



Appeal Decision

Site visit made on 5 February 2025

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th March 2025

Appeal Ref: APP/D4635/C/23/3334789

7 Lower Green, Wolverhampton, West Midlands WV6 9AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by David Middleton against an enforcement notice issued by Wolverhampton City Council.
- The notice was issued on 10 November 2023.
- The breach of planning control as alleged in the notice is the installation of two UPVC upper floor windows on the front elevation.
- The requirements of the notice are:
 1. Remove the two upper floor unauthorised UPVC windows
 2. Reinstall the timber windows that have been removed. If these are not available, install windows that match those that were removed in design, materials, size, colour and form (therefore having the style and material be the same as original and as detailed in the Article 4 Direction)
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 (the Act) (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 allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of two upper floor UPVC windows on the front elevation of 7 Lower Green, Tettenhall, Wolverhampton, West Midlands WV6 9AH referred to in the notice.

Background and Preliminary Matters

2. The appeal property is located within the Tettenhall Greens Conservation Area which is subject to an Article 4 Direction. The Direction removes permitted development rights under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for certain categories of development. The effect of the Direction is to require a planning application for 'the alteration or insertion of new windows and window frames.'
3. The Council refused to grant partially retrospective planning permission for a number of replacement windows at the appeal property on 10 November 2023. The Council issued an enforcement notice relating to the two UPVC upper floor windows that had already been installed and formed part of the planning application on the same day.

4. Since the appeal was lodged, the National Planning Policy Framework (the Framework) has been revised¹. However, the revisions have not raised any new matters which are determinative of the appeal.

The appeal under ground (a) and the Deemed Planning Application (the DPA)

5. An appeal under ground (a) derives from the allegation and the DPA is therefore an application for planning permission for the two windows that have been installed.

The main issue

6. The main issue is whether the development preserves or enhances the character or appearance of the Tettenhall Greens Conservation Area (the CA).

Reasons

7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
8. A Conservation Area is a designated heritage asset. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 212 of 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.
9. Whilst a Conservation Area Appraisal has not been provided, the appellant has provided the Tettenhall Greens Conservation Area review dated 14 July 2003 which addresses some characteristics of the CA. The significance of the CA includes the attractive generous expanse of park and garden area known as Tettenhall Green as well as smaller areas of green open space within the CA include Upper Green and Lower Green where the appeal property is located. Lower Green is identified as an area of ancient settlement and the public open space at Lower Green 'may have been first mentioned in 1327'.
10. The appeal dwelling is described as post medieval and is part of a row of buildings on Lower Green which fronts onto the open space itself. No 9 and No 11 are dwellings of a similar style to the appeal dwelling although the appeal property includes a flying freehold with a third window over a vehicular access gate to the rear. The three properties each have a single bay window at ground level which is of a very different style to the windows on the upper level.
11. At first floor level, the three properties have the same traditional style of sash windows which forms a rhythmic pattern which is an attractive feature when viewed from the Green itself. No 13 is an architects' practice which has extensive glazing at ground floor level. It does have sash windows on the first floor which are UPVC although the property falls outside the Article 4 Direction.
12. To the other side of the appeal property, the former Mitre Public House (the Mitre) is a substantial building with a wide frontage which has a striking black and white façade. The Mitre has been converted into apartments. The window treatment at

¹ 12 December 2024 and 7 February 2025

the Mitre has its own unique appearance and its window treatment shares no similarities with traditional sash windows.

13. The development being enforced against consists of two replacement UPVC windows at first floor level. The Council's reasons for issuing the notice are taken from the planning refusal which related to all of the windows on the front elevation. The Council refers to the development having a shiny reflective quality, the introduction of modern plastic material and removal of architectural features and an inauthentic alteration. However, there was no evidence of a shiny or reflective appearance when I conducted my site visit on a relatively bright day. I have no details of when the Council conducted their visits to form that view.
14. The conservation response provided by the Council is contained in the planning report for the original planning application. The response is limited and states that 'the application could not be supported as the two first floor windows installed should be like for like in accordance with the Article 4 Direction'. However, an Article 4 Direction is a procedural mechanism to ensure that a planning application is made. Any subsequent planning application is then assessed on its own merits having regard to the development plan, relevant statutory provisions and any other material considerations.
15. When viewed from the Green opposite, it is difficult to distinguish the new windows from the original sash windows and the rhythmic pattern across that part of the row remains. The design of the windows in terms of features and the number of panes match the existing windows and they appear to be of high quality and design. When viewed from directly in front of the appeal property, there are minor differences as the vertical glazing bars and the bottom rail of the development are slightly narrower. However, the design, style and proportions are in keeping with the existing windows. The alteration does not therefore appear inauthentic.
16. The development is complementary to, and not out of character with, No 9 and No 11 as the attractive symmetrical appearance of the three properties at first floor level is preserved. The way that the development has been designed to blend in with the original windows is not discordant, prominent or out of keeping. It does not have a negative visual appearance and does not diminish the character of the property or the street scene. The development has a neutral effect upon the CA which leaves it unharmed and meets the statutory objective of preserving the CA.
17. The Council is concerned about the effect that allowing the appeal would create in terms of setting a precedent. However, future cases would also have to be considered on their own merits.
18. An objection was received from the Lower Green Residents Association and the Tettenhall Community Forum. However, no comments are made about the actual appearance of the development or how it impacts 'important views for which UPVC is unsuitable in style.' The Council has not alleged that the setting or character of the two listed buildings that are located beyond the Mitre is affected by the development. Given their location in relation to the development, I have no information before me to reach a contrary view.
19. The Council has also provided details from a third party which describe what occurred when the development was first installed. Reference is made to the Mitre not being allowed to use UPVC at the time of the conversion to apartments. I have no details of what was proposed for the Mitre in terms of window replacements

and cannot conclude that what was proposed is comparable to the development. Each case has to be assessed on its own merits.

20. For the reasons given, I do find that the development does preserve or enhance the character or appearance of the CA. I find no conflict with Policy HE3 of the Wolverhampton Unitary Development Plan 2001-2011 (the UDP) which promotes the preservation and enhancement with designated conservation areas or Policy HE5 of the UDP which sets out criteria to be met for development in conservation areas for evaluating proposals. I find no conflict with Policy D9 of the UDP which refers to character and appearance generally including outside of the CA.
21. The development is also not in conflict with Policy CSP4 of the Black Country Strategy (BCCS) and Policy ENV2 of the BCCS which collectively refer to preserving historic character. The development is also not in conflict with the relevant paragraphs of the Framework which address 'Conserving and enhancing the historic environment' or the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990.
22. I find Policy ENV3 to be less relevant to the appeal than other policies referred to as it largely sets out principles to be met in submitting Design and Access statements throughout the Black Country. Policy HE10 of the UDP simply states that Article 4 Directions can be made to remove permitted development rights in a Conservation Area and there is an Article 4 Direction in force.

Conditions

23. The Council has suggested conditions which relate to the development commencing within three years of the grant of the permission and the development according with approved details. However, as the development has already taken place and the grant relates to what is alleged in the notice, neither condition is appropriate.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The enforcement notice will be quashed.
25. In these circumstances the appeal on ground (g) does not fall to be considered.

E Griffin

INSPECTOR