



Appeal Decision

Site visit made on 31 January 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/D0840/C/21/3281367

48 Wellington Terrace, FALMOUTH, Cornwall, TR11 3BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Bottomley against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN18/00856, was issued on 19 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a building from workshop/storage to a single dwelling house and operational development to insert uPVC windows and re-clad the building in plastic cladding.
 - The requirements of the notice are
 - (1) Cease the use of the building, shown in the approximate position marked by a blue 'X' on the plan attached to the notice and titled Plan 1, for residential purposes.
 - (2) Remove all the uPVC windows from the building, shown in the approximate position marked by a blue 'X' on Plan 1, and either reinstate timber ones, as original or block up the openings.
 - (3) Remove the plastic cladding from the building, shown in the approximate position marked by a blue 'X' on Plan 1, and reinstate the timber materials, as original.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (e) and (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word 'plastic' from the allegation.
2. Subject to the correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on 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 material change of use of a building from workshop/storage to a single dwelling house and operational development to insert uPVC windows and re-clad the building in cladding at land at 48 Wellington Terrace, Falmouth, Cornwall, TR11 3BL as shown on the plan attached to the notice and subject to the following conditions:
 - (i) Unless within three months of the date of this decision a scheme for the treatment of the cladding on the north-east and north-west elevations by painting or other means in order to achieve a single colour is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the

land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the residential occupation of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, the cladding shall thereafter be retained in a single colour.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- (ii) All the windows on the north-east elevation shall be obscure glazed, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the means of obscured glazing shall be submitted to and approved in writing by the local planning authority within three months of this decision and once installed the obscured glazing shall be retained thereafter.
- (iii) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on the north-east elevation.

Procedural Matter

- 3. The appellant states that the cladding is not plastic as alleged in the notice but is composed of fibre cement. As this appears to be the case, I shall correct the allegation vary requirement (3) by the deletion of the word 'plastic'. I am satisfied that neither party would suffer any injustice as a consequence.

The appeal site and relevant planning history

- 4. The appeal relates to a narrow two-storey building on a sloping site in a conservation area accessed at first floor level via a short driveway adjacent to 49 Wellington Terrace which is the end house in a short terrace. The appeal property is situated to the rear of the residential properties. Due to the sloping nature of the site, access to the property is at the upper storey level.
- 5. The appellant states that the property was built about 100 years ago and was used as a storeroom for a shop on Killigrew Street and later used as a sports hall, scout hut, auction room and a workshop before he purchased it some 20 years ago. It was then used as an extension to the family house, which I note was at 28a Waterloo Road which is elsewhere in the neighbourhood.
- 6. In December 2020 an application was refused for the change of use from general family usage eg storage/hobby/workshop to residential accommodation (PA20/07618).

The appeal on ground (e)

7. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. The appellant states that the notice was served on 'The Occupier' and by not making a reasonable attempt to serve the notice on the named owner/named occupier, the notice has not been served correctly.
8. The appellant does not indicate who was not served the notice, why they needed to be served the notice or what prejudice may have arisen as a consequence.
9. The Council advises that following a Land Registry search, the enforcement notice was served on John Bottomley and the occupier at 48 Wellington Terrace with both recorded delivery receipts being signed by Mr Bottomley. This satisfies the procedural requirements set out in s 172 of the Act.
10. The appeal on this ground fails.

The appeal on ground (d)

11. An appeal on this ground is that it is too late to take enforcement action for the cladding or the windows. The appellant states that the cladding was replaced in late 2016 and in his undated and unsigned declaration (at Appendix B of his statement), states that the windows were installed on 28 January 2017. As this represented operational development that occurred more than 4 years prior to the notice being issued, it is claimed to be immune from enforcement action.
12. In an appeal on this ground, the onus of proof rests with the appellant and the standard of proof is on the balance of probability.
13. The appellant does not claim that the change of use to residential purposes is immune from enforcement action and it is noted that the residential use of the building commenced in September 2019.
14. The Council argue that the whole development of the appeal site has been a single operation albeit in separate component parts, all directly undertaken to facilitate the residential use of the site. They rely on officer site visit notes of 1 February 2017 when the windows were being installed and cladding affixed to the building. The building did not include any facilities for day to day living but the appellant confirmed that it was the intention to use the building as a residence and would apply for permission once the works were completed (although no application was received until September 2020).
15. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own may not constitute development, or be permitted development or be immune from enforcement. I note that the Council cites *Somak Travel Ltd v SSE* [1987] JPL 630 and *Kestrel Hydro v SSCLG* [2016] EWHC1654 (Admin) in support of this approach.
16. In view of the appellant's stated intention to use the building as a dwelling at the time when the window and cladding works were being undertaken, I consider that these are integral to the development and form part and parcel of the change of use which requires a 10 year period to achieve immunity.

