

EASTBOURNE BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACT, 1971

Refusal of Permission to Develop Land

To:- K Sayers, Esq., C/o John D Clarke & Son, F.R.I.B.A.,
.....
2 West Terrace,
.....
EASTBOURNE, East Sussex BN21 4QX.
.....

Situation WEST ROCKS HOTEL, 44-46 GRAND PARADE, EASTBOURNE.
.....

Purpose Replacement of windows in the front and side elevations with UPVC vertical
sliding windows.
.....

IN pursuance of their powers under the above Act the Council as Local Planning Authority
hereby refuse permission to develop land in accordance with the proposals set out in your application
dated 26 January 1990 and shown on the plan(s) submitted therewith.

THE reasons for the Council's decisions to refuse permission for the development are:-

Reasons for Refusal

That the replacement of existing windows on the south-west and south-east elevations
with non-traditional frames would be detrimental to the appearance of the building
and to the terrace of which it forms part, and would detract from the appearance
and character of the Town Centre and Seafront Conservation Area in which it is
situated.

THE Applicant should read the notes on the back of this form.

Copies of the plan(s) and application form are returned herewith.

Dated this 22 day of February 19.90.

Form T.P.13 Refusal of Permission.

[Signature]
.....
Director of Planning and Technical Services

NOTES

TOWN AND COUNTRY PLANNING ACT 1971

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for the Environment under section 36 of the Town and Country Planning Act 1971.
- If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Department of the Environment at Tollgate House, Houlton Street, Bristol BS2 9DJ.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local authority based its decision on a direction given by him.

Purchase Notices

- If either the local planning authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.

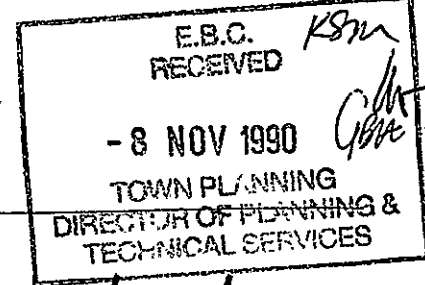
Compensation

- In certain circumstances compensation may be claimed from the local planning authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.
- These circumstances are set out in sections 169 and related provisions of the Town and Country Planning Act 1971.



Planning Inspectorate
 Department of the Environment
 Room 1417 Tollgate House Houlton Street Bristol BS2 9DJ
 Telex 449321

Direct Line 0272-218 927
 Switchboard 0272-218811
 GTN 1374



John D Clarke and Son FRIBA
 2 West Terrace
 EASTBOURNE
 East Sussex
 BN21 4QX

Your reference

Our reference

T/APP/T1410/A/90/154327/P8
 Date - 7 NOV 90

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
 APPEAL BY KENNETH SAYERS
 APPLICATION NO: EB/89/762

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Eastbourne Borough Council to refuse planning permission for replacement UPVC vertical sliding windows to south-east and south-west elevations of West Rocks Hotel, 44-46 Grand Parade, Eastbourne, East Sussex. I have considered the written representations made by you and by the Council. I inspected the site on 16 October 1990.
2. From my inspection of the site and its surroundings and from consideration of the representations received and bearing in mind Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I consider the main issue is whether the proposal would preserve or enhance the character and appearance of the Conservation Area.
3. West Rocks Hotel is located on the corner of Grand Parade and Howard Square having frontages to both. The hotel comprises 5 storey plus a basement and on the Grand Parade frontage forms part of a continuous terrace between Burlington Place and Howard Square and is within the Town Centre and Seafront Conservation Area designated in 1969. On the north-eastern side of Howard Square separated by a narrow gap from the West Rocks Hotel are a terrace of properties of similar style which are Grade II listed buildings dating from 1874.
4. The proposal is to replace all the existing windows on the south-east and south-west principle elevations which are predominantly timber vertical sliding sashes of traditional design by UPVC vertical sliding sashes and this proposal has been rejected by the Council as it considers that this would be detrimental to the appearance of the building and the terrace of which it forms part and would detract from the appearance and character of the Conservation Area in which it is situated.
5. In its representations the Council submit that the proposed replacement windows would be objectionable as the appearance of UPVC windows cannot replace the detailed appearance of timber windows and in particular the dimensions of the frame, treatment of vertical glazing bars and lack of traditional features such as decorative horns on the bottom rail of upper sashes. It is also submitted that the detrimental effects of the proposals would not be restricted to the appeal building itself as the windows would be seen as part of a terrace on the seafront side and in Howard Square would contrast with the original timber sashes in the listed buildings adjacent.



6. The Council refer to Circular 8/87 (Historic Buildings and Conservation Areas - Policy and Procedures paragraph 5 and Appendix IV which refers to alterations to listed buildings including the advice "The tendency to use non-traditional fenestration in elevations of value should be resisted and replacement windows in UPVC are almost always unacceptable" and submit that whilst the appeal property is not listed it is considered that it has elevations of value within the Conservation Area.

