



Appeal Decision

Site visit made on 9 November 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/F9498/C/22/3297708

Culbone Stables Inn, Porlock, Minehead, Somerset TA24 8JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Rupert Martin against an enforcement notice issued by Exmoor National Park Authority (the Park Authority).
 - The notice was issued on 18 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission: Within the last four years, the replacement of timber windows and timber doors with uPVC windows and doors.
 - The requirements of the notice are to:
Remove the uPVC windows and uPVC doors and replace them with windows and doors that are only constructed from natural timber and match the design, size, colour, moulding form, glazing layout, manner of opening and ironmongery as the existing timber windows and doors in the building.
 - The period for compliance with the requirement is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) 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:
 - At section 3, deletion of the matters which appear to constitute the breach of planning control and their replacement with:

Within the last 4 years, the replacement of 3 windows in the north-eastern elevation, 1 window in the south-eastern elevation and a door and window in the porch attached to the north-eastern elevation from timber to uPVC windows and door.
 - At section 5, delete each reference to 'doors' and replace each of them with 'door'.
2. Subject to the corrections, 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.

Preliminary Matters and Getting the Notice in Order

3. The allegation refers broadly to the replacement of timber windows and doors without specifying which ones. An enforcement notice should be precise so that the person in receipt of it knows what they have done wrong, with the requirements then needing to ensure that they know what the need to do to achieve the purpose of the notice. As it stands the notice is insufficiently

precise but I have broad powers to correct any defect, error or misdescription in an enforcement notice or can vary the terms under the provisions of s176(1)(a) and (b) of the Act, if I am satisfied it would not cause injustice to the appellant or the local planning authority.

4. It is reasonable to consider that the appellant who still occupies the building knows what windows and door they have changed without planning permission. The Park Authority has visited the site and will know what the alterations are but have unfortunately framed the terms of the notice too broadly and non-specifically. My concern about the lack of precision is due partly due to how it could affect future action for non-compliance and also because of the deemed application for planning permission.
5. I have canvassed the views of the main parties who have confirmed more precise terms. I am satisfied that it would not cause injustice to the appellant or the Park Authority to frame the notice in reduced terms making it clear which windows have been changed and which should be changed back. It is the windows within the north-eastern elevation and 1 window in the south-eastern elevation and a single door and window in the porch on the north-eastern elevation that the Park Authority has confirmed the notice should be directed against. Accordingly, I will correct the allegation. I will also correct the requirement to refer to 'door' in the singular.

The Appeal on ground (a)

6. I have to consider whether planning permission should be given for what is alleged on the enforcement notice, as corrected.

Main Issues

7. The main issue is the effect of the development on the character and appearance of the main building on the appeal site and surrounding area.

Reasons

8. The appeal site is a 2-storey detached building which is positioned close to the A39 with a narrow, raised grassed verge between the north and north-east side of it and the carriageway of the road. To the south and south-east of the building, a bridleway leads around the back of the building and the car park that is open with few physical obstructions of views toward the building. This is a very rural area. Attractive, rugged moorland is interspersed with the occasional buildings such as that on the appeal site and the property on the opposite side of the road.
9. The officer report leading to the issuing of the notice refers to the building being a former public house which is present on 19th century 1st edition Ordnance Survey maps. The Inspector who dismissed the previous appeal on this site to retain uPVC windows and doors that had been installed by that time in November 2020¹, refers to evidence that they had been given regarding the building being on the Park Authority's Historic Environment Record. These matters are not disputed by the appellant. In my view the traditional basic form of the building does contribute positively to the character and appearance of the area in a prominent position close to the road and the bridleway. The

¹ APP/F9498/W/20/3257315

building is distinctive and has some significance in terms of the cultural heritage of Exmoor National Park.

10. Policy GP1 of the Exmoor National Park, Local Plan 2011-2031 (including minerals and waste policies), adopted July 2017 (LP) sets out what is required to achieve the duty to have regard to conserving and enhancing the cultural heritage of the National Parks². The National Planning Policy Framework (the Framework) states that as well as great weight needing to be given to conserving and enhancing landscape and scenic beauty in National Parks, the same should apply to cultural heritage. In addition, LP Policy CE-S6 states that development proposals should deliver high quality sustainable designs that conserve and enhance the local identity and distinctiveness of Exmoor's built and historic environment.
11. The uPVC windows that have been installed within the appeal building are the same light green colour as the remaining timber windows. When compared with the casements of the remaining timber windows, the replacement windows have a similar vertical emphasis. The casements and top windows together also have a similar 8 light arrangement. There are therefore some similarities between the broad design of the replacement windows with the timber windows that remain. I have no evidence about the precise windows that have been replaced but there seems no dispute that they were of a similar design as those that remain.
12. As well as the broad similarities to the remaining wooden windows, the uPVC windows and doors have a very different appearance with chunkier, wider frames and glazing bars, less simple joinery with obvious mitred joints and moulding details. Even though finished in the same hue of green, the uPVC windows have a glossier finish which I recognise may in part be due to the decoration being newer but the smooth unnatural surfaces are also a distinctive characteristic of uPVC without the more organic, less uniform texture of timber.
13. Whilst the building retains its traditional general form and appearance, its significance to the character and appearance as well as cultural heritage of the area has been undermined by the replacement windows and door. The details of the changes that undermine the integrity of the building are noticeable primarily from the road but the changes on the south eastern in particular are also noticeable from the bridleway. Drivers of cars travelling quickly past the site on the A39 may have limited opportunity to notice the changes. However, the modern alterations are very obvious and would be noticed by more cautious drivers as well as other people walking and cycling along the road or using the bridleway and even by the passengers of those passing vehicles enjoying the scenic beauty of the National Park.
14. I have been provided with very limited details of other developments within the National Park where uPVC windows, facias and doors have been allowed by the Park Authority. One of the descriptions indicates 'lawful development' which implies that it was not an application for planning permission. However, I have no evidence about what the key issues were in these cases or how the decisions were reached. These sites do not provide an overriding influence upon the character and appearance of Exmoor National Park even if one of them at 1 Forge Cottages is prominent and another is a community building, they do not alter the physical or policy context within which I am considering

