



Appeal Decision

Site visit made on 29 January 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/V2635/C/23/3314105

36 Windsor Road, King's Lynn, Norfolk, PE30 5PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the "Act"). The appeal is made by Mrs Alison Chapman against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice, numbered 20/00204/UWCA, was issued on 29 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of Un-Plasticised Polyvinyl Chloride (UPVC) windows on the front elevation of 36 Windsor Road, King's Lynn, Norfolk, PE30 5PL.
 - The requirements of the notice are: (i) the UPVC windows to the front elevation are permanently removed and the land restored to its former condition.
 - The period for compliance with the requirement is: six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. 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 notice is corrected by:
 - At paragraph 2 of the notice, the deletion of the word 'shaded' and the insertion of the word 'hatched'; and
 - At paragraph 5(i) of the notice, the deletion of the word 'former' and the insertion of the words 'before the breach took place' so that it says 'The UPVC windows to the front elevation are permanently removed and the land restored to its condition before the breach took place.'
2. Subject to the corrections above, 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 Act.

Preliminary Matters

3. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. Although paragraph numbers with respect to conserving and enhancing the historic environment have changed, the document has not raised any new matters which are determinative to this appeal.
4. Paragraph 2 of the notice identifies the Land to which the notice relates as 'Land at 36 Windsor Road, King's Lynn, Norfolk, PE30 5PL, ("the Land") as shown shaded on the attached plan. However, No 36 is shown hatched on the attached plan, rather than shaded. I therefore consider the notice should be corrected by deleting the word 'shaded' and inserting the word 'hatched'. The

address is clearly identified within the notice and it is clear from the submissions that the appellant knows which property the enforcement relates to. There would therefore be no injustice to either party in correcting the notice in this way.

5. The enforcement notice requires that the uPVC windows are removed and the land is restored to its former condition. An enforcement notice may, by virtue of section 173(4)(a) remedy the breach by restoring the land to its condition before the breach took place. In the interests of certainty, I shall correct the notice to reflect the wording in the Act. Since this will not change the scope of the requirement, there would be no injustice to either party.

Ground (a)

6. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issue is whether the development preserves or enhances the character or appearance of the host dwelling and the King's Lynn Conservation Area.
7. The King's Lynn Conservation Area (CA) covers a wide part of the town centre and is subdivided into several parts. The appeal dwelling lies within 'The Friars' part of the CA which includes a busy and mixed use main street that passes through a largely residential area comprised of a variety of detached and semi-detached properties. The Friars Conservation Area Character Statement (2008)(Character Statement) notes that the great majority of buildings within the CA were constructed at the same time and in the same manner. As such, dwellings are unified in their age and the consistent use of materials provides uniformity of appearance and an attractive and cohesive character. The significance of the CA is in part derived from the consistent use of materials, a unity of appearance and the continuity between the buildings.
8. The appeal dwelling is located at the edge of the CA within a varied group of dwellings that form a short terraced row. Notwithstanding some variety in form and style within the row, the appeal dwelling is part of an attractive and cohesive group of three similar two-storey dwellings with additional living space set within mansard roofs. Given that the appeal dwelling shares some of the common characteristics of the CA it therefore makes a positive contribution to the significance of the heritage asset.
9. In order to protect the character and appearance of the area, a direction made in accordance with Article 4 of the General Permitted Development Order 2015 (as amended) takes away certain permitted development rights for specified types of development for properties within the CA, including the replacement of windows.
10. Windows are frequently one of the most prominent features and an integral part of the design of traditional buildings. Timber painted windows are a prevailing original detail that can be found on many of the buildings within the CA, and they make a positive contribution to the significance of the heritage asset. The Character Statement recognises that, notwithstanding the importance of listed and scheduled buildings within the area, the character of the CA rests more with the nature of its unlisted buildings. It goes on to highlight the importance of retaining the CAs historic characteristics which

includes the use of appropriate materials and it identifies replacement windows as a particular problem within the CA.

11. The unauthorised development has introduced a number of windows within the front elevation of the appeal building. Whilst no evidence has been produced to show the pre-existing windows, I have had regard to those within nearby properties and in particular those within the adjoining dwellings. The unauthorised windows have been constructed in a non-traditional material and they appear noticeably bulkier and smoother than the frames of windows within other dwellings within the terrace. The frame of the opening element is thicker than that of the fixed part resulting in the two components of the window being disjointed with noticeably different proportions and uneven sightlines and a visually disproportionate arrangement. Rather than being inset within the window opening, the replacement windows have been brought forward to align with the outer wall, thus reducing any depth and shadow within the front façade. Unlike other windows within the adjoining dwellings, the opening sections of the windows appear to be able to open outward, rather than being sliding sashes and they comprise a modern and less elegant profile which lacks the fine detailing of timber frames that are predominantly found within the CA.
12. Taking account of all of these factors, by reason of the design and materials of the unauthorised development, the windows appear as a strident and inharmonious addition to the front elevation of the appeal property which has a harmful unbalancing effect upon the appeal property and its immediate neighbouring properties together with the wider terraced group. The effect is particularly conspicuous given the dwellings' prominent position at the back edge of the footway.
13. There are some examples of windows constructed from UPVC along Windsor Road and within the wider CA. However, for the most part, UPVC windows are positioned within properties on the opposite side of Windsor Road which is outside of the CA. I also observed a number installed on buildings within the CA, however, traditional timber windows are the prevailing window type and the presence of some uPVC windows within the CA does not justify the unauthorised development and moreover, it points to a need to control this type of development if the character and appearance of the CA is to be safeguarded.
14. Therefore, I consider that by reason of their design and materials, the unauthorised windows appear as an incongruous addition that is at odds with the traditional design of fenestration found within the CA. Thus, the appeal scheme would not represent sustainable development and it would conflict with Policies CS08 and CS12 of the King's Lynn & West Norfolk Borough Council Core Strategy (2011) and Policies DM1 and DM15 of the King's Lynn & West Norfolk Site Allocations and Development Management Policies Plan (2016). Among other things, these policies set out the presumption in favour of sustainable development, require a high quality design, sensitive and sympathetic use of materials and the protection and enhancement of the historic environment. There would also be conflict with the Framework insofar as it aims to conserve and enhance the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.

15. The Council's reasons for issuing the notice also refer to conflict with Planning Practice Guidance, however as no specific conflict has been identified by the Council, I therefore do not find this matter to be determinant.
16. The harm to the CA identified would amount to "less than substantial harm". As such, paragraph 208 of the Framework requires the harm to be balanced against the public benefits of the proposal. No specific public benefits have been outlined within the appellant's evidence and in any event, I am mindful that the Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. It goes on to state 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. On the evidence before me, it has not been demonstrated that any public benefit would outweigh the identified harm to which I attribute great weight. Therefore, in addition to the conflict with the policies of the development plan, the appeal scheme also fails to comply with national policy outlined in the Framework which seeks to conserve and enhance the historic environment.
17. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) must fail.

Ground (g)

18. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
19. The appellant suggests a period of 12 months is required and this is in part based upon the need for additional time to raise the finance for the replacement windows. The appellant, as a landlord, refers to their financial position having been adversely impacted due to the Covid-19 pandemic. However, no substantive detail has been provided to explain what difficulties were experienced nor the extent of any loss suffered.
20. Nor has any evidence been produced to show the likely cost of carrying out the works. The appellant suggests that time is needed to obtain different quotes. However, in the absence of any clear indication of the likely cost, this undermines the appellants' assertion that the costs of the windows have increased and it fails to provide support to the appellant being unable to afford to carry out the works in the time permitted.
21. The appellant suggests restoring the windows back to the originals will result in them being in contravention of Building Regulations, however, no substantive information has been provided to explain the difficulties that the appellant considers they are likely to encounter or the implication for compliance with the enforcement notice in terms of timescales.
22. In my view, given the limited size of the property and number of windows, six months is likely to be sufficient time to obtain quotes, make the necessary arrangements and for the works to be carried out. Twelve months would be excessive, having regard to the harm to the CA I have identified above.
23. Accordingly, the appeal under ground (g) fails.

Conclusion

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

E Brownless

INSPECTOR