



Appeal Decision

Site visit made on 30 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/M1710/C/22/3290764

Land at 16b The Green, Rowlands Castle PO9 6BN

- 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 Mr Lee Slark against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 24 November 2021.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, unauthorised alterations to the roof comprising of dormer windows to the front and rear with a side gable and changes to the front bay window.
- The requirements of the notice are: 1. Remove the dormer roof extension from the front and rear roof slope; 2. Remove the gable end from the side elevation and return to a hipped roof; 3. Re-instate the bay window to its previous appearance; 4. Remove all resulting debris from the Land.
- The period for compliance with the requirements is 6 months.
- 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 is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

2. The main issue is the effect on the character and appearance of the Rowlands Castle Conservation Area.

Reasons

Background

3. Planning permission has previously been granted at the appeal property¹ for two dormer windows on the front roof slope, along with a single dormer on the rear roof slope. Works were carried out at the property for the installation of front dormer windows and a rear dormer window which were not in accordance with the 2020 Permission plans. Unauthorised

¹ Ref: 58572 ('2020 Permission')

development also included a gable roof conversion and alterations to the first floor bay window.

4. A retrospective planning application was submitted in respect of conversion of the roof space with a side gable, along with front and rear dormers. This was refused by the Council and the subsequent appeal² was dismissed. The Inspector in the 2021 Appeal found the gable conversion to be materially harmful to the character and appearance of the conservation area, but took the view that the dormer windows subject to the appeal were only marginally different to those permitted by the 2020 Permission.

Analysis

5. The appeal property sits within the Rowlands Castle Conservation Area ('CA'). From observations at my site visit, much of the significance of the CA derives from the historical and architectural quality of buildings within the CA, combining to create an attractive village centre around The Green. Many buildings within the CA have dormer windows of varying sizes on their front roof slopes which face towards The Green. Roof forms typically though remain balanced, which prevents development at roof level from harmfully dominating the distinct character of individual buildings. Traditional materials are a key feature in architectural detailing within the CA with many properties featuring timber fenestration which adds elegance and texture to the appearance of buildings in the village centre.
6. The appeal property forms one half of a pair of semi-detached properties which appear to have originally had symmetrical hipped roofs. I share the view of my colleague Inspector in the 2021 Appeal that the gable conversion fundamentally and harmfully unbalances the roof form of the pair of semi-detached dwellings. This is to the detriment of the roof scape, which is a notably positive characteristic of the CA. The appeal building is prominently located fronting The Green and the very obvious asymmetry at roof level, which is made more obvious by the resultant increase in bulk, results in a visually discordant appearance which draws the eye in the street scene.
7. I have taken account of the presence of the building at 55A The Green, which has an asymmetrical roof. I acknowledge this design was specifically approved within the CA. However, in my view this development can be distinguished from the gable conversion at the appeal property. The gable and hipped roof is an integral part of No 55A's design, with the hipped roof element following the pitch of the front projecting gable on the same side of the property. Indeed, the dwelling at No. 55A achieves a pleasing sense of balance in its unsymmetrical appearance as the smaller projecting gable is positioned on the same side as the gable end roof form, and the larger projecting gable sits on the same side as the hipped roof. No such balance is achieved at the appeal property as between the appeal development and the form of the adjoining semi-detached dwelling. The resultant mixed gable and hipped roof form also does not appropriately reflect any existing design features.
8. I note comments effectively that there does not need to be a very good planning reason for me to depart from the decision of the previous Inspector, and I acknowledge that this appeal is in the context of a notice

² Ref: APP/M1710/W/21/3270898 ('2021 Appeal')

which has draconian consequences for the appellant. Nonetheless, I have found in my own assessment that the gable conversion is materially harmful to the character and appearance of the CA.

9. Turning to the alterations to the first floor bay window, these have substantially increased the amount of glazing in this window which, along with the thickness of the frames used, creates a contemporary appearance at odds with the traditional and historic character of the CA. The removal of timber panel detailing and slim window frames has lost elegance and texture from the bay window. The new modern design appears clumsy and visually obtrusive and contrasts starkly with the first floor bay window in the adjoining semi-detached property. Indeed, the significant changes to the appeal property first floor bay window result in a further and harmful loss of symmetry as between the semi-detached properties.
10. As regards the front and rear dormer windows, I have taken into consideration the fallback position pursuant to the 2020 Permission which permits construction of front and rear dormers, with a pre-existing side dormer still in situ. If the appeal development were required to be removed, it seems that there is a very real prospect that the 2020 Permission would be implemented. As such, and given the prevalence of front dormers within the CA of varying sizes, I share the view of my colleague Inspector that the existing dormer windows preserve the character and appearance of the CA.
11. Although I have taken into consideration the case law related to fallback positions cited by the appellant, including that fallback cases are typically very fact-specific, I do not consider that the 2020 Permission fallback position offers any real weight in favour of granting permission in respect of the gable conversion or bay window alterations since it does not include permission for either of these. Whilst the 2020 Permission showed retention of a side dormer window, the presence of this still enabled the original roof form to remain apparent. As such, there was not an equivalent loss of balance and symmetry as compared to the hip to gable conversion which is the subject of this appeal. Equally, it is apparent that the Inspector in the 2021 Appeal in paragraph 8 was specifically only referring to the dormer windows in his comment that the effect on the CA was not 'meaningfully different'.
12. Whilst it might be open for me in theory to issue a split decision granting planning permission in respect of the dormer windows as part of the matters enforced against, I do not consider this to be appropriate in this instance. This is because in order to do so, I would need to be confident that this part of the development is clearly severable from the gable roof conversion both physically and functionally. I would therefore need evidence that the dormer windows are capable of being constructed (or rather in this case, remaining in situ) in the absence of the gable roof conversion).
13. The appellant has not made any request for a split decision and, on the evidence before me, I cannot be confident that removal of the gable end conversion and reinstatement of the hipped roof would not interfere with the construction of the dormer windows. Although I note that dormer windows were permitted pursuant to the 2020 Permission which presumably would not have interfered with the hipped roof in construction terms, since the

appeal dormers are larger, I cannot be confident that these can physically remain in the absence of the gable roof conversion.

14. I have a duty pursuant to s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area. Although not all aspects of a conservation area necessarily contribute to its significance, I consider that the harm to the character and appearance of the appeal dwelling and street scene also results in harm to the wider character and appearance of the CA, particularly given the prominent position of the appeal building.
15. In view of the limited scale of the proposal in the context of the CA as a whole and that the visual impact is relatively localised, I find the resultant harm to be less than substantial. I am though mindful that paragraphs 199 and 200 of the National Planning Policy Framework ('the Framework') stipulate that great weight should be given to the conservation of a designated heritage asset, and that any harm to the significance of such assets should require clear and convincing justification. Paragraph 202 of the Framework indicates that where a development would lead to less than substantial harm to significance, this harm should be weighed against the development's public benefits. The appellant has not suggested public benefits associated with the appeal development.
16. As such, there are no public benefits that outweigh the great weight that I must attach to the heritage asset's conservation. I find then on the main issue that the gable conversion and alterations to the bay window have resulted in a harmful effect on the character and appearance of the area. There is conflict in this way with Policies CP9 and CP30 of the East Hampshire District Local Plan: Joint Core Strategy (2014) which require that all new development respects the character and context of the district's towns, villages and countryside and conserves, and where possible, enhance the historic environment.
17. There is a failure to accord also with the requirements of saved policies HE2 and HE5 of the East Hampshire District Local Plan (2006) that alterations to buildings should be designed to take account of the design and character of the original building and its setting, and that alterations to unlisted buildings in conservation areas will only be permitted where they preserve or enhance the character or appearance of the building and conservation area. It also fails to accord with policy in the Framework seeking to conserve the historic environment and does not represent a suitable innovative design within the CA.

The appeal on ground (f)

18. This ground of appeal is that the requirements of the notice exceed what is necessary.
19. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires removal of the works and reinstatement

of the building suggests that its purpose is to remedy the breach of planning control.

20. The appellant argued that as there is an extant planning permission being the 2020 Permission for dormer windows to the front and rear and that a reasonable requirement would be to require reversion to the scheme that already has planning permission.
21. The purpose of the enforcement regime is remedial rather than punitive. The Council have not argued that it would not be possible to modify the development so as to comply with the 2020 Permission. Nor has the Council indicated that this permission is no longer extant. Whilst the requirements in the notice do not exceed the purpose of the notice, an obvious alternative would be to require the development to comply with the 2020 Permission which would remedy the breach of planning control. There would also be less cost and disruption than as a result of total demolition.
22. I therefore find that it would be reasonable to vary the notice, to require removal of the appeal development and reinstatement of the property, or in the alternative that the development is modified to comply with the 2020 Permission. I am satisfied that varying the notice on this basis would cause no injustice.
23. I am mindful though also that my colleague Inspector in the 2021 Appeal expressed a view that the dormers which were the subject of that retrospective application were acceptable in terms of their impact on the character and appearance of the CA. I found above under ground (a) that it is not clear on the available evidence whether the front and rear dormers could remain in situ in the absence of the gable conversion. As such, it is not appropriate for me to vary the requirements to permit the dormers to remain.
24. I shall vary the requirements to reflect the obvious alternative related to the 2020 Permission and to this extent the appeal on ground (f) succeeds.

The appeal on ground (g)

25. The appeal on ground (g) is that the period for compliance falls short of what is reasonable.
26. The appellant requests a period of 12 months citing supply chain difficulties and labour shortages affecting the construction industry following the COVID-19 pandemic. I am mindful also that in view of the fact that I have found the front and rear dormers acceptable, the appellant may wish to apply for planning permission for a different scheme to that approved in the 2020 Permission.
27. In my view, a 12 month compliance period would unduly prolong ongoing harm to the character and appearance of the CA. A 9 month period would strike the right balance in providing additional time for the appellant to urgently enter into pre-application discussions and submit a new proposal if appropriate. Enquiries/making arrangements in relation to the required reinstatement/new building works could be ongoing at the same time and so leaving sufficient time for the works to be completed as required.
28. The appeal on ground (g) succeeds to this extent.

Human rights

29. The appellant makes reference to the Human Rights Act 1998 in relation to the Council's taking of enforcement action. In view of my findings above, I consider that the enforcement action taken was in the public interest and proportionate. No human rights violation has occurred.

Conclusion

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

Formal Decision

31. It is directed that the enforcement notice is varied by:
- In paragraph 5 of the notice deletion of the wording from '*1. Remove*' to '*Land*' ; and substitution of '*A*) 1. Remove the dormer roof extensions from the front and rear roof slopes; 2. Remove the gable end from the side elevation and reinstate the hipped roof; 3. Re-instate the bay window to its previous appearance; and 4. Remove all resulting debris from the Land. OR B) 1. Carry out remedial works to the dormer roof extensions on the front and rear roof slopes so that these comply with the terms and conditions of planning permission reference 58572 dated 18 March 2020; 2. Remove the gable end from the side elevation and reinstate the hipped roof; 3. Re-instate the bay window to its previous appearance; and 4. Remove all resulting debris from the Land.
 - In paragraph 6 of the notice deletion of the wording '*6 months*' and substitution of '*9 months*'.
32. Subject to the variations, 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.

V Bond
INSPECTOR