



Appeal Decision

Site visit made on 11 December 2006

by Mrs G R Stewart BSc Dip TP MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date 3rd January 2007

Appeal Ref: APP/T5150/C/06/2017354
6 Bouverie Gardens, Harrow HA3 0RQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Harris against an Enforcement Notice issued by the London Borough of Brent Council.
- The Council's reference is E/05/0783.
- The notice was issued on 3 May 2006.
- The breach of planning control as alleged in the notice is the installation of PVCu windows and front door.
- The requirements of the notice are to remove the PVCu windows and front door and replace with timber framed windows and front door to match the design of the original windows and front door as seen in the photograph attached to the notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds and the Notice is corrected and quashed.

Procedural Matters

1. An application for an award of costs has been made by the appellant, and this is the subject of a separate letter.
2. The Mount Stewart Conservation Area is subject to an Article 4 Direction, which has the effect of bringing within planning control, certain forms of development which would otherwise be permitted by the Town and Country Planning (General Permitted Development) Order 1995. Thus the alteration of "window designs or materials on the street frontages" requires planning permission, as does the enclosure of recessed entrance porches or the erection of porches. The Notice alleges the unauthorised installation of a front door. However the replacement of doors is excluded from the effect of the Article 4 Direction and does not require planning permission. I am satisfied that I can correct the Notice without causing injustice to either party.

Main Issue

3. The main issue is the effect of the development on the appearance and character of the house and of the Mount Stewart Conservation Area.

Planning Policy

4. The London Borough of Brent Unitary Development Plan (UDP), adopted in 2004, is the Development Plan for the area. Policy BE2 militates against development that would cause
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harm to the character and/or appearance of its local area, or have an unacceptable visual impact on a Conservation Area. Extensions and alterations to existing buildings should comply with the criteria set out in Policy BE9, which seek to achieve a “harmonious addition” to the host building. In Conservation Areas, special attention should be paid to the preservation or enhancement of the character or appearance of the area (Policy BE25), reflecting the statutory duty imposed by Section 72 of the Listed Buildings and Conservation Areas act, 1990. Regard should be had to specific non-statutory design policies which may be drawn up. Policy BE26 addresses the issues arising when buildings in Conservation Areas are to be extended or altered. The emphasis is on retaining original features as far as is practicable, or, where necessary, ensuring that replacements are sympathetic to the original design in terms of dimensions, texture and appearance. In terms of design issues, the above policies appear to be the most relevant to the matter in hand, although the Council has also referred to Policy BE7 which relates to the streetscape generally.

5. Policy BE12 requires development proposals to embody sustainable design principles, in terms of design, construction and pollution control. The Council has approved Supplementary Planning Guidance (SPG) which, it says, is relevant to this appeal. SPG19 focuses on the principles and practice of the design process that will produce a sustainable built environment.

Reasons

The ground (a) appeal

6. The Mount Stewart Conservation Area encompasses an extensive area of housing built in the 1920's and 1930's. Mock-Tudor timbering and decorative brickwork feature prominently, and the high standard of craftsmanship displayed in the distinctive window designs gives a cohesive and characteristic theme to the area. It is evident from the amount of rot and filler visible from the footway, that many of these window frames are coming to the end of their life, and the process of replacing them has produced some poor imitations of the originals. This process has diluted the distinctive character of the houses and thus of the Conservation Area, and the Council is now adopting a stringent policy with respect to the use of PVCu frames, which it considers incapable of replicating the design features of the original timber frames. Although planning permission has been given in the past for some PVCu frames, the Council says that the finished installation rarely matches the quality of the design shown on the approved plans, and this prompted its total opposition to the use of PVCu.
7. Apart from the appeal site, the use of PVCu frames in Bouverie Gardens is limited to three houses, plus some individual windows in extensions. One of the ‘whole house’ installations, at No 10 Bouverie Gardens, was granted planning permission in 2005, since the adoption of the UDP and SPG19. The Council does not say whether that is one of the instances where the finished effect falls short of the expectation set by the approved plans, nor whether the windows approved in that case replaced poor quality non-original windows.
8. The Council's case rests, in part, on the poor sustainability credentials of PVCu, owing to the amount of energy used in its production and the fact that it is persistent in the environment. UDP Policy BE12 seeks generally to embody the principles of sustainable design, “commensurate with the scale and type of development”. It looks for built forms, technologies, orientation and layout that will contribute to reducing energy consumption

and associated emissions. While the thrust of the policy militates against the use of non-sustainable materials, it makes no direct reference to PVCu and it does not establish a PVC-free policy, across the Borough.

