
Appeal Decision

Site visit made on 27 January 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/Z2260/C/21/3276773

Land at 25 High Street, St Peters, Broadstairs CT10 2TL

- 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 Sarah Day against an enforcement notice issued by Thanet District Council.
 - The enforcement notice was issued on 20 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of one upvc window in the second floor of the front elevation, one upvc window in the second floor of the rear elevation and three upvc windows in the first floor side elevation, following removal of 3 timber windows on the side elevations and 2 aluminium windows on the front and rear of the property.
 - The requirements of the notice are: remove the unauthorised upvc window in the second floor of the front elevation, the upvc window in the second floor of the rear elevation and three upvc windows in the first floor side elevation and replace the windows on the front and rear elevation with aluminium windows of the same design as those removed and replace the 3 windows in the side elevation with timber windows of the same design that were removed from the property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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 as amended.
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Decision

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

Procedural Matter

2. Whilst not indicated on the appeal form as a ground of appeal, the appellant has made submissions under ground (f) on the appeal form that are arguments more applicable to ground (a). The appellant subsequently clarified the grounds of appeal and indicated that she wishes the appeal to be considered under grounds (a) and (f).

Appeal on ground (a)

Main Issue

3. The main issue is whether the replacement windows preserve or enhance the character or appearance of the St Peter's Conservation Area (CA).

Reasons

4. The appeal property is a three-storey end of terrace building with a commercial property at ground floor and residential accommodation above located in a prominent corner position of the High Street at the junction with Alderney Gardens.
5. This part of the CA is characterised by close knit properties which vary in terms of their use, type, age, character and design. Properties along this stretch of the High Street predominantly front almost immediately onto the street, with the significance of the area being defined, in part, by the dense townscape with buildings of architectural merit and historical value.
6. During my site visit, I observed that despite examples of traditional timber sash windows having been replaced with a variety of modern upvc in the High Street, those that remain make a positive contribution to the character of the CA. The appellant has drawn my attention to some of these examples where the original windows have been replaced. I am not aware of the detailed circumstances of these developments. However, I consider that the impact of upvc windows varies depending on the type of property and the specific detailing. Moreover, and in any event, I have determined the appeal before me on its own merits, with regard to the specific context of the appeal property in the street scene.
7. Prior to installing upvc windows the second-floor windows on the front and rear elevation were aluminium and the three first floor windows on the side elevation were timber. I am informed by the appellant that these were not original, the original windows being replaced by the previous owner in the 1990s.
8. Although no details have been provided regarding the former aluminium window on the rear elevation, the Google Streetview Images dated 2009 and 2014 submitted by the Council indicate that unlike its upvc replacement, the previous aluminium window in the front elevation, although not original, was flushed with the front of the property and of a lightweight design with glazing bars which complimented the design of other windows in the immediate vicinity. The replacement upvc windows with their thicker frames and glazing bars are more substantial than their aluminium counterparts. Moreover, having regard to the Google Streetview images dated 2009 and 2014, the thickness of the upvc frames in the side elevation is more substantial than the timber windows. Upvc is not a traditional material and is generally more flat, uniform and glossier in finish than traditional timber windows, giving the windows a modern and less refined appearance. Thus, the loss of the aluminium and timber windows with their thinner detailing has a negative impact upon the contribution the fenestration makes to the character and appearance of the CA.
9. S72(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 a conservation area. The harm I have identified falls within the category of "less than substantial harm" to the significance of the heritage asset. Paragraph 202 of the National Planning Policy Framework (the Framework) states that where a development proposal will lead to less than substantial harm of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The public benefit of better energy efficiency for the building is not sufficient to overcome

the harm that I have identified, a consideration the courts have determined is a matter of considerable importance and weight.

10. I conclude that the development fails to preserve or enhance the character or appearance of the CA. Consequently, it conflicts with the aims of Policies QD02 and HE02 of the Thanet District Council Local Plan (2020) which requires that development respects and enhance the character of the area particularly in the use of materials appropriate to the locality. The development also conflicts with the aims of the Framework.
11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires development to be in accordance with the development plan unless there are material considerations which indicate otherwise. The benefit described does not outweigh the conflict with the development plan.

Other matters

12. The appellant refers to a certificate issued by the Council's Building Control Department. Building Control covers a different area of legislation and thus is not a matter determinative to this appeal. Concerns expressed over the time it has taken to issue the enforcement notice should appropriately be made in the first instance through the authority's own complaints procedure.
13. Finally, I have considered the supporting comments submitted by a neighbour. However, these matters do not justify allowing a development which fails to enhance or preserve the character and appearance of the CA.

Conclusion

14. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173 (4)(b)). As the enforcement notice requires the removal of the upvc windows, the purpose is clearly to remedy the breach of planning control. No lesser steps than the removal of the windows would achieve that purpose. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. I note the case set out under this ground of appeal. However, I have considered those points earlier in my decision.
16. The appeal on ground (f) fails.

Elizabeth Jones

INSPECTOR