



Appeal Decision

Site visit made on 9 January 2022

by Timothy C King BA (Hons) MRTPI

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

Decision date: 04 February 2022

Appeal Ref: APP/L2250/C/21/3271824

Flat 4, 3 Castle Hill Avenue, Folkestone, Kent CT20 2TD

- 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 Fernanda Diaz Moro against an enforcement notice issued by Folkestone & Hythe District Council.
 - The enforcement notice was issued on 26 February 2021.
 - The breach of planning control as alleged in the notice is: The installation of uPVC windows in a flat in a Conservation Area.
 - The requirements of the notice are to:
 - (i) Remove the uPVC windows and frames.
 - (ii) In place of the uPVC windows, install white painted timber frames and sliding sash white painted timber windows to match those previously in place and the other sliding sash white painted timber windows and frames in the building.
 - The period for compliance with the requirements is 6 (six) 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) 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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Summary of decision

1. The enforcement notice is corrected by the deletion of Requirement (ii). Subject to this correction the notice is quashed, the appeal is allowed, and planning permission is granted for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. Since the scope of the enforcement notice is limited by s173(4)(a) and (b) of the 1990 Act the recipient cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with either a planning permission or restoration of the land to its previous condition. As such, there is no scope for an enforcement notice to require some improvements to the land, even if the result is that compliance with the notice would mean the building is left insecure or open to the elements. Accordingly, it would be for the appellant to carry out any improvements needed, seeking planning permission, if necessary.
3. In the first instance, I must therefore correct the enforcement notice.

Background

4. The four-storey building has been converted into flats and, in 2019, following the Council refusing planning permission for the replacement of its sash windows above lower ground floor level with uPVC types, the decision was unsuccessfully appealed. Notwithstanding this, it appears that the top storey, which accommodates Flat 4, has had its windows replaced with a uPVC variety. On this basis, the Council issued an enforcement notice requiring for their removal.

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

Main Issue

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

Reasons

6. The site falls within the western part of the Folkestone, Leas and Bayle Conservation Area. This area of the conservation area is largely characterised by tall, imposing, period age buildings. Many of these properties now appear to be in use as flats, but have, in the main, retained their original architectural features and individual character.
7. The development has involved the removal and replacement of the flat's windows to both the front and rear although, given that my site visit was unaccompanied, I only witnessed those on the principle elevation facing towards Castle Hill Avenue itself.
8. In dismissing the previous appeal, which would have involved the removal and replacement of most of the building's windows on the front and rear elevations, the then Inspector considered that, overall, the new windows would look modern, stark and out of keeping with the traditional materials and finishes of the property. Admittedly, I acknowledge that the development now enforced against only involves those windows along the top storey and, when walking along Castle Hill Avenue during my site visit, the uPVC windows installed, due to their positioning at a high level, are not overly perceptible. Further, relative to the building's lower level windows, the openings are significantly smaller and the development does not involve the reglazing of any of the prominent splayed bays situated directly below the top storey. The glazing's profile is also similar in form to the original. I can, though, appreciate the previous Inspector's concerns as, in contrast, wholesale replacement would materially alter the appearance of the both the building's front and rear elevations, to the detriment of the Conservation Area's character.
9. I am therefore drawing a clear distinction between the current development and the extent of the previous unsuccessful appeal scheme. I am, though, conscious that, in allowing this appeal and granting planning permission for the retention of the top storey's windows, it might seem difficult to resist the installation of similar windows at the building's lower levels, as was previously applied for. Also, despite the new windows' height, it does not alter the fact that their appearance, involving somewhat deeper central transom bars than those of the existing windows below, is not wholly consistent with the building's characteristic glazing features which are largely reflected throughout this part of the Conservation Area. Accordingly, it is important that the replacement of

this building's windows is controlled to protect its integrity and to guard against what could be an insidious erosion of such. That said, due to the replacement windows' height and relatively limited size, it is essential that any future replacement of the building's other, more prominent windows are carefully assessed. With this in mind I consider that the development enforced against should not lead to detract and resultant harm to the character of the Conservation Area.

10. I have had regard to the appellant's representations, in particular the fact that the Council previously granted planning permission (ref Y08/0939/SH) for the replacement of the windows at No 5 Castle Hill Avenue with a sliding sash uPVC type, and relevant documents have been provided in this regard. Mention has also been made of the Council having granted planning permission for replacement uPVC sliding sash windows lighting the semi-basement at 40 Castle Hill Avenue; a four-storey, period age building which falls within the same Conservation Area.
11. As regards, No 5, the relevant case report suggests that the Council's decision turned on the indication that the new windows would incorporate replica horns in accordance with the original design, and a condition was imposed to this effect. I also note that this planning permission was granted in 2008, which precedes the more contemporary advice contained in the Shepway Core Strategy Local Plan (LP), adopted in 2013, and also Place and Policies Local Plan (PPLP), adopted in 2020. The said permission also pre-dates the iteration of the government's original National Planning Policy Framework (the Framework) in 2012. However, at my site visit I also observed the front elevational windows at No 40. It appears that the permitted replacements have been installed, along with other alterations to the building's original fenestration. Nonetheless, visually, the changes have integrated well and illustrate that the installation of uPVC sliding sash windows, in principle, need not represent unacceptable development.
12. I note the appellant's point that a Council official had apparently indicated that no planning permission would be required for the windows' replacement and a series of new windows were apparently ordered on this basis, but I give little weight to this as it is the potential applicant's responsibility to ensure that the proposed works would be lawful in planning terms. Independent professional advice would have suggested otherwise and, at the very least, given the conservation area location, an application under s192 of the 1990 Act could have been made to the Council for a formal determination as to lawfulness of such.
13. 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 of new development has/would have a neutral effect on the conservation area, this is sufficient to '*preserve*'.
14. In the current case I consider that, for the above reasons, the difference between the respective visual effects of those windows now installed along the top floor and those in situ below is of significant materiality. In illustration, I was not able to discern from street level whether the original sash horns had been replicated in this instance. The high level windows are much less obvious

in the street scene and, as such, should in no way set a precedent for any future replacement of the larger, more prominent windows below. All such proposals should be assessed on their own merits and/or impacts with reference to the appropriateness of the proposed glazing profiles and materials.

15. Accordingly, I conclude that the extent of the development in this instance has had only a neutral effect on the Conservation Area and I am therefore satisfied that allowing this appeal and granting planning permission for the development enforced against would preserve these interests. I also find that there is no material conflict with the aims and requirements of LP policy DSD, PPLP policies HB1 and HB8, and the proposal is not inconsistent with relevant guidance from the Framework, particularly paragraphs 194, 195, 197, 199 and 200 thereto.
16. For the reasons given, and having had regard to all matters raised, the appeal on Ground (a) succeeds and planning permission, by way of the DPA, is granted. Given that the development is retrospective no conditions are necessary.

The Appeal on Ground (f)

17. Appeals on ground (f) are 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.
18. Given my findings on the DPA it is not necessary for me to consider this matter further.

The Appeal on Ground (g)

19. Appeals on ground (g) are made in instances where the appellant feels that the time period specified for compliance is unreasonably short. Similarly, in view of my decision, there is no need to address this matter.

Formal Decision

20. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted for the application deemed to have been made under section 177(5) of the 1990 Act, as amended for the development already carried out, namely the installation of uPVC windows in a flat in a Conservation Area at Flat 4, 3 Castle Hill Avenue, Folkestone, Kent CT20 2TD.

Timothy C King

INSPECTOR