9. The detail of the sustainability issues is addressed in SPG19 but I note that 'householder schemes' are exempt from its guidance, which is aimed at larger schemes. Notwithstanding that exclusion, I note that SPG19 acknowledges that compromises may sometimes have to be made between different needs, limits and options and that schemes may have to be considered flexibly. The Mount Stewart Conservation Area Design Guide states that wooden windows are the preferred material, and that PVCu is not normally considered appropriate because of its appearance. Although Policy BE12 and the Design Guide (the latter for aesthetic rather than environmental reasons) would indicate a preference for the use of timber as opposed to PVCu, the Council's current practice of "no longer granting planning permission for PVCu windows and doors as this is an unsustainable material" is over-simplistic and does not, in my view, have an unequivocal grounding in statutory or non-statutory planning policies.
10. I note that Inspectors have previously rejected the Council's stance on the use of PVCu as "too far-reaching and not in accordance with the planning duty to consider the individual circumstances of each case" and I concur with that view. I do not consider that the policy background justifies the outright rejection of PVCu, without recourse to other considerations, which may include the design quality of the proposed installation and the relative cost of alternative materials.
11. I therefore turn to consider the design issues raised by the unauthorised windows. Bearing in mind the harm that can be caused by replacement windows of any sort which do not replicate to an acceptable degree the design of the originals, I wholly support the Council's objective of securing high quality replacement windows.
12. I saw several poor examples of PVCu replacement windows in the locality, but those installed at the appeal site have not had to rise to the challenge of the curved Queen Anne-style transoms that are common in the area, as the original windows in the square bay had rectangular leaded lights, and a drip rail above the lower casements. From the footway, where the impact on the house and Conservation Area is appreciated by the passing public, the leaded light pattern and a black painted drip rail appear to have been reasonably accurately replicated. Although the mullions are made up of 'frames' standing proud of the base structure, the proportion of frame to glass is very similar to that at the neighbouring house, No 4, where the original windows still exist. The proportions of the upper lights appear to differ slightly between ground and first floor, but the photographs of the original windows suggest that that was also a feature of the originals.
13. I consider that the overall effect of the replacement windows is not unpleasing. Indeed in many ways they are, in my view, superior in design to those installed at No 10 Bouverie Gardens. They do not produce the jarring effect often caused by PVCu windows when the frames are too wide and the panes are reduced in size. Nor do they incorporate incongruous air vents. I consider that they replicate the original windows to an acceptable standard in a material that is different to the original, but whose use is not precluded by current planning policies.
14. I conclude that the unauthorised windows do not cause unacceptable harm to the appearance or character of the house or the Conservation Area generally and I find no conflict with the

UDP policies cited in paragraphs 3 and 4 above. I do not consider that allowing the ground (a) appeal would set a precedent for the use of PVCu windows in this or any other Conservation Area as a matter of course, as each case should be considered on its merits and I intend to allow this appeal because of the good quality of the design, which is, in part a function of the relatively simple style of the original windows. The Council will retain its ability to judge submitted schemes on their merits and to take appropriate action if the installed windows do not match the approved plans.

15. In the same way that this decision should not be regarded as setting a precedent for subsequent ones, so those made in the past in respect of other sites carry little weight in my deliberations, not least because I, unlike the Inspectors who determined those cases, have not seen the windows that occasioned the enforcement action in those cases, and I have little knowledge of their visual context, making it impossible to draw parallels with the case in hand.

Conclusions

16. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

17. I direct that the enforcement notice be corrected by the deletion of the words "and front door" from Schedule 2 and Schedule 4 of the Notice.
18. Subject to that correction, I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission 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 PVCu windows at 6 Bouverie Gardens, Harrow referred to in the notice.

G R Stewart

INSPECTOR



Costs Decision

Site visit made on 11 December 2006

by Mrs G R Stewart BSc DipTP MRTPI

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Date 3rd January 2007

**Costs application in relation to Appeal Ref: APP/T5150/C/06/2017354
6 Bouverie Gardens, Harrow HA3 0RQ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr M Harris for a full award of costs against the London Borough of Brent Council.
- The appeal was against an Enforcement Notice alleging the installation of PVCu windows and front door.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the appellant

1. The Council has acted unreasonably by serving the Notice, without first trying to resolve the breach, given that there are PVCu windows in the vicinity both with and without planning permission, and that great care was taken with the design of these windows to match the original timber ones.
2. Circular 8/93, Annex 3, paragraph 24 states that it will generally be regarded as unreasonable for a planning authority to issue an enforcement notice, if it is concluded on appeal that there is no significant planning objection to the breach of control alleged in the notice.

The Response by the Council

3. The Council considers that there were sound planning reasons for issuing the Notice. Its action was based on a change of policy which took place two years ago, in response to a realisation that it was not possible to construct PVCu windows which accurately reflect the design details of timber windows. The Council had realised that even if submitted plans showed an acceptable design, the finished installation invariably differed materially from the approved plans. In addition the Council opposes PVCu frames because it is an unsustainable material. As a result, the Council "no longer grants planning permission for such windows in Conservation Areas". The Council has won similar appeals in other parts of the Borough.

Conclusions

4. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

5. There is no indication that the appellant sought an opportunity to discuss with the Council any amendment or alteration that might have resulted in the Council's opposition to the scheme being modified or withdrawn, but given the Council's inflexible approach to the use of PVCu, it seems unlikely that such an approach would have borne fruit. The Council's failure to initiate such discussions is not surprising in these circumstances, but it does not amount to an unhelpful refusal or reluctance to discuss whether the appeal could be avoided.
6. I do not consider that the breach of control which occurred in this case can be categorised as a trivial or technical breach of the sort mentioned in Circular 8/93, Annex 3, paragraph 24 and PPG18, paragraph 5(3), as the installation of unauthorised windows in a house in a Conservation Area can, potentially have a profound effect on the appearance and character of that area. An assessment of the extent of the visual harm is a subjective judgement and the fact that I have concluded that the development does not cause unacceptable harm does not inevitably lead to a conclusion that the Council was wrong to take enforcement action. It is not a case, such as that described in Circular 8/93, Annex 3, paragraph 24, in which an unconditional grant of planning permission indicates that the breach was a trivial or technical one. In theory, the Council was entitled to take a different view of the merits and demerits of the development, concluding that the unauthorised windows harmed the appearance and character of the Conservation Area, a matter which merits protection in the public interest. On that basis, its decision to take enforcement action could have fallen within the parameters of PPG18, paragraph 5(3).
7. However, I have not seen any documentary evidence explaining how the Council arrived at its decision to serve the Enforcement Notice, so I must rely for an understanding of that process on the statements submitted in the course of the appeal. All the indications are that there was little or no detailed consideration of the individual merits or effects of the windows which had been installed in this instance. The overwhelming impression is of a blanket prohibition (except where non-original windows are to be replaced) being applied to PVCu windows in Conservation Areas. In support of that stance, and in support of its service of the Enforcement Notice, the Council has relied to some extent on SPG19, non-statutory planning guidance from which householder schemes are explicitly exempted. In these ways, the process by which the Council decided that it was expedient to take enforcement action was flawed. Had that not been the case, a different outcome could well have resulted and the appeal would not have been necessary.
- ~~8. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that an award of costs is justified.~~

Formal Decision and Costs Order

9. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that the London Borough of Brent Council shall pay to Mr M Harris, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 174 of the Town and Country Planning Act 1990 against an Enforcement Notice issued by the London Borough of Brent Council alleging the unauthorised installation of PVCu windows and front door at 6 Bouverie Gardens, Harrow.

10. The applicant is now invited to submit to the London Borough of Brent Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

G R Stewart

INSPECTOR