17. Accordingly the appellant has not shown on the balance of probability that the works are immune from enforcement action and the appeal on this ground fails.

The appeal on ground (a)

18. An appeal on this ground is that planning permission should be granted.
19. The main issues are the effect of the development on (a) the living conditions of a neighbouring property due to overlooking of the private rear amenity space of 49 Wellington Terrace caused by the close position of the building and the windows along the North East elevation; and (b) on the character and appearance of the conservation area.

Living conditions

20. The property has a living area at the upper level and a basement sleeping/storage/work area with direct access through a door to the small back garden. There are seven relatively small windows in the upper living area and a larger one facing over the back garden and land to the rear. There is a window serving the basement level facing No 49 but at a lower level adjacent to the stepped garden of No 49. The front door is behind an original wooden door giving the impression that the structure is an outbuilding. There is also a door on the side of the building from the upper level that directly opens onto the rear yard of No 49. I am unaware of what rights the occupier of the appeal building may have or had in terms of using the door and passing over the neighbour's property.
21. The principle of a dwelling at this location is accepted and in accord with the relevant policies of the Cornwall Local Plan. However Policy 12 seeks to protect individuals and property from overlooking and an unreasonable loss of privacy. The layout and style of built development in this part of Falmouth inevitably leads to some degree of overlooking of rear amenity space and in this case it is exacerbated by the sloping nature of the land. In this appeal, the upper floor of the building is generally at the same level as the small space to the rear of No 49 but it is very difficult for the area to be overlooked due to the cill height of the four windows on the north-east elevation adjoining the neighbour. The Council draws attention to the fact that at 1.5m above floor level the cill does not achieve the 1.7m height specified for upper floor windows in a wall or roof slope forming a side elevation and referred to in section A.3 of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, the Order states that lower heights are acceptable where a window is obscure glazed and non-opening. I note that the bottom half of the window closest to the front of the building is obscure glazed at present and there are sufficient alternative windows on the other elevations to provide necessary ventilation.
22. I was able to inspect the appeal site from the rear amenity space of No 49 where I note that the previous occupier expressed concerns about privacy.
23. Policy 12 requires a judgement to be made about whether any loss of privacy is to an unreasonable degree. I note that the planning officer did not inspect the appeal property internally and had the officer done so, the extent for any possible overlooking would have been better appreciated bearing in mind the internal layout and disposition of the windows. Additionally, the building has

been in existence for a long time and no additional windows have been installed, only replaced. The potential for overlooking arising from previous uses should not be ignored. Furthermore there is opportunity for mitigation of any future harm caused by overlooking through the imposition of a condition requiring further obscuring of glazing and windows being non-opening. Although the perception of overlooking may exist, I do not regard this as being too different to the situation that previously existed.

24. I therefore conclude on this issue that whilst some additional loss of privacy may be experienced by the neighbouring occupiers as a result of residential use, it would be at a level that would not be unreasonable in the context of the past uses of the building, the disposition and size of the windows and the opportunity for further mitigation measures. I do not consider therefore that it is at odds with Policy 12 or with paragraph 130 of the National Planning Policy Framework (the Framework)
25. The Council also makes reference to the 32sqm floor area of living space being inadequate for single occupation but this seems to ignore the 19sqm of floorspace at the basement level. In view of this I do not consider that the amount of accommodation would be inadequate.