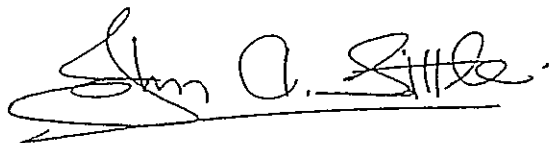
7. On behalf of the appellant it is submitted that the existing timber vertical sliding sashes are in need of considerable repair many being ill-fitting and draughty and that the efficiency of windows is more important than it has been in the past. That the owner of the hotel is sensitive to maintaining the quality of the building and proposes top grade UPVC windows of the vertical sliding type which would maintain the existing profiles and appearance. Photographs of other properties within the Conservation Area show examples where UPVC replacement windows mainly of the tilt and turn type have been used. It is also submitted that replacement timber windows would not be as efficient as the proposals put forward even if modern draught seals were fitted.

8. Having visited the site and noted the representations of both parties I am of the opinion that West Rooks Hotel which is typical of a large proportion of the Victorian Hotels facing the seafront on Grand Parade is both attractive in appearance and occupies a very prominent position adjacent to the junction with Howard Square and that any alterations should be of a design which respects the traditional appearance of the building. It is my view that the use in a building of this character of UPVC replacement windows, a non traditional material, would not retain the traditional joinery details which are a feature of such buildings and would therefore be damaging to the appearance of the building and the Conservation Area in which it is located and would neither preserve nor enhance the character and appearance of the latter.

9. I have taken into account all the other matters raised in the representations and viewed most of the buildings illustrated in the photographs annexed to the appeal documents but they are insufficient to outweigh the considerations which have led to my decision.

10. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

I am Gentlemen
Your obedient Servant



JOHN A LITTLE FRIBA MRTPI
Inspector



Appeal Decision

Site visit made on 26 April 2012

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 13 June 2012

Appeal Ref: APP/T1410/A/11/2167721

Flat 6, Arya Court, 1 South Cliff, Eastbourne BN20 7AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr N Hedges against the decision of Eastbourne Borough Council.
 - The application Ref EB/2011/0599(HH), dated 6 October 2011, was refused by notice dated 6 December 2011.
 - The development proposed is described on the planning application as 'Replacement windows to front and rear'.
-

Decision

1. The appeal is allowed and planning permission is granted for replacement UPVC windows to front and side at Flat 6, Arya Court, 1 South Cliff, Eastbourne BN20 7AE in accordance with the terms of the application, Ref EB/2011/0599(HH), dated 6 October 2011, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 1.
 - 3) All the windows to be installed shall be sash windows with dimensions and sections as close as possible to the existing timber windows and finished with white frames.

Procedural Matters

2. The appeal premises are part of a corner building divided into flats and with frontages to South Cliff (south east) and also to Silverdale Road (north east) where the front door is located. The drawings identify the windows to be replaced as those facing both roads. The window frames would be UPVC. The proposal is described on the decision notice and appeal form as 'Replacement UPVC windows to front and rear' and on the Design and Access Statement as 'Replacement windows at front and side'. There are no drawings showing any windows at the rear of the building which I take to be the south west elevation. I have therefore determined the appeal on the basis of the following revised description: 'Replacement UPVC windows to front and side.'

Policy Context

3. The property is located within the Town Centre and Seafront Conservation Area. The development plan here includes the Eastbourne Borough Local Plan 2001-2011 (adopted 2003) (the LP). Policy UHT15 requires planning

- applications in conservation areas to preserve or enhance the character or appearance of the area. That reflects a statutory duty to have regard to such matters.
4. The conservation area is a designated 'heritage asset' in the terms of Section 12 of the National Planning Policy Framework (NPPF) which seeks consideration of the significance of the heritage asset and which attaches great weight to the asset's conservation. Substantial harm to the significance of a designated heritage asset should not be permitted unless it is necessary to achieve substantial public benefits.
 5. NPPF paragraph 95 seeks that local planning authorities should 'actively support energy efficiency improvements to existing buildings'.
 6. The Council has also drawn attention to the Eastbourne Townscape Guide Supplementary Planning Guidance (2004) (the SPG). Guideline WD2 advises that in conservation areas the Council will normally expect historic buildings to retain the original design and material of their windows and doors but will allow the use of alternative materials to an appropriate design on hidden elevations and new buildings. The weight to be attached to this document is limited in that it is guidance rather than adopted policy and because there is no submitted evidence of public consultation in its preparation.

Main Issue

7. The main issue is considered to be the effect of the proposal on the character and appearance of the building and the conservation area and whether any identified harm may be outweighed by other benefits.

Reasons

8. The conservation area is extensive and includes a wide variety of development. However the seafront including the appeal site is characterised mainly by multi-storey late Victorian and Edwardian buildings with rendered and painted facades and often with bay windows surrounded by moulded detailing. Most are occupied as flats or hotels. There has also been some late 20th century infill development which can detract from the area's dominant character. Many of the older buildings retain their original timber sash windows but there are also a significant number of replacement windows in UPVC or aluminium. Some windows are in styles that detract from the dominant architectural character and appearance of the buildings and the conservation area. It is likely that some of these have been installed without a planning application.
9. Arya Court is a typical late 19th/early 20th century building with painted moulded facades and large bay windows. The bay windows to the ground, first and second floors (including the appeal premises) retain their original large timber sashes painted white in a very simple plain style without glazing bars. However all basement level windows have been replaced with white UPVC windows in a different style that is out of character with the building. Their wider visual impact is mitigated in that they are partially hidden below ground level and behind shrubbery. All balcony doors on all floors (including at the appeal flat) have also been replaced in UPVC or aluminium. All of the top floor windows are modern replacements. Their original openings are of different proportions from those of the bay windows on lower floors and they are partially screened in the usual views from ground level. There is no evidence

before me that planning permission has been granted for any of the above replacement windows.

10. The building has also been extended along Silverdale Road and all of the many windows in that extension are in aluminium or UPVC. However that self-effacing extension reads as almost a separate more modern building and the SPG does endorse alternative materials on such buildings.
11. In the main the replacement and modern windows at Arya Court retain the simple symmetrical appearance of the original windows. Viewed as a whole the original Arya Court building continues to make a mainly positive contribution to the heritage significance and character of the conservation area.
12. To install replacement windows of a different pattern in the prominent existing bays would risk undermining the historic architectural appearance and heritage significance of the building and its positive contribution to the character of the conservation area. However the very simple design and dimensions of the existing windows are here capable of being closely replicated. Indeed the application proposes to install double glazed sash windows with similar sections to the existing sash timber windows. This can be the subject of planning conditions. In these circumstances the appearance of the windows would be little changed and not obvious to most observers, particularly in the usual views from street level. Consequently there would be little or no harm to the character of appearance of the building and conservation area or to the heritage significance of the asset.
13. As the change may be just discernible there remains a slight risk that the character and appearance of the conservation area would not be fully preserved and hence there would be a literal conflict with LP Policy UHT15. There would also be a literal conflict with the SPG Guideline WD2 in that the window materials would change. However WD2 does allow for exceptions by its use of the term 'normally'. It is also a material consideration that the NPPF supports energy efficiency improvements to existing buildings. The proposed windows can be expected to achieve a significant improvement in energy efficiency. It is concluded that the improved energy efficiency is a public benefit that here outweighs the only slight risk of harm. There would also be noise insulation benefits.
14. It is acknowledged that there may be other ways to achieve similar energy efficiency and noise insulation aims, such as professionally draught-stripping the existing windows and fitting secondary glazing. Secondary glazing would be less convenient to the occupier because of the added difficulty of opening and cleaning the windows. There would also be uncertain visual consequences depending on the detailed design of the system and what may be visible from the street. Nevertheless in other circumstances where traditional windows would be more difficult to replicate than secondary glazing of suitable design may be the only acceptable solution. However that is not the case here.
15. For the above reasons, and having regard to all other matters raised in representations, it is concluded that the appeal should be allowed.

RPE Mellor

INSPECTOR



Appeal Decision

Site visit made on 1 October 2012

by David Harmston FRICS DipTP MRTPI

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

Decision date: 17 October 2012

Appeal Ref: APP/T1410/A/12/2175277

Flat 2, 6 South Cliff, Eastbourne BN20 7AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Norman Lee against the decision of Eastbourne Borough Council.
 - The application (Ref:- EB/2011/0705), dated 28 September 2011, was refused by notice dated 9 February 2012.
 - The development proposed is the replacement of windows with double glazed vertical sliding sash units.
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Decision

1. The appeal is allowed and planning permission is granted for replacement windows with double glazed vertical sliding sash units at Flat 2, 6 South Cliff, Eastbourne BN20 7AF in accordance with the terms of the application (Ref:- EB/2011/0705), dated 28 September 2011.

Procedural Matters

2. The National Planning Policy Framework was published in March 2012. The Council's decision to refuse the application the subject of this appeal was made just before that date. The Eastbourne Borough Plan (2001 – 2011) was adopted in September 2003. In my opinion none of the policies relevant to this development are inconsistent with the Framework and, in accordance with paragraph 215, I have afforded them due weight in considering this appeal.
3. The site lies within the Town Centre and Seafront Conservation Area. It is therefore necessary to determine whether the development would serve to preserve or enhance the character or appearance of that Area. In considering this matter I have taken into account the Council's Supplementary Planning Guidance of July 2004 (SPG) – *Eastbourne Townscape Guide*.

Main Issue

4. The main issue in this appeal is the effect of the development on the character and appearance of the area having regard to its Conservation Area location.

Reasons

5. The appeal property is a first floor flat within a four-storey period building facing Eastbourne seafront. The development, which has already been

- undertaken, is to replace four timber-framed windows situated within the front elevation of the building with uPVC vertical sliding sash replacements. Three of the windows make up a bay front whilst the fourth is a single unit to its side.
6. Within the front elevation of the property, other windows already have uPVC replacements. Similarly, many of the adjoining and nearby buildings feature uPVC replacement windows of varying profiles and styles. A modern, five-storey block of flats exists to the east of the site. The terrace of period buildings of which the appeal property is a part appears to be generally well maintained retaining many original features with a high measure of architectural integrity. The terrace contributes in a positive way to the character and appearance of the Conservation Area.
 7. Policy UHT1 of the Local Plan states that all new development should harmonise with the appearance of the local environment respecting its distinctiveness. Policy UHT15 relates to developments within Conservation Areas requiring them to preserve or enhance their character or appearance. Guideline WD2 of the SPG states that within Conservation Areas the expectation is that historic buildings should retain their original design features and materials in their windows and doors. Some styles of plastic replacement windows may be acceptable in certain locations, for example on hidden elevations. Where modern materials are acceptable, imitation glazing bars should be avoided.¹
 8. The replacement windows which have been installed are well designed with an acceptable profile and style and no glazing bars, respecting the appearance of the windows which they have replaced. They match other similar replacements within the immediate locality and are inconspicuous in the context of the area and the building itself. In my view, and despite the use of uPVC in their construction, the replacement windows serve to preserve the character and appearance of the Conservation Area. They are visually inoffensive and cause no material harm. Such conflict with the Local Plan and the SPG as exists is outweighed by these considerations.
 9. I have taken everything else into account including the views expressed by the Council's Historic Buildings Advisor. Nevertheless, my overall conclusion is that the very small degree of harm that the development causes is acceptable having regard to the weight of all considerations in its favour. No conditions are necessary as the development has already been undertaken.

David Harmston

Inspector

¹ Supplementary Planning Guidance - *Eastbourne Townscape Guide* - Paragraph 8.5

Appeal Decision

Site visit made on 24 March 2014

by Katie Peerless Dip Arch RIBA

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

Decision date: 4 April 2014

Appeal Ref: APP/T1410/F/12/2188806

Land at The Claremont Hotel, 5 - 10 Grand Parade, Eastbourne, East Sussex BN21 3DD

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Sheik Abid Gulzar against a listed building enforcement notice issued by Eastbourne Borough Council.
 - The Council's reference is ENF/2008/0287.
 - The notice was issued on 2 November 2012.
 - The contravention of listed building control alleged in the notice is (1) Replacement of the windows on the front elevation of the listed building, as shown and numbered 1 to 54 inclusive on the photo exhibits DS/01 to DS/12 inclusive attached to the listed building enforcement notice, with UPVC windows. (2) Replacement of the 12 windows on the east facing elevation of the listed building, as shown and numbered 55 to 66 inclusive on the photo exhibits DS/13 and DS14 attached to the listed building enforcement notice, with UPVC windows. (3) Replacement of the windows on the rear elevation of the listed building, as shown and numbered 67 to 108 inclusive on the photo exhibits DS/30 to DS/36 inclusive attached to the listed building enforcement, notice with UPVC windows.
 - The requirements of the notice are: to replace (1) The 54 windows on the front elevation (2) the 12 windows on the east facing elevation and (3) the 42 windows on the rear elevation as specified above with timber framed windows to match the design and specification of the windows prior to their unauthorised replacement.
 - The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1) (e), (h), (i) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The listed building enforcement notice is varied by the omission from the requirements of the notice of windows nos. 75 – 78 and 83 – 88 inclusive, 93 and 94 as numbered on the photograph sheets attached to the listed building enforcement notice. However, the appeal is allowed on the grounds that the listed building enforcement notice is void through uncertainty and is consequently quashed.

Procedural matters

2. After considering the Historical Assessment of the appeal building and the group in which it is located, carried out for the appellants, the Council has suggested that the listed building enforcement notice should be amended to omit the requirement to replace some of the windows to the rear of the building. To this end, the Council has submitted appendix A with these windows highlighted in yellow.

3. However, only some of the windows marked in the appendix (nos. 75 – 78 and 83 – 88 inclusive 93 and 94) were included on the original schedule attached to the notice. The others were not included on that schedule and are not, therefore, being enforced against in any event.
4. Since the appeal was lodged, the Government has issued its latest Planning Practice Guidance (PPG), which supersedes a number of Circulars and planning guidance documents. However, the Historic Environment Planning Practice Guide (HEPPG) issued by the DCLG, English Heritage and the DCMS, to which reference has been made, has not been withdrawn and I am satisfied that there is nothing in the cases already made by the parties that would be affected by, or would need to be amended in response to, the publication of the new PPG.

Main Issue

5. I consider that the main issue on the appeal on ground (e) is the effect of the replacement windows on the special architectural and historic character of the listed building and its setting within the Eastbourne Town Centre and Seafront Conservation Area.

Site and surroundings

6. The appeal property is a hotel that occupies a number of the town houses in the group that, together with a central hotel, originally formed nos. 5 – 23 Grand Parade. The group of buildings are listed Grade II* and are described in the listing description as '*the best series of buildings in Eastbourne*'. They were built in the middle of the 19th Century but in a style that was popular some 30 years earlier.
7. The block stands close to the sea front and the pier, overlooking the formally laid out 'Carpet Gardens' between the road and the pedestrian promenade. The Claremont Hotel occupies the 6 former houses at its eastern end, turning the corner at the junction of Grand Parade and Elms Avenue/Cavendish Place and is within the Eastbourne Town Centre and Seafront Conservation Area.
8. The Claremont Hotel rises to 3 storeys and an attic above a semi-basement. The main elevation facing the seafront consists of a series of regular bays with those at the eastern end divided by Ionic columns to the first and second storeys, supporting the cornice above. This arrangement is reflected at the western end of the larger block, but the building is not symmetrical. The central portion originally had an extra storey, 5 windows wide, but the bays on either side have now also been raised to this height, as have 3 of the houses to the west and 2 to the east. The remainder of the houses to the west (5 in total) have had mansard roofs with dormers added whereas the roofs of the houses comprising the Claremont Hotel retain their original profiles. To the rear the buildings have been altered, extended and repaired after bomb damage to the block.
9. The windows that are the subject of the listed building enforcement notice are on all 3 elevations of the Claremont Hotel. All the first, second and attic floor windows of the front elevation have been replaced in UPVC, as have all bar 4 on the east elevation. All the ground floor windows on these 2 elevations, apart from one on the eastern side, have been retained in timber. The new windows are double glazed and, whilst they are generally consistent in their design detail, they do not always reflect the glazing patterns of the windows they replaced, as shown on the photographs attached to the listed building enforcement notice.

Reasons

Ground (e)

10. The appeal on ground (e) seeks the grant of listed building consent for the alterations that have taken place. This application is supported by the appellant's assessment of the historic significance of the building, which concludes that the new windows to the front of the building are not having any harmful impact, particularly in longer views from where they are difficult to distinguish from the timber versions that they replaced.
11. It is true that the proportions of the important front elevation have not been significantly altered by the replacement windows and the rhythm and hierarchy of the fenestration has been maintained. It is also the case that there have been earlier alterations to the block as a whole that have had a far greater impact visually than the installation of the UPVC windows. Nevertheless, this does not mean that further unsympathetic alterations should be considered acceptable as this would eventually lead to a serious cumulative erosion of the significance of the listed building.
12. There is strong encouragement to retain traditional materials on important heritage assets such as this in the HEPPG where, in paragraph 149, the advice is that *'repairing by re-using materials to match the original . . . helps maintain authenticity'*. In paragraph 152 it states *' . . . windows are frequently key to the significance of the building. Change is only advisable where the original is beyond repair. . . '* Whilst the wholesale renewal of the windows goes beyond the scope of *'repair'*, these paragraphs nevertheless give no support to the concept that it would be acceptable to change the material from which the windows were originally made. In addition, paragraph 178 notes that the use of materials is one of the main issues that should be considered when assessing proposals for additions to heritage assets. Paragraph 179 says that it is not appropriate to sacrifice old work simply to accommodate the new, as appears to have happened in some instances at the Claremont Hotel.
13. It is the case that some of the windows that have been taken out were not original and that there was a likely to have been a variety of windows across the block as a whole, reflecting the different ownership of the individual properties. Therefore, their replacement in UPVC has not necessarily resulted in a total loss of all the historic fabric of the windows. However, the original windows would all have previously been made of timber, and the change to UPVC is, therefore, a radical one. In addition, I note that the HEPPG refers to *'old'* rather than *'original'* work, suggesting that fabric does not have to be original to be considered important or afforded protection.
14. The modern material has different properties to timber; the joints are generally different and the moulding profiles less refined. There have been advances in the quality of UPVC windows in recent years, particularly in the spacing of the panes of double glazing and the quality of the finish of the plastic, but the windows at the Claremont Hotel are not of this type. They have mitred joints, silvered inserts in the double glazing and the flat featureless finish that is typical of material of this age. These properties may not be obvious from a distance, but they are clear from within the rooms of the hotel and consequently have had a harmful impact on the architectural character and historic interest of the building. The different reflective qualities of the double glazed units also add to the changes in the external character of the façade.

15. It is not only the extent of the visibility of the change that is important. The introduction of a material that is totally alien to a building of this age undermines its historic integrity whether or not the change is immediately obvious from public viewpoints.
16. The appellant makes the point that had UPVC been available at the time the building was constructed, it might well have been employed for its weathering properties in this seaside location. However, the material was **not** available and is consequently not one that could ever be expected to be found in a Grade II* listed building of this age. The Council appears to have permitted the use of the material in other buildings within the Conservation Area and the appellant has listed some of these examples, but none of these relate to Grade II* listed buildings and are therefore not directly comparable to the appeal premises.
17. Buildings can often be adapted and changed to suit modern requirements without causing an adverse effect on their character, and the National Planning Policy Framework (the Framework) supports the viable use of listed buildings consistent with their conservation. However, this building has been in use as a hotel for a number of years and I am not persuaded that a change in the material of the windows is crucial to its ongoing viability.
18. To the rear of the building, there is now little architectural cohesion or special character and the Council has accepted that a number of windows in extensions to, or rebuilt parts of, the listed building can be omitted from the listed building enforcement notice. Nevertheless, the inclusion of the remainder of the UPVC windows has contributed to the overall historic deterioration of this elevation of the building and they appear clumsy and inappropriate. They are less well matched to the style of the building than those on the front and east elevations and consequently have a comparatively greater impact.
19. The rear elevation is not mentioned in the listing description but this does not lessen the importance of maintaining the character of the building as a whole. This elevation is clearly seen from public viewpoints and I consider that the use of UPVC windows with unequal frames to the sashes and top-hung opening lights are adding to the degraded character of this part of the building and harming the character and appearance of the surrounding conservation area.
20. Consequently, I consider that, although the harm caused to the listed building by the installation of the windows is not 'substantial' as discussed in paragraph 133 of the Framework, there is harm nonetheless and paragraph 134 notes that this should be considered against any public benefits of the alterations before listed building consent could be granted for the works.
21. I accept that the installation of the windows may be commercially advantageous for the owners of the building and have benefits in terms of sound insulation and heat retention for the hotel rooms. Nevertheless the building is, as previously noted, part of the best group in the town and only 5.5% of listed buildings are accorded Grade II* status. Such buildings are, according to English Heritage, particularly important and of more than special interest. I consider that the weight to be accorded to any harm identified to such a building is significant and, in this case, the advantages noted would not justify the harm caused by the permanent loss of the building's traditional windows.

22. To grant listed building consent would conflict with the statutory duty in Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) which requires special regard to be paid to the desirability of preserving a listed building before granting listed building consent. It would also conflict with the aims and objectives of policies UHT17 and UHT15 of the Eastbourne Borough Plan 2001 – 2011 which seek to protect listed buildings and conservation areas from harmful development. Although of some age, these policies are nevertheless compliant with those of the Framework and the provisions of the PLBCA. Therefore, I consider that listed building consent should not be granted for the changes to the windows identified in the (amended) listed building enforcement notice and the appeal on ground (e) fails.

Grounds (i) and (j)

23. The appellant has put forward arguments under both grounds (i) and (j) but these grounds of appeal are normally mutually exclusive because they relate to 2 different and alternative purposes that the requirements of a listed building enforcement notice are intended to achieve. The Council cannot require any improvements or alterations to the previous condition of a building to be carried out through these requirements; in a case such as this, all it can seek is the restoration of the building to its previous state or works to alleviate the impact of the unauthorised works that have been carried out.

24. Ground (i) is used when the appellant considers that the steps required by the notice would not serve the purpose of restore the character of the building to its former state. In this case, the Council is invoking s.38(2)(a) of the PLBCA and is therefore seeking to restore the building to its condition before the works were carried out. This would be achieved by the like-for-like replacement of the windows and its previous character would consequently be restored and the appeal on ground (i) fails.

25. Under the appeal on ground (j) the appellant repeats the arguments put forward for granting listed building consent but also suggests that alterations to the windows, such as the installation of additional glazing bars, to match the pattern of those shown in the Council's photographs and the removal of the horns to the top sashes would help to mitigate the impact of the UPVC windows. However, as explained above, the Council has not sought to alleviate the impact of the works through s.38(2)(b) of the PLBCA through the requirements of the notice.

26. In any event, I consider that these measures would not go far enough to indicate that the UPVC windows could be retained. I have explained the extent of the harm in preceding paragraphs and cosmetic changes to the windows would not overcome the fact that they are made from a material that is unsympathetic and alien to the fabric of the listed building. The appeal on ground (j) therefore also fails.

Validity of the listed building enforcement notice

27. The appellant submits that because the present owners of the building did not carry out the alterations they do not have any direct knowledge of the details of the construction of the windows that were replaced. The Council has not provided such details and for this reason they submit that the notice is unclear and consequently invalid as it does not specify exactly the details of what should be put back.

28. It is normally the case that the owners of the building are in the best position to know the detail of what has been taken out and how to put back what was previously there. However, that is not the case here and there is little evidence to draw on that would help the appellant. The windows in the photographs attached to the enforcement notice show 2 stages in the building's development and the photographs of the front and east elevations are claimed to have been taken in 2006 and appear to show the timber windows still in situ. However, these windows include a variety of designs, including what look to be double glazed casements and, whilst the glazing patterns and proportions are discernable, the details of the frames, sashes and glazing bar mouldings are not.
29. The photographs of the windows to the rear show the UPVC replacements and were taken in 2010. There is no photographic record of the previous windows on this elevation attached to the notice, although some of the photographs submitted as appendix A with the appeal statement appear to be from an earlier date and show some of the windows that have now been replaced. The Council has asked me to omit a number of windows from the notice and this I am able to do, but appendix A serves only to identify those windows and, because of the discrepancies within it, I will not attach it to the notice.
30. In any event, the second set of photographs is similar to those already attached to the notice, in that they do not show specific details of the windows to be replaced. Even if they could now be appended to the listed building enforcement notice, they would not, in my view, give sufficient clarification on what is required in the way of reinstatement. For these reasons, I consider that the listed building enforcement notice is unclear in respect of the requirements and does not give the appellant sufficient detail of what must be done to rectify the breach of control.
31. The Council has apparently suggested that the appellant should submit details of the proposed replacement windows, so that it can determine whether or not they would meet the requirements of the listed building enforcement notice. This procedure would not be acceptable, as the courts have established that the notice must be clear on its face and tell the recipient exactly what he must do to comply, otherwise it is invalid.
32. The Council has also made some suggestions of what it considers would be appropriate in its appeal statement, but this is not part of the listed building enforcement notice and cannot be used as a definitive guide. Consequently, I conclude that, as, in this case, the Council cannot rely on the knowledge of the owners to inform the details of the replacements, the listed building enforcement notice is void through uncertainty and will be quashed.

Other matters

33. As previously noted, the Council cannot require any improvements to be carried out unilaterally through a listed building enforcement notice and is restricted to, at most, requiring the replacement of what was previously there. Therefore, if the Council decides to issue a replacement notice, it will need to consider whether it is able to provide the owners of the building with sufficient detail of the former timber windows so that they can be replicated. These details would need to accompany the notice and include an explanation of exactly what the Council wishes to see carried out.

34. However, there is, of course, the alternative of a discussion between the parties to try and agree a suitable scheme that could, in due course, be submitted for listed building consent, to regularise the situation. It is clear that the windows on the 2 main elevations were made of timber at the time of listing in 1948 and there may well be examples of windows in other parts of the terrace that could provide suitable patterns for the replacement of those in the Claremont Hotel.
35. As the listed building enforcement notice will be quashed, there is no need for me to consider the appeal on ground (h), that more time should be granted to comply with the requirements. However, this is a matter that, if the parties manage to negotiate a way forward, would also need to be taken into account.
36. There is encouragement in the Framework to ensure the vitality of town centres and to support commercial enterprises. These factors would need to be considered when determining any timescale for the completion of the window replacements, given that the hotel would need to remain open for business during the process.

Conclusions

37. The listed building enforcement notice will be varied to omit windows nos. 75 – 78, 83 – 88 inclusive and 93 and 94, as included in photograph appendix A, as requested by the Council. However, for the reasons given above I conclude that the appeal on grounds (e), (i) and (j) should fail.
38. Nevertheless, I conclude that the listed building enforcement notice does not specify with sufficient clarity the steps required for compliance. I do not have the information necessary to correct this omission and vary the notice in this respect. In any event, the powers transferred to me in accordance with section 41(2) of the PLBCA do not extend to the expansion of the requirements of the notice to the degree that would be required, as this would cause injustice to the appellant. As the notice is void for uncertainty, it will be quashed. In these circumstances the appeal under ground (h) set out in section 39(1) of the PLBCA does not fall to be considered.

Katie Peerless

Inspector

Appeal Decision

Site visit made on 28 April 2014

by Stephenie Hawkins BSocSc(Hons) MPhil MSc MRTPI

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

Decision date: 24 July 2014

Appeal Ref: APP/T1410/A/14/2211151

Beverley Court, 2/3 South Cliff, Eastbourne, East Sussex BN20 7AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Paternoster Properties against the decision of Eastbourne Borough Council.
 - The application Ref 130424, dated 28 May 2013, was refused by notice dated 25 September 2013.
 - The development proposed is described on the application form as: "Replacement of single-glazed wooden framed windows and exterior doors with new double-glazed PVCu framed windows and doors".
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Decision

1. The appeal is allowed and planning permission is granted for double-glazed PVCu framed windows and doors at Beverley Court, 2/3 South Cliff, Eastbourne, East Sussex BN20 7AE in accordance with the terms of the application, Ref 130424, dated 28 May 2013, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Drawing No 13-57-866W (Rev *).
 - 3) Notwithstanding condition 2, no development shall take place until full details of the windows/doors to be replaced have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details. The details are to show which windows and doors are to be replaced and by which window system – that is, Rehau Heritage or Rehau Standard. For each style of window/door to be replaced by the Rehau Heritage System, the details are to show the design and dimensions, including meeting rails, bottom rails, horns and, where applicable, transoms. The door to the main front elevation is to be shown as excluded from the scheme of replacement.

Procedural Matters

2. The description of development as used in the case details above is taken from the application form. Whilst this states that development is for the replacement of wooden framed windows, the covering letter submitted with the

application states that aluminium framed windows would also be replaced. I have therefore edited the description of development used in my formal decision to reflect this.

3. The application was not supported by elevational drawings indicating which windows/doors are proposed to be replaced and by which window system – that is, Rehau Heritage or Rehau Standard. Whilst the application form states that the Heritage System would be applied to the front elevation and the Standard System to the side and rear elevations, the covering letter states that the Heritage System would be applied to front facing windows visible from the street with the Standard System applied to the windows on the hidden parts of the side elevations and rear elevations. As such, it is not clear what is intended where the appeal premises step back from the main front elevation. However, on the basis of the covering letter, which gives greater detail than the application form, I interpret the proposed development as applying the Heritage System to the main front elevation, together with the step backs, herein referred to as the principal elevation. Notwithstanding this, I note the appellant’s appeal statement states that the door to the main front elevation is to remain, which I have taken into account in my determination of the appeal.
4. Other than the Location Plan, the application was supported by one plan – Drawing No 13-57-866W (Rev *). This illustrates the Rehau New Heritage V/S Window System for two window styles, together with sections. The drawing is noted as indicative and it is clear from my site visit that it does not show all the window/door styles to the principal elevation, or indeed all the window styles to the main front elevation. Notwithstanding this, the Council based its decision on this plan and, accordingly, so have I.
5. Revisions to Drawing No 13-57-866W (Rev *) were submitted with the appeal, showing amended dimensions and an additional window style, and the addition of run through horns. Notwithstanding this, the original plan submitted with the application, together with the revised plans, still do not show all the window/door styles to the principal elevation, or indeed all the window styles to the main front elevation. As such, the revised plans add little to my understanding of the proposed development over and above that shown on Drawing No 13-57-866W (Rev *). Given this, and that the appeal process should not normally be used as a means to evolve a proposal, whilst noting the revisions, I have determined the application on the basis of Drawing No 13-57-866W (Rev *).
6. As far as is relevant, I have taken the Planning Practice Guidance (PPG), launched on 6 March 2014, into account in reaching my decision.

Main Issue

7. The main issue is the effect of the proposed development, in terms of the principal elevation, on the character and appearance of the appeal premises and the Town Centre and Seafront Conservation Area.

Reasons

8. The appeal premises comprise a pair of semi-detached properties that have been converted into flats. The premises are a substantial building, of the Victorian era, standing four storeys over a partially visible basement, with a rendered and decorative façade, including bay windows in a hierarchical design.

The premises are located towards the western end of the Town Centre and Seafront Conservation Area in an elevated position overlooking the sea. They form part of a row of properties between South Cliff Avenue and Silverdale Road, largely comprised of similar properties, with the key exception of an infill development adjacent to the appeal premises. Whilst the Conservation Area is extensive, it appears to me that the significance of this part of the seafront lies in the architecture of the buildings, especially when read as a group, to which the appeal premises make a positive contribution.

9. I appreciate that the front elevation of the appeal premises retains many original, or replacement, timber sash windows. I also note that Guideline WD2 of the Eastbourne Townscape Guide (ETG), adopted as Supplementary Planning Guidance in July 2004, normally expects historic buildings in conservation areas to retain the original design and material of their windows and doors.
10. Notwithstanding shortcomings in the information supplied, Drawing No 13-57-866W (Rev *) indicates the design of the windows proposed, which to an extent has been added to with information submitted during the appeal process. On the basis of the information before me, I am satisfied that the various styles of the original/replacement timber windows could be closely replicated, including in respect of meeting rails, bottom rails and horns. In such circumstances, the proposed windows would be practically indistinguishable from the original/replacement timber windows to a casual passer-by. As such, there would be no, or at most little, harm to the character and appearance of the appeal premises and the Conservation Area, especially given the heritage significance of this part lies in the architecture of the buildings when read as group.
11. However, as the proposed windows may be just distinguishable to some, there is a risk, albeit small, that the character and appearance of the Conservation Area may not be fully preserved. As such, whilst the proposed development would generally accord with Policies UHT1 and UHT4 of the Eastbourne Borough Plan (EBP), adopted September 2003, and Policy D10A of the Eastbourne Core Strategy Local Plan (ECSLP), which are concerned with design and visual amenity, there could be conflict with Policy UHT15 of the EBP and Policy D10 of the ECSLP, which require development in a conservation area to preserve its character and appearance. In addition, there would be conflict with Guideline WD2 of the ETG in that the material of the windows would change.
12. However, the use of the word normally within Guideline WD2 of the ETG implies exceptions may be allowed. Moreover, it is not disputed by the Council that the proposed development would deliver a benefit in terms of energy efficiency, in line with the National Planning Policy Framework. Whilst the Council suggest slim secondary glazing should be used to improve energy efficiency, the appellant sets out that this would be impractical, including as the surrounds have limited internal depth, and contends it would not achieve the performance of the proposed windows. Given this, and that the design of the original/replacement windows could be closely replicated, I consider an improvement in energy efficiency to be a benefit that outweighs the small risk of harm to the Conservation Area

Conclusion and Conditions

13. For the reasons given above, the appeal should be allowed.

14. I have considered the conditions suggested by the Council against paragraph 206 of the Framework and the advice in the PPG. Notwithstanding the appellant's comments, given the shortcomings in the details of the proposed development, as set out above, I consider it necessary, in the interests of the character and appearance of the appeal premises and the Conservation Area, to require full details of the windows/doors to be replaced to be agreed with the local planning authority. In addition, I have attached the standard time limit condition and, for the avoidance of doubt and in the interests of proper planning, a condition requiring the development to be carried out in accordance with the approved plans.

Stephenie Hawkins

INSPECTOR