



Appeal Decision

Hearing held on 11 February 2025

Site visit made on 11 February 2025

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal Ref: APP/W0734/C/24/3353905

56 Barker Road, Middlesbrough, TS5 5ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joseph Winterschladen against an enforcement notice issued by Middlesbrough Council.
 - The notice was issued on 20 September 2024.
 - The breach of planning control as alleged in the notice is without planning permission, UPVC windows have been installed on the front elevation.
 - The requirement of the notice is to remove the UPVC windows from the front elevation and replace with timber sliding sash windows (to precisely match the design, proportions, style and sectional timber thickness of the removed windows).
 - The period for compliance with the requirement is 24 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 24 weeks and its substitution with 12 months as the period for compliance.
2. Subject to the variation, 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.

Ground (a) and the Deemed Planning Application

3. The appeal property is a dwellinghouse located in Linthorpe Conservation Area ("the CA"). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission which affects any buildings or other land in a conservation area special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The National Planning Policy Framework 2024 ("the Framework"), which is a material planning consideration, advises that when considering the impact of development on the significance of the designated heritage asset (which is the CA in this case), great weight should be given to the asset's conservation.
4. The main issues are the effect of the development on the character and appearance of the Conservation Area and host building, and the personal circumstances of the occupiers.

Character and Appearance

5. The Linthorpe Conservation Area Direction 2009 ("the 2009 Direction") provides that the permission granted for the enlargement, improvement or other alteration of a dwellinghouse pursuant to Article 3 and Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 has been removed within the CA where the development fronts a highway. This includes development which consists of the replacement of windows and doors.
6. The significance of the CA is both architectural and historic. It is located in a mainly residential suburb of Middlesbrough which has developed around the site of the original village of Linthorpe. The Linthorpe Conservation Area Appraisal and Management Plan April 2006 ("the CA Appraisal") records that: *"By 1915 the Conservation Area had developed into a fashionable residential suburb and had assumed its present basic character and layout"*. This includes groups of houses on road designed to be architecturally consistent including Barker Road which is described in the CA Appraisal as:

"Continuous terraces with flat roofed or turreted 2-storey bays. Two storey red brick buildings with pitched slate roofs and chimneys, painted dressings and lean-to porch details. Some original sliding sash windows with smaller upper sash with leaded lights remain but a large proportion have been replaced in PVC-u. Where windows have been replaced the proportions of original sashes has generally been replicated"

7. Since the introduction of the 2009 Direction the Council has only granted permission for wooden framed windows in the CA, and this includes where there has been the replacement of existing UPVC frames. The Council's case is that the appearance and therefore significance of the CA is improving as a result of this policy, and that consistency in the approach is the key to ensuring ongoing benefits in heritage terms.
8. The appeal development in the front elevation of the house consists of UPVC framed ground floor and first floor bay windows and a single first floor window. The windows are double-glazed and made from toughened glass. The design does not match the timber windows which were replaced, and which are also seen in the adjoining property. Each of the original windows included a stained-glass element which has not been retained, and the replacement windows include a Georgian bar detail which was not in the original design.
9. The proportions of both the thicker UPVC window frames and the glazed elements are different than those replaced. This is clearly seen due to the proximity of and comparison with the retained original windows on the adjoining property. The use of the UPVC with ventilation strips, change in design and loss of original stained-glass features does not make a positive contribution to local character and distinctiveness. The loss of the traditional design and materials of the windows has a negative effect on the appearance of the windows and building.
10. Whilst the individual windows are a small element of the CA as a whole, they do contribute to its significance as the wooden frames and original appearance of the windows, including the dimensions and stained-glass, are a key element of the original design of the house, and reflected across the CA. It is clear that many of the original frames on the street have been replaced over time, but the Council's

position is that a significant number of original windows have been retained or replaced with timber frames in the CA since the 2009 Direction came into effect.

11. The use of only timber frames since the introduction of the 2009 Direction is contributing to the conservation and enhancement of the CA through improvements to the character and appearance of the area which reflect its original design. In any event, the fact that there are other UPVC frames in the vicinity does not justify the harm caused to the character and appearance of the CA and host dwelling through the insertion of the appeal windows.
12. It was suggested that the stained-glass element could be incorporated into the existing replacement frames. Whilst this would reintroduce an original element back into the windows, the replacement frames are a different width and height so that the stained-glass elements would have to be cut down to fit and would look materially different. This would not be an appropriate solution in heritage terms and would not remove the harm to the significance of the CA.

Personal Circumstances

13. The appellant replaced the windows because he was concerned that the wooden frames were rotten and beyond repair. He had safety concerns regarding the glass which was not to modern standards and not sufficiently robust given the needs of the family. The replacement of the windows with wooden frames which retained the stained-glass elements would be more costly than those installed, although I was not provided with evidence such as specific quotes to enable meaningful comparisons.
14. I have sympathy for the fact that the appellant was not aware of the 2009 Direction when he bought the house and began to replace the windows, but whilst this is very unfortunate I give it little weight in my determination. The appellant accepts that it was provided as part of the conveyancing process when he bought the house but that he had not taken it on board at that point or understood its implications.
15. Similarly, the financial cost associated with the replacement of the frames with those made of wood is not normally a stand-alone reason in the heritage balance as the lower cost of a proposal will not usually outweigh the harm to a heritage asset.

Other matters

16. I was referred to two other appeal decisions by the parties as listed in the documents at the end of this decision. I took both into account as they relate to similar development within the CA but each case must be decided on its own facts, and on the specific grounds of appeal, and neither of these previous cases lead me to a different decision in this case.

Conclusion on Ground (a)

17. Article 8 of Schedule 1 of the Human Rights Act, the right to respect for private and family life, is engaged. As a result, the best interests of the children living in the house is a primary consideration.
18. The occupiers of the house require tougher, modern glass, and the windows fitted will provide this additional element when compared to the glass which was

replaced. Taking into account the family's specific requirements, it is clearly in the best interests of the children that safer windows are installed in the house.

19. However, I do not accept that it is necessary in the best interest of the children occupying the property that the design of the windows had to be materially different from those replaced, or that wooden frames could not be used, either through the restoration of the original frames or use of new "slim line" double-glazed frames which the Council consider acceptable within the CA. I was referred to an example where a social care home had similar glazing requirements and was able to work with the Council to design and install an appropriate solution.
20. Whilst the best interests of the child is the primary consideration, and no other consideration is inherently more important, in this case the same outcome in terms of increased safety can be achieved without the use of UPVC windows, and with a design that matches that of the original windows and those on the adjoining property. This could be done without causing harm to the character and appearance of the CA.
21. I have also had due regard to the Public Sector Equality Duty ("the PSED"). The family has characteristics which are protected when considering the PSED and the appellant informed me that this leads to additional needs meaning that, in order to provide the necessary support at home, neither he nor his wife were able to work full time
22. The development causes less than substantial harm in the terms set out in the Framework to the significance of the CA. This harm is not outweighed by the public benefits of the proposal. The same environmental improvements could be achieved by repairing the original windows or using wooden frames which match the original design. The personal circumstances of the family, including the social objective of supporting of the individual family members and their specific needs, fall within the scope of public benefits for the purposes of the Framework, but this does not outweigh the less than substantial harm caused by the development that I have set out above.
23. The development does not accord with the Middlesbrough Core Strategy 2008 as a whole. It is in conflict with Policy CS4 which, amongst other things, seeks to protect and enhance Middlesbrough historic heritage and townscape character, or DC1 and CS5 which requires development to demonstrate a high quality of design including the contribution to the preservation or enhancement of conservation areas.
24. Taking Article 8 and the PSED into account, I do not consider that the requirement to replace the windows in this case would be disproportionate as the planning aims of the conservation and enhancement of the historic environment are well-established. The refusal of planning permission for the development windows is proportionate and necessary in all of the circumstances, and the protection of the public interest arising from the heritage aims cannot be achieved by means that are less interfering of the family's rights.
25. The appeal on ground (a) does not succeed and the deemed planning application is refused.

Ground (f)

26. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose
27. The appellant argued that an acceptable alternative would be to retain the UPVC windows with the insertion of the original stained-glass element. I have dealt with this in respect of the ground (a) appeal above and do not find that it would sufficiently reduce the harm caused by the development.
28. In this case, the purpose of the notice was to remedy the breach of planning control as set out in section 173 of the 1990 Act. The notice requires the removal of the UPVC windows and replacement with ones that match the previous windows, and therefore seeks to restore the land to its condition before the breach took place pursuant to section 173(4)(a).
29. The appeal on ground (f) does not therefore succeed.

Period for Compliance with the Notice

30. Taking all of the circumstances of the case into account as set out above, it is proportionate to extend the period for compliance to 12 months. The notice should therefore be varied in this regard.
31. I am also mindful of the powers afforded to the Council under section 173A(1)(b) to extend the period for compliance. Whilst the exercise of this power is entirely for the Council's discretion, it was highlighted during the hearing that the Council were aware of examples of staged replacement of existing UPVC windows with new wooden frames within the CA in order to stagger the cost.

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joseph Winterschladen

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Glossop, Development Control Officer

Helen Allison, Conservation Officer

DOCUMENTS

1. Appellant's Opening Statement
2. Appeal decision APP/W0734/A/10/2134399
3. Appeal decision APP/W0734/C/24/3348040
4. Linthorpe Conservation Area Appraisal and Management Plan, April 2006