Character and appearance

26. As the appeal site is in a designated conservation area I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
27. The site is within Character Area 5 Falmouth Neighbourhood Plan 2017 – 2030 (which forms part of the development plan along with the Cornwall Local Plan'. This area is described as 'A large area of terraced suburbs of varying social status on the higher ground around the historic core of the town. Stucco is the dominant finish, but there is a wide diversity in form and detail and the high degree of variation within the area is a significant element of its character'.
28. The character of conservation area in the vicinity of the appeal property is primarily residential with a tightly knit network of two-storey pastel coloured stucco finished terraced housing. Adjacent to the site is a single storey, metal clad building in what appears to have been the yard of a former school building now occupied by the University of Falmouth. The raised pavement level on the opposite side of Wellington Terrace adds a distinctive feature. Further along the Terrace, there is a greater variety of house styles including some relatively modern ones with integrated garages and a further terrace of newish houses set back from the road behind parking bays. Although painted stucco predominates, tile hanging is also employed as an external material on some houses. Window types are generally of a sash style with many uPVC replacements in evidence. Some houses have small porches, bay and oriel windows.
29. In contrast, the appeal building is significantly different from those around it with it being set back well behind the building line. It has the appearance from the front of a domestic garage or outbuilding clad in timber and I suspect that it appears very little different to when it was built and its contribution to the street scene would not have materially changed. However, the insertion of uPVC windows and the coloured horizontal cladding has changed its appearance on all three sides other than at the front. The cladding on the

- south-west side is all in a single grey colour and the proximity of the adjacent metal clad building effectively obscures the appeal building from view.
30. The elevations on the north-east side and on the narrow rear of the building have been clad in a variety of different coloured slats, these being of a blue, pink and grey hues which give these two elevations a distinctive and somewhat unorthodox appearance. Whilst the colours may emulate the colourwash of some of the stuccoed houses, this is where the similarity ends.
31. I have viewed the building from the other side of the valley to the north-west and consider that whilst the building is prominent by virtue of its size and position at the rear of the terrace (which it historically would have done), the variety of colours employed in the cladding, or the nature of the cladding material itself, is not visually harmful from a distance.
32. It is only from a close proximity, such as in the rear garden of No 49, or I surmise, from the upper floor windows of nearby neighbours, that the palette of colours is evident. From the photos submitted by the appellant, the appearance of the original shed had taken on a patina of age, as is often the case with older timber clad buildings. The predominant colours were tones of brown and green, with a darker brown colour associated with what appears to be vertical cladding of the basement level. The appearance of the replacement cladding is very different in colour and has a fresh clean look. I note that similar cladding material has been used in development elsewhere, both within and outside conservation areas, but generally in larger areas of a single colour. The popularity of the material no doubt stems from its durability. However, although the viewpoints of the side of the appeal building are private, and the noticeable elevations are not in general public view, the colour variation is nevertheless harmful to the appearance of the conservation area. This harm could be mitigated by a condition requiring it to be painted or treated in a manner to subdue its harmful effects and I note that the appellant would not be opposed to a condition that required this.¹
33. Turning to the replacement windows, from the appellant's photos, those on the north-east elevation were 9-pane square timber windows which have been replaced with 2-pane casement uPVC windows. The design is not an issue, only the material which is regarded as not being appropriate in the conservation area albeit that the appellant has directed my attention to many other examples of uPVC windows in other dwellings in the street. Whilst uPVC windows now appear to contribute to the appearance of the area, this does not justify the addition of further uPVC windows where the Council and others are seeking enhancement to the area. However, as the replacement windows are to the rear of the terrace I do not consider that they harm the character or appearance of the conservation area.

¹ Condition(i) is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

The planning balance

34. In reaching a conclusion on this ground of appeal, I conclude that the cladding causes harm to the character and appearance of the conservation area, to which I attach considerable weight. However as this level of harm is less than substantial to the significance of the conservation area, in accordance with paragraph 202 of the Framework this harm should be weighed against the public benefits of the development including, where appropriate, securing its optimum viable use. As a simple building in the conservation area it is being re-purposed as a dwelling and this has a public benefit in adding to the housing stock. I am satisfied that with appropriate conditions relating to the windows to mitigate potential overlooking and relating to the appearance of the cladding, any potential harm can be mitigated sufficiently for the development to be acceptable and for it to maintain the character and appearance of the conservation area.
35. With these conditions, the development accords with the Framework and with Policies 2,12 and 24 of the Local Plan aimed at respecting the special character of Cornwall and its settlements and to the protection of its heritage assets and with Policies DG3 and DG7 of the Falmouth Neighbourhood Plan regarding design and local distinctiveness in character areas and in the conservation area.
36. The appeal on this ground is upheld.

Conclusion

37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
38. The appeal on ground (f) does not therefore fall to be considered.

P N Jarratt

INSPECTOR