² Environment Act 1995, Part III, s62

this appeal or the specific building I am dealing with here. Furthermore, as the Park Authority clarify, there are circumstances when they do accept alternatives to traditional materials, that is generally when it involves non-traditional buildings unlike in this case.

15. In relation to the main issue, the development as alleged has had a harmful effect upon the character and appearance of the main building on the appeal site and upon the surrounding area. This does not conserve or enhance the cultural heritage or special qualities of the Exmoor National Park, its historic environment and natural beauty and does not reflect traditional vernacular architecture or local distinctiveness. LP Policies GP1, CE-S1, CE-D1, CE-S4 and CE-S6 would not be complied with. Accordingly, I give great weight to the harm to the scenic beauty and cultural heritage of the National Park as required by the Framework.

Other matters

16. The appellant draws attention to the environmental benefits of the windows as installed which are 'A' rated. I have not been provided with any Energy Performance Certificate to demonstrate the comparative energy efficiency benefits once installed of uPVC windows in comparison with those that preceded them or whether new timber windows or repairs to the replaced windows could have achieved similar benefit. I also have no evidence about the relative energy related benefits of the different materials over the lifetime of the alternatives from manufacture to disposal once their useful life ends. I have insufficient information therefore to reach a view about whether the uPVC windows and door contribute positively to the Park Authority's pledge toward carbon neutrality, in comparison with timber replacement windows of an appropriate design or whether the development future proofs climate change impacts that exceed the Building Regulations as required by LP Policy CE-S6 sections 2(c) and 3 or suitable climate change mitigation as required by Policy CC-S1. The appellant uses the term "sustainability" as a title for this topic area in their statement but in the context of planning decisions, the Framework makes it clear that the environmental objective is just 1 of 3 objectives which together form the overarching sustainability objective of the planning system.
17. Other investment in the Lillycombe Estate and the high standard of workmanship in various projects is not in dispute in this case. What is not demonstrated by any evidence is how critical this development has been to enabling or assisting in those other improvements to the estate or what the public interest benefits are, as a result, that should weigh in favour of this development. I also have no evidence of the effect of the costs of compliance with the notice would be upon the appellant's overall business.
18. The appellant has expressed concerns about how the previous planning application was considered by the Park Authority due to Covid-19 measures limiting attendance at the planning committee meeting that led to that refusal. It is not for me to review that matter and even if some members of the committee were not able to vote, this would not alter my view of the merits of the case. It was also a separate decision to issue an enforcement notice and it is well established that an Inspector has no jurisdiction to review the expediency to issue an enforcement notice by a Local Planning Authority.
19. These other matters do not outweigh my conclusion on the main issue.

Conclusion

20. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) fails.

The Appeal on ground (f)

21. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires the installation of new windows rather than the insertion of the previous windows. This in my view can only therefore be interpreted as having the purpose of remedying injury to amenity caused by the breach.
22. The appellant has repeated much of their arguments about the planning merits of the case within this ground. I have considered those merits under ground (a) and do not consider that it is necessary to repeat them here. I have not been provided with an alternative requirement for the notice that would achieve the same purpose other than the retention of the unauthorised windows and door.
23. The appeal on ground (f) therefore fails.

The Appeal on ground (g)

24. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
25. The appellant cites difficulties in obtaining construction materials and other construction industry problems for requesting 24 months to require rather than the existing 6 months. That would be an exceptionally period. I have no specific evidence to show that 6 months is not going to be sufficient time.
26. Given the date on which this decision is issued, 6 months would require compliance prior to the height of the summer tourist season. I have no evidence about how safety plans during the construction work would result in disproportionate and inconvenient highway measures. The appellant does have experience in changing the windows closest to the road and I have not been told for example what measures were required when they undertook that work.
27. I have reached the conclusion that the unauthorised windows and door cause harm to the character and appearance of the area which is within a designated National Park. I give great weight to the harm to the scenic beauty and cultural heritage of the National Park as required by the Framework.
28. I consider that 6 months strikes a reasonable and proportionate balance and the appeal on ground (g) therefore fails.

Conclusion

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

Andy Harwood

INSPECTOR