



Appeal Decisions

Site visit made on 21 October 2024

by Mr Phillips BA(Hons), DipTP, MTP, MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 4 November 2024

Appeal A Ref: APP/D1590/C/23/3322477

16, 16A and 16B The Leas, Westcliff-on-Sea, SS0 8EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Julie Burgess against an enforcement notice issued by Southend-on-Sea City Council.
- The notice was issued on 28 April 2023.
- The breach of planning control as alleged in the notice is the installation of uPVC windows.
- The requirements of the notice are to:
 - a) Remove the uPVC windows and doors highlighted in red in drawing TL-BU-02, and
 - b) Remove from site all materials resulting from compliance with a) above.
- The period for compliance with the requirements is nine (9) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/D1590/W/23/3320541

16 and 16A The Leas, Westcliff on Sea, Essex, SS0 8EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Julie Burgess against the decision of Southend-on-Sea City Council.
 - The application Ref is 22/02340/FUL.
 - The development proposed is replace existing wooden sash windows with uPVC double glazed sash windows at 16 and 16A The Leas.
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Decisions

Appeal A

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended. By virtue of section 171B(4)(b) of the 1990 Act the Council is not prevented from taking further enforcement action on this matter.

Appeal B

2. The appeal is dismissed.

Appeal A: The Enforcement Notice

3. The enforcement notice required the removal of the uPVC windows and doors highlighted on drawing TL-BU-02 and for the materials resulting from compliance to be removed from site. However, it falls short of telling the appellant what he must then do to replacement windows and doors – that is reasonably assuming the Council does not want the openings to remain

uncovered. As a result, the appellant cannot tell with reasonable clarity what steps must be undertaken.

4. Therefore, having regard to the Court of Appeal's judgement in *Miller-Mead v Minister of Housing and Local Government (1963) 2 QB 196*, the notice does not specify the steps required with the precision needed to satisfy section 173(3) of the Act. It may be argued that the omission does not prejudice the appellant because the Council assumes that the uPVC windows should be replaced with wooden sash windows with curved timber detailing, decorative lights in the same style as those that have been removed, but without the details of a more precise description of what is required or reference to specific photographs showing what is expected, the notice does not tell the appellant fairly the measures required with reference to the windows and doors that should be installed.
5. I have considered whether the steps could be amended or added to without causing injustice to the appellant. However, as the High Court held in *Clive Payne v National Assembly for Wales and Caerphilly County Borough Council (2007) JPL 117*, where a notice fails to comply with the provisions of section 173, there is no power to vary its terms because the notice is a nullity.
6. I have concluded that the notice is a nullity and in these circumstances the appeal under grounds (c), (f) and (g) set out in section 174(2) to the 1990 Act as amended does not fall to be considered.

Appeal B: Preliminary Matters

7. I have taken the description of the Council's decision notice. At my site visit I noted that the development has already taken place.

Appeal B: Main Issue

8. The main issue is the extent to which the development preserves or enhances the character or appearance of the Leas Conservation Area (CA).

Appeal B: Reasons

9. Local and national planning policies and guidance seek to ensure that new development is well designed. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Section 72 (1) of the Planning and Listed Buildings and Conservation Areas Act 1990 as amended states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The National Planning Policy Framework (the Framework) 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.
10. Policy DM1 of the Development Management Document July 2015 (the DMD) and the Southend-on-Sea Design and Townscape Guide provide further details on how this can be achieved, including ensuring the new development contributes positively to the creation of a successful place by, among other objectives, adding to the overall quality of the area and respecting the character of the site and detailed design features giving appropriate weight to the preservation of a heritage asset based on its significance. Policy DM3

seeks to support development that is well designed and alterations to a building will be expected to make a positive contribution to the character of the original building through, for example, using materials and details that draw reference from the original building.

11. Policy CP4 of the Southend-on-Sea Core Strategy adopted December 2007 (the CS) expects all development to contribute to the creation of a high quality, sustainable urban environment through, among other things, safeguarding the historic environment and heritage assets including Conservation Areas. Policy KP4 of the CS establishes a number of development principles including to respect, conserve and enhance the natural and historic environment. Policy DM5 of the DMD requires that development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal and will be resisted where there is no clear and convincing justification for this.
12. Policy DM6 states that "Existing buildings along the Seafront that form a cohesive frontage, have a historic context or are recognised as key landmarks and/or contribute to a distinctive Southend sense of place will be retained and protected from development that would adversely affect their character, appearance, setting and the importance of the Seafront. "
13. The appeal property is a three storey building situated at the corner of The Leas and Cobham Place which appears to have been built in the early twentieth century. It is currently occupied as residential flats. UPVC windows have been installed on the ground, first and second floors to replace the timber sliding sash windows previously there.
14. The CA was first designated in 1981 and later extended, most recently in 2009 when Pembury Road, Cobham Road and Palmerston Road were added. It was designated due to the mix of unusual house designs which take advantage of sea views, with attractive balconies and bay or bird beak windows. The CA displays excellent examples of late Victorian and early Edwardian seafront architecture.
15. Each street within the CA has its own idiosyncrasies, but there is repetition throughout of double height bay windows with decorative small-paned windows, gables and pediments, timber or wrought iron balconies or verandas. Historically, the fenestration comprised sash windows with multi upper panels alongside elements of stained glass. These remain important in their positive contribution to the character and appearance of the CA.
16. Properties along Cobham Place contain a range of original features such as cornicing, timber sash windows, ridge tiles and decorative bargeboards. Corner towers, bay windows, dormer windows, balconies and verandas are also present along the street and in the vicinity of the appeal property.
17. The property is described in the Conservation Area Appraisal (CAA) as:

