic alterations have been undertaken to buildings throughout the CA and to identified BTM. Relevant planning policy and guidance seeks to secure the preservation or enhancement of heritage assets through the

² Barton-Upon-Humber Conservation Area Appraisal (December 2004)

³ Barton-Upon-Humber Conservation Area Supplementary Planning Guidance (December 2004)

⁴ Glanford Borough Council (Barton-Upon-Humber Conservation Area) Planning Control Direction (No.2) 1977

retention of existing architectural and historical features and the reinstatement of such features where they have been lost. The existence of other uPVC windows in and around Chapel Lane does not justify the erosion of the host property's architectural and historic features.

17. The moderate harm to the significance of the BTM and the considerable importance and weight I have attributed to the less than substantial harm to the significance of the CA is not outweighed as no public benefits have been identified.

Conclusion on ground (a)

18. For the above reasons, the development fails to preserve or enhance the character or appearance of the host property and the Barton-Upon-Humber Conservation Area. The development conflicts with policies CS5 and CS6 of the Core Strategy (June 2011) and saved policies DS1 and HE2 of the North Lincolnshire Local Plan (May 2003) which seek, amongst other things, to deliver high-quality developments, which preserve or enhance the character or appearance of the identified heritage assets. Also, the development does not accord with guidance set out in the SPG, which amongst other things, promotes the retention of existing architectural features and the use of materials appropriate to the age and character of buildings.

Overall conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with a correction.

Formal Decision

20. It is directed that the enforcement notice is corrected by:

In section 5. WHAT YOU ARE REQUIRED TO DO, step (ii) the deletion of the word "principal" and the substitution of the word "front".

Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR