



Appeal Decision

Site visit made on 16 August 2010

by **Katie Peerless Dip Arch RIBA**

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

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**Decision date:
25 August 2010**

Appeal Ref: APP/Q1445/C/09/2118995 13 Cheltenham Place, Brighton BN1 4AB

- 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 Graham Jasper against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2006/0115.
- The notice was issued on 30 November 2009.
- The breach of planning control as alleged in the notice is:
 - a) The removal of the front round bay and replacement with an angled canted bay.
 - b) Installation of uPVC windows to front elevation
- The requirements of the notice are:
 - 1. Remove the angle canted bay window from the front elevation.
 - 2. Remove the uPVC windows from front elevation.
 - 3. Reinstate round bay as original.
 - 4. Reinstate paired curved single glazed painted timber sash windows, to match exactly the original shown in the photograph attached to the enforcement notice at Appendix 1.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the development is fee exempt, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. Although an appeal has not been made on ground (a), that is that planning permission should be granted for the development, the site lies within the North Laine Conservation Area where there is a Direction in place made under Article 4 of the Town & Country Planning Act 1990 (as amended) (TCPA). This Direction removes permitted development rights for, amongst other things, alterations to a dwellinghouse where the development would front a highway and would otherwise be included within Class A of Part 1 of Schedule 2 of the GPDO. The development that has been carried out at the appeal site falls within this category and for this reason, planning permission would be needed to authorise it.

3. In cases where there is such an Article 4 Direction and the site is within a conservation area, an appeal against an enforcement notice is exempt from the fees normally required to accompany an appeal on ground (a) and the planning application deemed to have been made under S177(5) of the TCPA. Although, in this case, an appeal has not been made under ground (a), the deemed planning application does not require a fee and therefore still remains to be determined. I have, therefore, considered the merits of the deemed planning application as part of this appeal.

Main issues

4. I consider that the main issues in this case are, firstly;
on the deemed planning application, the effect of the development on the character and appearance of the North Laine conservation area and, if this appeal does not succeed:
on ground (f), whether the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control and if they are not:
on ground (g), whether the time for compliance with the enforcement notice is reasonable.

Site and surroundings

5. The appeal property is one of a terrace of houses within the North Laine Conservation Area in the city of Brighton. Most of the properties on the same side of the road have a bay window at the front and the majority of these are two storey. Early photographs of the appeal property show that it originally had unusual curved windows, one above the other on each floor, forming a rounded bay. Each window frame contained a total of four, six over six sashes, divided centrally.
6. The bay has now been altered so that it has a canted profile, similar to some others in the road, and uPVC windows, six on each floor. The new windows each have four panes and include five top hung opening casements.

Reasons

Deemed planning application

7. The uPVC windows that are referred to in the enforcement notice have already been the subject of a refused planning application¹ that sought to retain them, an appeal against which was dismissed in 2007². In his decision, the previous Inspector considered the windows to be unattractive, bulky and inappropriate to the style and period of the building and consequently detrimental to the street scene and the character and appearance of the conservation area. I find no reason to disagree with this assessment.
8. The appellant suggests that the harm to the conservation area could be overcome by replacing the existing windows with timber sliding sashes, whilst retaining the canted profile of the bay. He points to similar bays in the street and submits that it is impossible to reinstate the bay in its original form.

¹ Ref: BH/2006/01433

² Ref: APP/Q1445/A/07/2036341

9. I understand that the original structure needed considerable remedial work to make it structurally stable and this is not disputed by the Council. The appellant has not, however, explained why a curved bay to match the original could not now be constructed. The only practicalities that the appellant addresses relate to cost and the inconvenience to the tenants, which are not matters that carry any significant weight in planning terms. Neither has he submitted details of any proposed replacement timber sashes for consideration. Such details are, in my view, too important to the overall design of the whole bay to be left to a condition requiring their subsequent submission.
10. The appellant also states that he considers the revised design to be more appropriate and that the modern materials are more in keeping with the rest of the street. However, I do not agree with this assessment. It is true that there is a variety of styles of bays and windows, however the bay that is now on the appeal property has different proportions to the other canted bays in the street and therefore has no historical precedent. I also consider the fact that other, inappropriate alterations have already taken place in the street means that it is now all the more important to retain the original designs where at all possible. The demolished bay was the last original survivor of this interesting and unusual design in the street and its loss is precisely the kind of development that the Article 4 Direction is seeking to prevent.
11. Even if the uPVC windows were changed to timber sashes, they would not replicate the curved sashes that have been taken out. I consider that the revised design, even with timber windows, would continue to harm the appearance of the building and the character of the conservation area. Consequently, I find that the bay and uPVC windows fail to preserve the character and appearance of the conservation area and conflict with the aims and objectives of saved policies QD2, QD14 and HE6 of the Brighton and Hove Local Plan 2005 which set design standards for development and seek to protect conservation areas.

Ground (f)

12. S173 (4) of the TCPA provides, amongst other things, that an enforcement notice shall specify the steps which the authority requires to be taken to remedy the breach of planning control either by restoring the land to its condition before the breach took place or by remedying any injury to amenity which has been caused by the breach.
13. The Council's statement makes clear that it is seeking to return the details of the bay to its original design before the works were carried out. It has explained the historic importance of the design and the impact that the loss of the bay has had on the character and appearance of the conservation area. The planning merits of the scheme have already been considered in respect of the deemed application and I have concluded that planning permission should not be granted for the existing alterations.
14. As noted above, I have been given no details of the replacement timber sashes that the appellant suggests could replace the uPVC windows and, in any event, the planning merits of any proposals are not considered under an appeal on ground (f).

15. Consequently, I find that the requirement to restore the bay to its original design is not excessive and the appeal on ground (f) therefore fails.

Ground (g)

16. The appellant asks for a minimum of ten months to comply with the enforcement notice, based on the time needed to re-house the existing tenants, possibly through the need to obtain a court order.

17. I consider that six months would normally be sufficient time to give notice to the tenants and carry out the rebuilding of the bay. The Council has given the assurance that, should difficulties in obtaining vacant possession of the property be demonstrated, it would be willing to use its powers under S173A(b) of the TCPA to vary the time for compliance whether or not the enforcement notice has come into force. In these circumstances, I see no reason to extend the time for compliance at this stage. The appeal on ground (g) consequently fails.

Katie Peerless

Inspector