'A three storey corner building with white rendering with red brick string course detailing between each floor. The pitched roof is enlivened by a couple of gable ends. A distinctive corner bay with a gable end and a finial addresses both The Leas and Cobham Road, otherwise the building faces

Cobham Road. There are two double-height bay windows with steeply pitched tile roofs framing a central, projecting entrance bay with a grand round arched entrance. The entrance features original, double timber doors with glazed panels framing ionic columns and a round-arched hood mould. Above is a Venetian window with original leaded glazing, comprising a central arched window framed by two smaller rectangular windows and a balcony above. Although most original windows have been lost, some upper panels of windows retain their original glazing. To the rear, the building is lower in height, but still characterised by bay windows at ground and first floor level.

The main unsympathetic modern alteration to the building is the replacement of some of the historic windows with uPVC units, which has removed much of the character inherent in the design of the building’.

18. At my site visit I observed that there have been widespread alterations to buildings across the CA, including the replacement of timber windows with modern uPVC windows. Indeed, this has happened at properties in the immediate vicinity of the appeal site, including nos 11-14 The Leas which has a range of modern metal and glazed balconies. Furthermore, the appellant’s own evidence acknowledges that the adjacent property, No 14 The Leas has substantial unsympathetic modern changes including a glazed first floor veranda and metal and glazed corner balcony.
19. The CAA also acknowledges that considerable unsuitable alterations have taken place in the CA and the most widespread of these is the replacement of historic sliding sash windows, and some timber doors, with inappropriate uPVC units. Much of this replacement was carried out before the CA designation and was one of the main drivers in the area’s historic designation, in order to improve its appearance through better window designs. The appellant has stated that the windows were replaced before the adoption of the CAA. However, they were not installed before the designation of the CA, which is the most important material consideration in this case.
20. Unsympathetic and harmful alterations do not justify further works which may be harmful to the character and appearance of the area. The appellant’s evidence is that the uPVC replacement windows are of a much better quality than others in existence in the CA and incorporate traditional two pane sliding sash frames which retain the visual integrity of the CA when compared with others. They also display some details present on the original timber windows and have visible fixings and openings. However, it is for me to consider the effect of the replacement windows on the character and appearance of the host property and the wider CA rather than comparing them with other unsympathetic development that has occurred locally, which may, in fact, be unauthorised or have taken place before they were the subject of formal planning control.
21. The appeal property is highly visible in the locality as a consequence of its elevated position from the adjacent streets as well as from the seafront and Western Esplanade. The original windows were timber with attractive curved timber detailing. The decorative lights appeared to match the Venetian window above the main entrance of the elevation facing Cobham Road. The loss of the decorative lights is regrettable and detracts from the design features important on the building’s façade and recognised by the CA designation and in the CAA.

22. The alterations are materially different in design, style and materials from the windows they replaced and the loss of the timber sliding sash windows and their associated detailing alongside the replacement with modern unsympathetic uPVC has caused harm to the historic and architectural character and quality of the building and the wider CA. That harm is recognised in the adopted CAA with specific reference to the appeal property and the wider CA, generally.
23. Given the above, I find that the alterations are unsympathetic and have removed much of the inherent character of the facades, failing to preserve the special interest of the building. The Framework advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. Whilst the harm is significant in this case I consider it to be less than substantial.
24. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant submits that improving the thermal performance and energy efficiency is vital to the preservation of the planet. Whilst acknowledging that improving one building cannot save the planet, she considers the contribution to this wider objective is a public benefit. In my judgement and in these particular circumstances, this is a limited public benefit.
25. Given the above and with only a relatively limited public benefit, I conclude that the proposal would fail to preserve the special historic interest of the building and the wider CA. As such, it fails to satisfy the requirements of the Act, the Framework and conflicts with Policies KP2 and CP4 of the CS, Policies DM1, DM3, DM5 and DM6 of the DMD and the Design and Townscape Guide.

Conclusions

Appeal A

26. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act (as amended) do not fall to be considered.

Appeal B

27. For the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

A A Phillips

INSPECTOR