



Appeal Decision

Site visit made on 14 April 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2025

Appeal Ref: APP/Y1945/C/24/3341898

Land at 153 St. Albans Road WD24 5BB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Elaine Dunning against an enforcement notice issued by Watford Borough Council.
 - The notice was issued on 5 March 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the removal of wooden sash windows from the locally listed building and installation of UPVC windows in breach of the Article 4 in Nascot Conservation Area.
 - The requirements of the notice are to:
 - (1) Remove the UPVC windows
 - (2) Re-instate wooden sash windows to the same design and materials as prior to development.
 - (3) Remove from the land and dispose of all rubble, waste materials and debris in relation to compliance with Steps (1) and (2) above.
 - The period for compliance with the requirements is: 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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 corrected and varied by:
 - At section 3 of the notice the deletion of the words 'Without planning permission, the removal of wooden sash windows from the locally listed building and installation of UPVC windows in breach of the Article 4 in Nascot Conservation Area' and their substitution with the words 'Without planning permission, the removal of windows comprising wooden cambered mid-rail sliding sashes, with the upper sash having six panes and their replacement with windows comprising uPVC double glazed windows with six panes above a single pane.'
 - At section 5 (1) of the notice, the deletion of the words 'Remove the UPVC windows' and their substitution with the words 'Remove the uPVC windows comprising six panes above a single pane'.
 - At section 5(2) of the notice, the deletion of the words 'Re-instate wooden sash windows to the same design and materials as prior to development.' and their substitution with the words 'Replace the uPVC windows with wooden sash windows of the same design and materials as prior to development, i.e., wooden cambered mid-rail sliding sashes, with the upper sash having six panes.'
 - At section 7 of notice, the deletion of the words '3 calendar months' and the substitution with the words '6 months', so that the time for compliance is 'Within 6 months from the date this Notice takes effect'.
2. Subject to the corrections and variation 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 1990 Act as amended.

Preliminary Matters

3. Although the appellant has suggested that the Council has acted unreasonably and that a costs application is likely to follow, no application for costs has been received to date.
4. The appellant suggests the notice is a nullity and asserts that the requirements are vague and imprecise and that it is unclear whether the notice relates to every window in the building. They also suggest reference to 'in breach of the Article 4 in Nascot Conservation Area' is incorrect.
5. The enforcement notice alleges the removal of wooden sash windows from the locally listed building and installation of UPVC windows. The allegation therefore only relates to windows which were wooden sash windows and not windows which were not sash windows. The requirements of the notice, however, require the removal of all UPVC windows and so would include windows which were not previously sash windows. A sash window is a window with one or two sashes which can be slid vertically to make an opening. It is clear from the Council's statement that its concern relates to the sash windows with an arced midrail, as can be seen on the front of the building in the Nascot Conservation Area Appraisal¹ (the CA) and in the photograph in the Council's Statement of Case on page 3.
6. I raised with the parties whether the allegation should be corrected to allege the removal of windows comprising wooden cambered mid-rail sliding sashes, with the upper sash having six panes and their replacement with windows comprising uPVC double glazed windows with six panes above a single pane, and whether the requirements should be corrected to require the removal of uPVC windows comprising six panes above a single pane and their replacement with wooden sash windows of the same design and materials to those removed, i.e., wooden cambered mid-rail sliding sashes, with the upper sash having six panes.
7. I have wide powers of correction, under section 176(1) of the Act, subject to the correction or variation not causing injustice to the appellant or the local planning authority. The Council advise that it does not object to such a correction. I note the appellant's concerns that the notice did not correctly set out within its four corners exactly what the appellant is required to do or abstain from doing, however, I consider the proposed correction would remedy that. It would not make the requirements more onerous and so there would be no injustice to the appellant. I shall also delete reference to the words 'in breach of the Article 4 in Nascot Conservation Area' since the Council acknowledges that the breach does not relate to the Article 4 Direction.

Ground (c)

8. The appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.

Whether the windows are development

9. Section 55 of the Act sets out the meaning of 'development' as the 'carrying out of building, engineering, mining or other operations in, on, or under land.....'. Section

¹ Image shown on page 21 of the CA.

336 of the Act defines “building” as ‘includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building’.

10. At section 55 (1A) it is indicated that ‘building operations’, amongst other things, involve ‘(d) Other operations normally undertaken by a person carrying on business as a builder’. The appellant suggests that the works were not undertaken by a building, but by a window company/glazier, who does not undertake building work. However, section 55(1A) does not mean that development can only constitute works which are carried out by a builder. If what has been done has resulted in the erection of a building, the erection of it is likely to have amounted to a building or other operation.
11. Section 55(2) of the Act provides that the carrying out for the maintenance, improvement or other alteration of any building of works which i) affect only the interior of the building, or ii) do not materially affect the external appearance of the building. The Appellant suggests the windows are an alteration which does not materially affect the external appearance of the building. However, the windows are a prominent feature, which are clearly visible from the public domain. The windows which have been inserted are of different design to those which were previously *in situ* and comprise a modern material which is not typical of Victorian buildings. In my judgement, the alteration does materially affect the external appearance of the building and is therefore development for the purposes of the Act.

