



Appeal Decision

Site visit made on 5 September 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/Z2260/C/21/3292089

1 The Square, Birchington, Kent CT7 9AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Abdul Goni against an enforcement notice issued by Thanet District Council.
- The notice was issued on 12 November 2021.
- The breach of planning control as alleged in the notice is without planning permission, the insertion of upvc windows, following the removal of timber windows.
- The requirements of the notice are to:
 - Remove the upvc windows from the front and side elevations. Reinstall a timber window on the front elevation with three linear casements to the lower part and three square panes split into a two over two arrangement above.
 - To the first floor flank adjacent to 3A The Square, reinstall three timber casement windows. The first window in this elevation should be a side hung casement with a central glazing bar. The second must be a side hung, two over two pane casement and the third to be a fixed frame, non-opening casement window. All 3 windows must have protruding cills.
 - To the first floor in the flank wall adjacent to No. 215A Canterbury Road, reinstall the two windows, the first one with a fixed timber frame and the second with a pair of timber side hung casements with a two over two glazing bar arrangement. All frames to set within a reveal.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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.

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.

Preliminary Matters

2. I carried out my site visit on an unaccompanied basis without entering the appeal site as I was able to see the windows from public land.

Matters concerning the notice

3. The allegation refers to UPVC windows. When read with the requirements of the notice it is clear that the notice is concerned with the window in the front elevation and the windows in the two side elevations at first floor level.
4. The Council has clarified that the notice seeks to reinstall the windows reflect those that were in place prior to the unauthorised works taking place. I

am satisfied that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control.

5. The Council has pointed out that in the reasons for issuing the notice it has omitted the word 'substantial' in front of the word 'harm' in the first sentence of the second paragraph. The notice refers to paragraph 202 of the National Planning Policy Framework (NPPF) which sets out the balance that must be undertaken where development will lead to less than substantial harm. I do not consider that any injustice has been caused by the omission of the word 'substantial'.

The appeal on ground (c)

6. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The appellant has not explained their case in this regard. On legal grounds such as this, the burden of proof lies with the appellant to make out their case, with the standard of proof being the balance of probabilities. I have no reason to disagree with the Council's view that the works that have been carried out are development requiring planning permission, and as none has been obtained, they constitute a breach of planning control. The appeal on ground (c) therefore fails.

The ground (a) appeal and the deemed planning application

7. Having regard to the reasons for issuing the notice, the main issue is the effect of the development on the character and appearance of the area, with particular reference to the Birchington Conservation Area (CA).
8. I have a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA.
9. The CA is centred on the historic core of the village, focusing on the junction between Canterbury Road and Station Road at The Square. With the exception of All Saints Church and churchyard, the pattern of development is generally close knit along the road frontages. The Square provides a focal point. There is a mixture of building styles, with older and historic buildings interspersed with more modern development. The significance of the CA therefore lies in its historic character and pattern of development.
10. The building is relatively modern and has a mock tudor frontage. With its pre-existing windows it had a traditional appearance and made a positive contribution to the significance of the CA. It is in a prominent location facing onto The Square.
11. The uPVC window on the front elevation has failed to replicate the distinctive arrangement of square fanlights, so that they appear rectangular due to the use of glazing bars rather than timber framing. The uPVC frames are wider and flatter, with a more modern finish and proportions than the previous timber windows. Despite the use of a wood effect finish, the window on the front elevation is out of keeping with the mock tudor appearance of the building.
12. While the windows on the flank elevations are less prominent in the street scene and the openings are smaller, the uPVC windows are clearly a modern insertion that do not replicate the traditional timber windows in terms of the thickness and finish of the frames and the use of glazing bars.

13. I appreciate that the appellant has tried to improve the appearance of the site and has retained the original window openings. However, the windows appear as bulky and modern insertions that detract from the appearance of the building and make a negative contribution to the significance of the CA as a whole. I note that several neighbours have provided letters of support, the appellant's personal circumstances have been difficult and the business was adversely affected by the pandemic, but these matters do not outweigh the harm that is caused to the CA.
14. As a result, the development is harmful to the character and appearance of the CA. It is therefore in conflict with Policies QD02 and HE02 of the Thanet Local Plan 2020, insofar as they seek to ensure that development is well designed and uses appropriate materials and detailing so that it does not result in the loss of features that contribute to the character and appearance of the CA. It follows that it fails to preserve or enhance the character and appearance of the CA.
15. The appellant has provided several examples of other buildings in the locality which have uPVC windows. The Council states that the uPVC windows at 3-5 The Square and 8 The Square have been in place for more than 4 years and are therefore likely to be immune from enforcement action. 16-18 and 20 The Square have modern shop fronts where the window frames are relatively narrow and appear to be metal rather than uPVC. Properties at Walnut Tree Close are modern dwellings and have had uPVC for at least four years according to the Council. It is not therefore the case that the Council has acted inconsistently by granting planning permission for uPVC windows in the locality, as suggested by the appellant.
16. However, the Council has acknowledged that it granted planning permission¹ for replacement uPVC windows at ground floor level on the south elevation of the appeal building. As these windows are not visible from the street scene due to their location on the building, I do not consider that this is comparable with the harm caused by the development.
17. Paragraph 199 of the NPPF 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. While the development is harmful to the significance of the CA, I consider that the harm is less than substantial. Paragraph 202 of the NPPF states that where a development would 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 optimal viable use.
18. The appellant has explained that he tried to retain and repaint the pre-existing timber windows, but the wood had rotted and the frames were beyond their economic life. The uPVC windows have stopped draughts and reduced traffic noise, to the benefit of the occupiers of the building. As the uPVC windows are more thermally efficient they reduce energy costs. I appreciate that the appellant wants to resolve the enforcement action due to his personal circumstances. These are private rather than public benefits and do not outweigh the harm that I have identified to the significance of the designated heritage asset. I have seen no evidence that the development is required in

¹ Ref F/TH/19/0023

order to secure the optimum viable use of the building. I therefore find that the development is contrary to the NPPF.

Other matters

19. I note that the appeal site is adjacent to a listed building at Grove House and is in close proximity to a number of other listed buildings. The Council has not raised any concerns with the effect of the development on the setting of any of the listed buildings. Due to the small-scale nature of the works and their position in relation to the listed buildings, I am satisfied that the development would preserve their settings. In coming to this conclusion, I have had special regard to the desirability of preserving the setting of a listed building, as required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
20. The Written Ministerial Statement (WMS) issued on 17 December 2015 confirmed the introduction of a national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals.
21. The Council states that the works that have been carried constitute intentional unauthorised development as the appellant was aware that planning permission was required. However, planning permission should not be refused simply on the basis that development has been carried out without planning permission. Section 174(2) of the 1990 Act allows for planning permission to be granted for development that is being enforced against, and the enforcement procedure is intended to be remedial rather than punitive. I therefore give this consideration limited weight.
22. I note that the Council refers to the public sector equality duty. I have a duty to have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations under section 149 of the Equality Act 2010. If I dismiss the appeal, the outcome will be that the appellant has to comply with the notice. This will put him to financial expense and may cause disruption to his family and personal life. This is proportionate to achieve the legitimate aim of preserving or enhancing the character and appearance of the CA.

Conclusion in relation to the appeal on ground (a)

23. The development is in conflict with the development plan as a whole and the NPPF. No material considerations have been identified that would warrant making a decision other than in accordance with policies in the development plan. The appeal on ground (a) therefore fails.

Conclusion

24. For the reasons given above, I conclude that the appeal 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.

N Thomas

INSPECTOR