



Appeal Decisions

Site visit made on 21 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2023

Appeal A Ref: APP/Z1510/X/21/3272293

33 Francis Way, Silver End CM8 3QX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jordan Billinton against the decision of Braintree District Council.
 - The application ref 20/01907/PLD, dated 17 November 2020, was refused by notice dated 8 January 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is demolition of single storey rear extension to a dwelling in conservation area.
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Appeal B Ref: APP/Z1510/W/21/3267963

33 Francis Way, Silver End, Essex, CM8 3QX, 580554, 219770

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jordan Billinton against the decision of Braintree District Council.
 - The application Ref 20/01546/FUL, dated 18 September 2020, was refused by notice dated 13 November 2020.
 - The development proposed is Demolition of single storey rear extension to rear of single dwellinghouse.
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Appeal C Ref: APP/Z1510/W/21/3269480

33 Francis Way, Silver End, Essex, CM8 3QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jordan Billinton against the decision of Braintree District Council.
 - The application Ref 20/01548/HH, dated 18 September 2020, was refused by notice dated 1 December 2020.
 - The development proposed is brick-up window of bathroom on the first floor on the side elevation.
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Decision: Appeal A

1. The appeal is dismissed.

Decision: Appeal B

2. The appeal is allowed and planning permission is granted for demolition of single storey rear extension to rear of single dwellinghouse at 33 Francis Way, Silver End, Essex CM8 3QX in accordance with the terms of the application, Ref 20/01546/FUL, dated 18 September 2020 and the plans submitted with it.

Decision: Appeal C

3. The appeal is dismissed.

Applications for costs

4. Applications for costs have been made by Mr Jordan Billinton against Braintree District Council. These applications are the subject of separate decisions.

Appeal A

Main Issue

5. The main issue of the appeal is whether the Council's deemed refusal to grant a LDC was well-founded.

Reasons

6. An application under section 192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. Section 192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
7. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
8. I am aware that planning permission has been granted on appeal, reference APP/Z1510/W/20/3259303 for, amongst other things, the demolition of the single storey extension which is the subject of this appeal. During my visit, I saw that the single storey extension has been demolished and an extension erected at the rear. However, the appeal decision was issued after the date of the lawful development certificate (LDC) application, on 9 February 2021, and so it is not relevant to my considerations under Appeal A.
9. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
10. Section 55 of the Act sets out the meaning of development, which includes the carrying out of building operations. Section 55(1A) states that for the purposes of this Act "building operations" includes (a) demolition of buildings. Section 55(2)(a) exempts from development the carrying out for the maintenance, improvement or other alteration of any building of works which... (ii) do not materially affect the external appearance of the building.
11. While I note the Council concludes in its decision notice that the proposal constitutes the alteration of a building which materially affects the external appearance of the building as described under section 55(2)(a)(ii) of the Act, whether works are demolition, or an alteration is a matter of judgement. The Cambridge Dictionary defines alteration as 'a change, usually a slight change, in the appearance, character, or structure of something'. This suggests the

¹ Town and Country Planning Act 1990 (as amended)

adaptation of a structure rather than its removal. Demolition is defined as 'the act of destroying something such as a building'.

12. I note the appellant has used the word demolition in respect of the application and, since the works relate solely to the removal of the single storey rear extension², such that it would no longer exist, I consider as a matter of fact and degree, the proposed works would constitute an act of demolition.
13. Section 55(2)(g) of the Act excludes from the definition the demolition of any description of building specified in a direction given by the Secretary of State. The Town and Country Planning (Demolition – Description of Buildings) Direction 2014³ provides that the demolition of any building, the cubic content of which, measured externally, does not exceed 50 cubic metres. The Direction confirms that "building" does not include part of a building, except in relation to a gate, fence, wall or other means of enclosure.
14. Although it is proposed to demolish less than 50 cubic metres, from my inspection of the plans, the extension which is stated to be demolished appears to have been physically connected to the main building and, as a matter of fact and degree formed part of the overall building. As such, the Direction does not apply to the appeal scheme.
15. Part 11, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits any building operation consisting of the demolition of a building. B.1 states that development is not permitted by Class B if (b) the demolition is "relevant demolition" for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area).
16. Section 196D of the Act states that "relevant demolition" means the demolition of a building that (a) is situated in a conservation area in England; and (b) is not a building to which section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply by virtue of section 74 of that Act (listed buildings, certain ecclesiastical buildings, scheduled monuments and buildings described in a direction of the Secretary of State under that section).
17. The Conservation Areas (application of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015 sets out buildings to which section 74 of the Act does not apply and includes (a) any building with a total cubic content not exceeding 115 cubic metres (as ascertained by external measurement) or any part of such a building, other than a pre-1925 tombstone. The appeal building greatly exceeds 115 cubic metres and so is not a building to which section 74 of the Act does not apply.
18. Section 336(1) of the Act defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. There is nothing in the wording of section 196D or any provision of the Act which requires a different interpretation of the word "building". The appeal scheme is therefore not excluded from the definition of development by section 55(2)(g) of the Act.

² Having regard to the fact that my considerations under this appeal are limited to the LDC application and not the subsequent planning application which was the subject of appeal reference APP/Z1510/W/20/3259303.

³ Although now replaced by the Town and Country Planning (Demolition – Description of Buildings) Direction 2021, this came into force on 21 April 2021, after the date of the LDC application.

19. The appellant has drawn my attention to the case of *Shimizu (UK) Ltd v. Westminster City Council* [1997] 1 WLR 168: [1997] 1 ALL ER 481, where the House of Lords concluded that the extended meaning of the word “building” in section 336(1) had no function in relation Planning (Listed Buildings and Conservation Areas) Act 1990 section 7. However, the extended meaning does have a function in relation to section 196D, which is of relevance in this case.
20. The appellant has drawn my attention to *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 which considered whether works materially affected the appearance of a building. However, since the proposed demolition is development, whether the demolition would materially affect the appearance of the building is not determinative and so *Burroughs Day* does not assist in this case.
21. I note the comments made by the appellant regarding an Article 4 Direction which they assert the extension would comply with. However, even if this is the case, Article 4 Directions are restrictive and not permissive, and would not override the provisions of the Act in this regard. Moreover, the Council confirms that the Article 4 Direction does not remove permitted development rights in relation to demolition.
22. The appeal scheme would involve the demolition of part of a building and is not excluded from the definition of development by any direction given by the Secretary of State. It is therefore development for the purposes of the Act and, since at the date of the application planning permission had not been granted, the appeal must fail.

Appeal A conclusion

23. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the demolition of a single storey rear extension to a dwelling in conservation area was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeals B and C

Preliminary Matters

24. The Council adopted the Braintree District Local Plan 2013 – 2033 (the BDLP) on 25 July 2022 which supersedes the Braintree District Local Plan Review (2005) and the Braintree District Local Development Framework Core Strategy (2011). The Council has identified those policies it considers of relevance to the appeals and the appellant has had the opportunity to comment on those policies through the appeal process.
25. With respect to Appeal B, the appellant submitted an application for planning permission for relevant demolition in a conservation area, dated 18 September 2020. It was refused on 13 November 2020. The appellant asserts that the Council has erroneously dealt with their application as an application for planning permission and that since no fee was paid, it cannot have been an application for planning permission. However, no planning application fee is required for applications to demolish an unlisted building in a conservation area (these are exempt under regulation 5A of the 2012 Fees Regulations)⁴.

⁴ Planning Practice Guidance paragraph 004 Reference ID: 22-004-2014-20141017

26. The appellant submitted the application on the form 'Application for planning permission for relevant demolition in a conservation area.' The form refers to the Planning (Listed Buildings and Conservations Areas Act) 1990 rather than the Town and Country Planning Act, however, since conservation area consent has been abolished in England, this cannot be indicative that the application is for conservation area consent.
27. The GPDO sets out notification requirements for development which is permitted by Class B, Part 11 of Schedule 2. However, as set out above, I have found that the proposal is development for which planning permission is required and so the requirements set out under B.2 of the aforementioned part are not relevant in this case. The Council considered the application on the basis that planning permission was being sought and so shall I.
28. Although Appeals B and C concern different elements, since they are both proposals affecting the same building in the same conservation area, I shall deal with them together.

Main issue

29. The main issue in relation to Appeals B and C is the effect of the respective appeal scheme on the character or appearance of the Silver End Conservation Area (the SECA).

Reasons

30. The appeal site is located in the Silver End Conservation Area (the SECA) which comprises a Garden Village which was founded by Francis H Crittall and was built between 1926 and 1932 to house workers at Crittall's Factory. The Silver End Conservation Guide (January 1999)(the SECG) states it was conceived as a showpiece of modern architecture and Crittall products.
31. The design of houses in the SECA falls into two categories: well-proportioned and detailed cottages and detached staff houses in the garden city tradition; and early modern movement houses with flat roofs and horizontal emphases. From the evidence before me and from my inspection of the SECA, I consider the significance of the SECA is derived from the fine architectural detailing and the historic layout of development.
32. Section 72(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 the SECA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
33. Policy LPP1 of the BDLP states that within development boundaries, development will be permitted where it can take place without material adverse detriment to the existing character and historic interest of the settlement. Policies SP7, LPP36, LPP47, LPP52, LPP53 and LPP54 all seek to protect the built historic environment. Policy LPP53, in particular, seeks the preservation and enhancement of the character and appearance of conservation areas. Policy LPP54 concerns demolition in Conservation Areas and is therefore only relevant to my consideration of Appeal B.

34. The appeal building is located along Francis Way, which comprises a mix of these two housing types and in particular, in the vicinity of the appeal dwelling, comprises detached staff houses set around two bungalows with the Manors, the former Francis Henry Crittall Building, in between. There is a degree of symmetry along this section of Francis Way, which gives the effect of framing the Francis Henry Crittall Building and makes a positive contribution to the character and appearance the SECA.
35. The appeal building comprises what was presumably a detached staff house, with well-proportioned features and windows which are generally in keeping with the design of windows in the SECA and chimney stacks which reflect the chimney stacks used in the Henry Crittall Building. These features provide architectural interest and a degree of cohesiveness along this part of Francis Way and make a positive contribution to the character and appearance of the SECA.

Appeal B: The rear extension

36. Views of the rear are very limited from the public domain and whilst the proposed demolition is stated to result in the potential loss of a rare prototype conservatory manufactured by the Crittall firm, I have very little evidence of this. Significantly, planning permission was granted, on appeal, for the demolition of [sic] single storey conservatory and construction of part single storey part two storey rear extension with associated internal alterations on 9 February 2021, reference APP/Z1510/W/20/3259303.
37. During my visit, I saw that the single storey extension has been demolished and an extension erected at the rear. Although I have been provided with a photograph and plans of the single storey rear extension which was previously *in situ*, and which is the subject matter of this appeal, I have therefore been unable to assess the extension myself. Nevertheless, from the photograph provided, the extension appears to have comprised features which in my experience are typically associated with later buildings. I note the commentary made by the Inspector in respect of APP/Z1510/W/20/3259303 and see no reason to take a different view.
38. Since planning permission has been granted, whilst now essentially an academic exercise, I see no reason not to grant planning permission for the demolition of the appeal scheme and no conflict with policies SP7, LPP1, LPP36, LPP47, LPP52, LPP53 and LPP54 of the BDLP in this regard, the requirements of which are set out above. Since the development has already occurred, I consider there is no need for conditions.

Appeal C: The window

39. The appellant proposes to fill an existing window on the side elevation of the property with brick, with a setback of 50mm to enhance the aperture of the original opening. It is stated that the infill brickwork would match the existing.
40. Although there would be no change to the front of the property, the side elevation is clearly seen from the public domain along Francis Way. The building is the first of a row of similarly designed detached dwellings which frames the Francis Henry Crittall Building and adjacent bungalow and makes a positive contribution to the character and appearance of the SECA.

41. The appellant points out that the Council has failed to provide a copy of the Article 4 Direction and suggests that in the absence of an Article 4 Direction which might restrict any alterations to the Conservation Area, the proposed changes could be carried out without the need for any approval. However, the SECG advises that an Article 4 Direction has been introduced which was endorsed by the Secretary of State in October 1985.
42. The SECG sets out those works which require planning permission under the Article 4 Direction, including the alteration of a dwellinghouse affecting windows...to the front and side elevations. I have no evidence to show that the Direction is no longer in place and given the reasons given for issuing the Direction set out in the SECG, I consider it is highly unlikely to have been cancelled.
43. Although the window is modest in size, it is clearly visible from the public domain and forms part of the architectural detailing which is characteristic of this type of building. The removal of the window and its replacement with recessed bricks, despite the use of similarly coloured bricks to those used in the main building, would create a design feature which is odd and would imbalance the ratio of void to solid.
44. The appellant states they have infilled the window with blockwork immediately behind the glazing, leaving the exposed blockwork visible through the glass from outside. This is to enable the appellant to install a shower at this location but is asserted to be unsightly compared with the proposal. I do not agree. I was able to view the window during my site visit. The external features of the window retain the uniformity, which is seen across Nos 33, 35 and 37 and preserve the character and appearance of the SECA.
45. The appellant has drawn my attention to a number of properties along Francis Way which have had windows infilled, which I was able to view during my visit. Where buildings along this part of Francis Way have had windows in their side elevations infilled, although they have used bricks of a similar colour to that used in construction of the original buildings, they are easily identifiable and appear odd features which diminish the character and appearance of the area. Where windows have been retained, they add architectural interest to these side elevations.
46. I have no substantive evidence of the circumstances surrounding the infilling of the windows at properties cited by the appellant and note that the SECG advises in 1998 the Council carried out a complete photographic survey of all properties falling within the area, accepting changes made before 1998. This appears to have been a pragmatic decision, reflecting the fact that some inappropriate changes had escaped the attention of the planning department and not an indication that the infilling of windows is acceptable.
47. Indeed, the SECG advises that where original windows still remain, they should be retained. I do not agree, therefore, that the examples cited set a precedent for this type of development along Francis Way. The proposed bricking-up of the bathroom window would remove a feature which makes a positive contribution to the area and as a result would diminish the character and appearance of the SECA, contrary to policies SP7, LPP1, LPP36, LPP47, LPP52 and LPP53 of the BDLP, the requirements of which are set out above.

48. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Although the window is located in the side elevation, it is clearly visible when viewed from Francis Way. Given its limited size relative to the SECA as a whole, I consider the harm to be less than substantial harm to the significance of the SECA.
49. Paragraph 202 of the Framework goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
50. I note the Inspector in respect of APP/Z1510/W/20/3259303 found that the loss of the window would amount to less than substantial harm to the designated heritage asset (the SECA). The appellant has sought to address the Inspector's point that they were not given a "coherent" argument which would become an over-riding reason for the infill of the window to be allowed. However, many of the arguments advanced by the appellant concern the significance of the window in respect of the SECA and the effect of its infilling on the SECA, which I have already considered above.
51. While the appeal scheme would provide privacy to users of the bathroom I am not persuaded the appeal scheme is the only means of securing privacy for occupants. Dark blinds or other similar internal features could offer privacy without the need for the appeal scheme or to relocate the bathroom. In my view, the benefits of the appeal scheme do not outweigh the harm I have identified to the SECA, the conservation of which I attribute great weight to.

Other Matters

52. The Council has drawn my attention to policy SP1 of the BDLP, which sets out that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework 2021 (the Framework). The Framework explains that for decision-taking, this means approving development proposals that accord with an up-to-date development plan without delay. While I note the provisions of the policy and the Framework in this regard, I do not consider this policy to be determinative in this case.

Conclusion: Appeal B

53. For the reasons given above, I consider the appeal should be allowed.

Conclusion: Appeal C

54. For the reasons given above, I conclude that the appeal scheme would harm the character and appearance of the SECA and would conflict with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

M Savage

INSPECTOR