Whether the windows benefit from planning permission

12. Planning permission 23/01077/FUL was granted on 1 March 2024 for retrospective rear/side extension and rear entrance gates, and covered terrace. The planning permission was granted subject to the condition that the development shall be carried out in accordance with specified drawings. The appellant has provided me with plans which show the pre-existing elevations, and which show windows which do not feature a curved meeting rail.
13. The appellant has drawn my attention to the case of *Barnett v SSCLG & East Hants DC* [2008] EWHC 1601 (Admin), [2009] EWCA Civ 476; [2009] JPL 1598. In that case, it was held that plans were an essential part of any grant of planning permission. The extent to which those plans would matter would vary from case to case.
14. The appellant states that the application form referenced the materials to be used for the windows to match existing. However, there is no detail on the plans as to what the windows would comprise in terms of materials. As pointed out by the Council, the description of the proposed development does not include replacement windows. A member of the public inspecting the application form and the proposed plans comparing the ‘pre-existing’ and the proposed would presumably see no difference between the sash windows and therefore, a reasonable reader would conclude that changes to it do not form part of the application.
15. While the plans the appellant has provided are the pre-existing plans, rather than the proposed plans, given the description of the proposed development, it seems unlikely to me that the windows come within the scope of what is permitted by the permission. As such, I consider the windows were not granted by planning permission 23/01077/FUL.

Whether planning permission would be granted by the GPDO

16. The appeal building comprises a public house, which is a *sui generis* use. The appellant has not advanced their case on the basis that the windows would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). Although Part 7 allows non-domestic extensions, alterations etc, Class A relates to buildings used for any purpose within Class E of Schedule 2 to the Use Classes Order, not to public houses.
17. While the Article 4 Direction restricts the painting of the exterior of any building or work and does not, therefore, prevent the installation of windows, since I have found the installation of windows is development which is not permitted, either by express permission or by the GPDO, the installation of windows is development for which planning permission is required and so the appeal under ground (c) must fail.

Ground (a)

18. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice.

Main Issue

19. The main issue is the effect of the appeal scheme on the locally listed building and the character and appearance of the local area, bearing in mind the extent to which it would preserve or enhance the character or appearance of the Nascot Conservation Area (NCA).

Reasons

20. The Nascot Conservation Area Character Appraisal (2015)(the CA) advises that the NCA largely retains its Victorian character, with a notable variety of architectural styles displayed and diversity of detailing evident on the buildings. While the NCA is largely residential, public houses and the architectural features of these buildings give interest to the character and appearance of streets and often serve as local landmarks. In my view, the significance of the NCA is derived from the Victorian character, layout of development and the fine architectural detailing of the buildings within.
21. The appeal building is identified as a locally listed building, which was included in the list due to its importance in terms of architectural interest, function, historical interest, landmark quality and streetscape quality. The building is identified as having a strong Victorian character which retains many of its original features. I saw that the building is constructed of red brick, with ornate panelling, a feature cornice and decorative panel showing a stag, recessed windows with decorative stone lintels and stone cills. The CA includes a photograph of the appeal property prior to the installation of the uPVC windows. The fenestration comprised wooden framed sliding-sash windows with a curved meeting rail.
22. The appellant has provided me with a black and white photograph of the appeal building, when it was The Stag. It appears that a number of doors have been removed and two windows have been inserted on the front elevation, where a door and adjoining window were located (referred to as a 'large picture style window' by the appellant. The remaining fenestration on the front elevation and gable end appear unchanged.

