The Planning Inspectorate

Appeal Decision

Site visit made on 24 May 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2022

Appeal Ref: APP/Y2003/C/21/3284973
3A Garden Street, BRIGG DN20 8HE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Peter Bradley against an enforcement notice issued by North Lincolnshire Council.
- The enforcement notice, numbered EN186, was issued on 21 September 2021.
- The breach of planning control as alleged in the notice is non-compliance with conditions 2 and 3 of planning permission reference PA/2013/1624 granted by the Council on 19 February 2014 to form a ground floor flat and an application reference PA/2016/193 for a non-material amendment to PA/2013/1624 to re-align windows granted by the Council on 16 May 2016, by the installation of uPVC windows and use of render to front elevation.
- The conditions in question are:
  Condition 2: The development hereby permitted shall be carried out in accordance with the following approved plans: 757.01, 757.02 and 757.03
  Condition 3: The materials and finishes of the new areas of brickwork shall match the remainder of the building in colour and texture.
- The requirements of the notice are:
  i. Remove uPVC windows from the ground floor front elevation of the building.
  ii. Install in place of the removed uPVC windows, single or double glazed soft wood sliding sash windows whose frames fit the existing window openings. The timberwork of the frames and windows must match the style, proportion, form and colour of the existing windows at first floor level as shown on the plan annotated PLAN2 annexed hereto.
  iii. Re-paint the render installed on the front elevation in White as detailed in the British Standard 4800 Colour Chart and referenced 10-A-01 [www.britishstandardcolour.com/].
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Background

2. Planning permission was granted, subject to conditions, for a material change of use to form a ground floor flat[1] ('the 2013 PP'). A proposal for non-material amendments to the 2013 PP was confirmed to be acceptable by letter[2] ('the 2016 NMA'). The Council subsequently stated, in an email dated 16 June 2016, *'I can confirm that the proposal to render the frontage is acceptable. Although you did not specify this in your written description on the application forms, it*

[1] PA/2013/1624 granted 19 February 2014
[2] PA/2016/193 confirmed re-alignment of ground floor windows acceptable 16 May 2016

is noted on the plans in the schedule of works. I trust this clarifies the position for you' ('the 2016 email').

Appeal on ground (c)

3. In pursuing an appeal on this ground, the onus of proof is on the appellant to show, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control. Essentially, their argument is a simple one, namely that the matters stated do not constitute a breach of planning control because the use of uPVC windows and the application of render benefit from planning permission. Before I examine this argument in detail, I will first turn to a subsidiary point.

4. The submission is that the works carried out had been accepted as non-material amendments to the 2013 PP as confirmed in the 2016 NMA and the 2016 email. The appellant claims a legitimate expectation to be able to rely on correspondence received from a senior planning officer, acting on behalf of the Council. For the following reasons, I do not accept that submission.

5. Whether a breach of planning control has occurred is a matter of law. While the appellant was not professionally represented, there is no doubt that he was aware of the conditional requirements of the 2013 PP as he sought advice from the conservation officer in relation to changes necessary to overcome identified structural issues. He also submitted the non-material amendment application. The Council's letter of 16 May 2016 in respect of the 2016 NMA is clear that only the *'re-alignment of the ground floor windows'* is an acceptable amendment. While the 2016 email claims that rendering the frontage is also acceptable, this informal correspondence is not a formal decision of the Council and has no legal status. I do not believe any argument of legitimate expectation could be supported by the facts of this case. Neither the 2016 NMA nor the 2016 email binds the Council so as to prevent them taking enforcement action.

6. The only planning permission granted in respect of the material change of use to a ground floor flat is the 2013 PP. To lawfully implement the 2013 PP, it had to be begun in accordance with the conditions imposed. There is no dispute that the 2013 PP was lawfully implemented. Instead, it is alleged that conditions were not complied with due to the use of uPVC windows and the application of render.

7. The approved plans, Drawing Numbers: 575.01, 757.02 and 757.03, do not show the use of uPVC windows or the application of render. Furthermore, the uPVC windows do not match the existing first-floor timber sliding sash windows and the render does not match the colour and texture of the existing brickwork. The development has therefore been carried out in breach of conditions 2 and 3, which require the development to be carried out in accordance with the approved plans numbered above, and that materials match the colour and texture of the existing brickwork.

8. Power to make non-material changes to a planning permission is set out in s96A of the 1990 Act. This allows a local planning authority to make a change to any planning permission if they are satisfied that the change is not material. The power conferred includes power to impose new conditions or to alter or remove existing conditions. The approval of a non-material amendment

application does not amount to a new planning permission, and it should be read in conjunction with the original planning permission.

9. Where a non-material amendment would require the approved plans condition to be varied, s96A(3)(b) makes the necessary provision. The 2016 NMA, while confirming the acceptability of the *'re-alignment of the ground floor windows',* did not vary condition 2 relating to the approved plans or condition 3 relating to materials and finishes. The 2016 NMA did not confer any approval or acceptance of the use of uPVC window frames or the application of render in lieu of the requirements of conditions 2 and 3 of the 2013 PP.

10. I have already found that the email of 16 June 2016 carries no legal status in relation to the grant of planning permission or the non-material amendment. Even if it had provided for the building to be rendered as part of the approved conversion scheme, no details of the render's colour finish were provided or approved. Furthermore, the development would remain a breach of planning control due to the use of uPVC windows.

11. Conditions 2 and 3 have not been discharged by any other means, such as through the 2016 NMA, and therefore remain in effect. There is no dispute that the matters alleged in the notice have occurred and, for the reasons given above they do not have the benefit of planning permission. A breach of planning control has occurred as a matter of fact.

12. The appeal on ground (c) fails.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Madge

INSPECTOR