23. It therefore seems that at least some of the windows which have been removed were not original. Nevertheless, from the evidence provided, it appears likely that they comprised wooded cambered mid-rail sliding sashes, and therefore made a positive contribution to the character and appearance of the NCA and the locally listed building within. While the appeal site is not mentioned (in the CA) when discussing character zone F, this does not, in my view, undermine its value in terms of the NCA or its designation as a locally listed building.
24. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the NCA. Furthermore, paragraph 212 of the National Planning Policy Framework ('the Framework')(2024) 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.
25. Paragraph 216 of the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
26. Policy HE7.2 of the Watford Local Plan 2021-2038 (the WLP) states that development in conservation areas will be supported where they preserve and, where possible, enhance the character, appearance and significance of the designation and policy HE7.3 of the WLP seeks to ensure that applications that affect non-designated heritage assets enhance the building's character, setting and features and do not adversely affect the significance of the building.
27. The NCA identifies negative factors, including the removal of original windows. It states that a particularly frequent problem is the replacement of original wooden framed sliding-sash windows with poorly suited uPVC replacements. The uPVC windows have a modern design, with limited detailing, which contrasts with the intricate detailing elsewhere on the building. The windows which have been installed are uncharacteristic of a 19-century building and do not replicate the interesting curved design of the wooden windows previously *in situ*.
28. The appeal site is located in a prominent position on the edge of the NCA and the windows on the elevation facing St Albans Road and on the gable end of the building are clearly visible from the public domain. In my view, the windows which have been installed harm the architectural interest and streetscape quality of the building, which is harmful to the significance of the non-designated heritage asset and to the character and appearance of the NCA, contrary to policies HE7.2 and HE7.3 of the WLP, the requirements of which are set out above.
29. The appellant has drawn my attention to the adjoining locally listed building, which has windows which do not appear characteristic of its age. While I saw this, and other examples of uPVC windows and other unsympathetic alterations throughout the NCA, the purpose of the local plan policies (and the introduction of Article 4 Directions) is to try and prevent further harm to the NCA.
30. I recognise that significant development has been carried out in proximity to the appeal site, including buildings of significant height and modern appearance. A

number of the buildings which have been erected are outside the NCA and are stated to have replaced large modern retail units. While the buildings are clearly visible from the appeal site, and from the NCA, they are separated from it by St Albans Road. As a result, they do not undermine the appeal building's significance as a local landmark.

31. In respect of a nearby tower block which, the appellant suggests, affects a Grade II listed building, this comprised redevelopment of the site to provide a mixed use scheme comprising of 146 residential units, flexible commercial units and associated cycle and car parking, play space, landscaping and associated works. In that case, the Council found there would be less than substantial harm to the NCA but that it was outweighed by the benefits of regenerating the site and the provision of market and affordable housing. It is therefore not comparable to the appeal scheme before me.
32. Paragraph 202 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. The windows are clearly visible from the NCA. Given its limited size relative to the NCA as a whole, I consider the harm to be less than substantial harm to the significance of the NCA. Paragraph 215 of the Framework goes on to advise that where a development proposal will 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 optimum viable use.
33. The appellant suggests that the appeal scheme facilitates the historic use of the building as a pub, allowing this use to survive/continue. I recognise that the windows which have been installed are likely to have benefits in terms of energy efficiency, lowering energy bills and making the premises more comfortable for its patrons. However, I see no reason why it would not be possible to install wooden double glazed sash windows of a similar design to those which have been removed, which would also provide improved energy efficiency and ensure the comfort of patrons.
34. Although wooden sash windows of a bespoke design are likely to be more costly than uPVC, I have no substantive evidence to show that the use would become unviable were I to uphold the notice. While I recognise the positive contribution that public houses make to both the economy and to the local community, given the fact that there are likely to be alternative solutions which are less likely to harm the NCA, I therefore afford these benefits modest weight.
35. Given the above, and in the absence of any significant public benefit, I conclude that, on balance, the appeal scheme fails to preserve the character or appearance of the NCA. This fails to satisfy the requirements of the Act, paragraph 210 of the Framework and conflicts with policy HE7.2. In my view, the benefits of the appeal scheme do not outweigh the harm I have identified to the NCA, the conservation of which I attribute great weight to, nor do the benefits outweigh the harm to the significance of the locally listed building.

Ground (a) conclusion

36. For the reasons given above, I conclude that the appeal scheme harms the significance of the locally listed building and harms the character and appearance of the NCA and would conflict with the development plan as a whole. There are no

material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

37. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice, or to remedy any injury to amenity which has been caused by any such breach. It is clear from the wording of the notice that its purpose of the notice is to remedy the breach of planning control by requiring the removal of the uPVC windows and the reinstatement of windows which are similar to those removed.
38. The appellant suggests that altering the windows to provide an arched transom would address the alleged breach of planning control. The appellant has provided no substantive details as to what the alterations would comprise. Furthermore, this would not address concerns regarding the use of materials, set out above, nor would it remedy the breach of planning control. I consider the requirements are not excessive and so the appeal under ground (f) must fail.

Ground (g)

39. An appeal under ground (g) is made on the basis that any period specified in the notice falls short of what should reasonably be allowed. The appellant suggests that a minimum period of 6 months is required to source, finance and purchase the replacement windows and to ensure that they are acceptable to the local planning authority.
40. Although the appellant has been aware of the Council's concerns for some time, the appellant has made an appeal and is entitled to assume success on the grounds pleaded. The design of the windows which have been removed is unusual. As a result, I agree that it is likely to take the appellant time to source windows of a suitable design and type and to secure installation by a suitably qualified individual/company. I therefore consider that 3 months is unlikely to be sufficient time and that 6 months would be reasonable and proportionate. I shall extend the period for compliance to 6 months. The appeal under ground (g) therefore succeeds.

Conclusion

41. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended). The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR