

<b>Reference:</b>	19/00190/UNAU_B	
<b>Ward:</b>	Milton	
<b>Breach of Control:</b>	Replacement of timber windows with UPVC windows in a Conservation Area	
<b>Address:</b>	18 Parkgate, Westcliff-On-Sea, Essex, SS0 7NY	
<b>Case opened:</b>	1 <sup>st</sup> July 2019	
<b>Case Officer:</b>	Mark Broad	
<b>Recommendation:</b>	<b>AUTHORISE ENFORCEMENT ACTION</b>	



## **1 Site location and description**

1.1 The site contains a detached two-storey building on the western side of Park Road within the Milton Conservation Area and which is subdivided into flats. This report concerns a first floor flat in the southern part of the building, the elevations of which are open to public view from Park Road.

1.2 The Milton Conservation Area Character Appraisal notes that: "16-18 Parkgate is a large detached two storey house built slightly later than its neighbours. Red brick to ground floor with render above and a hipped red clay tile roof with prominent chimneys. Corner turret with steep roof provides a mini landmark to the street. Two storey canted bay with boarded gabled top forms a secondary feature on the frontage. Square bay to first floor side supported by decorative columns providing open porch to what appears to be the main entrance. Additional simpler entrance porch to the front. Modern replica timber casement windows with stained glass detail to fanlight. Now divided into 3 flats as Development Control Report part of the Parkgate development. Yellow stock brick wall to the front provides good enclosure and helps to screen the block paved parking area. Mature trees on the boundary provide good softening to the street."

1.3 In terms of the contribution to the Conservation Area from the building, the appraisal states that this is positive. Milton Conservation Area is covered by an Article 4 Direction which seeks to protect this special character. The Direction removes householder permitted development rights in relation to the alteration of any window which fronts a highway, among other things.

1.4 Regardless of the Article 4 Direction, replacement windows would need planning permission for this property as it is a flat.

## **2 Lawful Planning Use**

2.1 The lawful planning use is as a self-contained residential flat within Use Class C3 of the Town and Country Planning Use Class Order 1987 (as amended).

## **3 Relevant Planning History**

3.1 19/01743/FUL (the "2019 Application") - Replace single glazed timber windows with double glazed UPVC window at first floor flat (Retrospective). Refused.

Summarised reason for refusal:

The windows, by reason of their detailed design and materials are harmful to the character and appearance of the individual property and the street scene in the wider Milton Conservation Area of which it forms a part. Whilst this harm is less than substantial, the public benefits do not outweigh the harm.

3.2 20/00393/FUL (the "2020 Application") - Replace single glazed timber windows with double glazed UPVC windows to first floor flat (Retrospective)(Amended Proposal). Refused. Appeal dismissed 25<sup>th</sup> June 2021 under reference 21/00002/REFN.

Summarised reasons for refusal:

The windows, by reason of their detailed design and materials are harmful to the character and appearance of the individual property and the street scene in the wider

Milton Conservation Area of which it forms a part. Whilst this harm is less than substantial, the public benefits do not outweigh the harm.

#### **4 The alleged planning breach and the harm caused**

4.1 Without planning permission, the replacement of original wood sash windows with UPVC framed windows.

4.2 It has been found through determination of two planning applications and dismissal of a subsequent appeal, that the current windows, by reason of their detailed design and materials are harmful to the character and appearance of the individual property and the street scene in the wider Milton Conservation Area of which it forms a part. Whilst the identified harm is less than substantial, the public benefits do not outweigh the harm. The development is therefore unacceptable and contrary to the National Planning Policy Framework; Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015); and advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Milton Conservation Area Appraisal 2020.

#### **5 Background and efforts to resolve breach to date**

5.1 On 1st July 2019 an enforcement case was raised regarding the replacement of the original wood sash windows with UVPC windows.

5.2 A letter was sent to the owners on 11<sup>th</sup> July 2019 advising that planning permission was required for the replacement of the windows.

5.3 The 2019 Application was submitted on 23<sup>rd</sup> September 2019 and was refused on 22<sup>nd</sup> November 2019. The 2020 Application was submitted on 4<sup>th</sup> March 2020 and was refused on 27<sup>th</sup> July 2020.

5.4 An appeal was lodged with the Planning Inspectorate on 12<sup>th</sup> January 2021 under reference APP/D1590/W/20/3261209 (Council's reference: 21/00002/FEFN) (the "Appeal Decision") against the refusal of the 2020 Application. That appeal was dismissed on 25<sup>th</sup> July 2021.

5.5 To date no further planning application has been submitted nor any other actions have taken place to seek to overcome the reason for refusal of the retrospective planning applications or dismissed appeal.

#### **6 Harm caused by the breach as assessed against relevant planning policies and justification for enforcement action**

6.1 The officer's report for the 2020 Application setting out the reason for refusal is attached at Appendix 1.

6.2 The Appeal Decision concurring with the Council's reasons for refusal is attached at Appendix 2.

6.3 The unauthorised replacement windows are causing significant and demonstrable harm to the character and appearance of the site and the Conservation Area in conflict with relevant planning policies.

- 6.4 Staff consider that it is proportionate and justified in the circumstances of the case that an enforcement notice should be served as this will bring further focus to the need for the breach to be regularised and the identified harm to be remedied. Service of an enforcement notice carries its own right of appeal and does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm.
- 6.5 Taking enforcement action in this case may amount to an interference with the owner/occupier's human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area.

#### Equality and Diversity Issues

- 6.6 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have, in considering this enforcement case and preparing this report, had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the recommended enforcement action will not conflict with the Council's statutory duties under this legislation.

### **7 Recommendation**

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION to require from anyone with an interest in the land (the site) to:**
- a) remove the unauthorised UPVC windows; and**
  - b) remove from site all materials and debris resulting from compliance with (a) above.**
- 7.2 **The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.**
- 7.3 **When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case a compliance period of six (6) months is considered reasonable for the removal of the unauthorised windows, considering that planning permission is required for the installation of new appropriate windows.**

## Appendix 1 – Officer Report application reference 20/00393/FUL

<b>Reference:</b>	20/00393/FUL
<b>Ward:</b>	Milton
<b>Proposal:</b>	Replace single glazed timber windows with double glazed UPVC windows to first floor flat (Retrospective)(Amended Proposal)
<b>Address:</b>	18 Parkgate, Westcliff-On-Sea, Essex, SS0 7NY
<b>Applicant:</b>	Mr England
<b>Agent:</b>	Design Spec Ltd.
<b>Consultation Expiry:</b>	25.06.2020
<b>Expiry Date:</b>	27.07.2020
<b>Case Officer:</b>	Scott Davison
<b>Plan No's:</b>	Drawing No: 2808/09/40 Sheet 1/2 & 2808/09/40 Sheet 2/2
<b>Recommendation:</b>	<b>REFUSE PLANNING PERMISSION</b>

### 1 Site and Surroundings

- 1.1 The application site is a detached two storey house located on the western side of Park Road subdivided divided into flats. The application site is a first floor flat and is within the Milton Conservation Area.
- 1.2 The Milton Conservation Area Character Appraisal notes that Park Road is a long north-south road that marks the boundary of the conservation area to the east. First edition Ordnance Survey maps from 1872 show that its development began with a short run of larger villa style properties to the eastern side of the street but by the second edition in 1897 the development had become much more mixed. More modest terraces and semis appeared at either end of the street and larger detached and semi-detached houses sprang up in the centre. It is interesting to note that although consistent on each side there is a significant difference in the building lines on either side of the street. On the eastern side they are tight and these houses have small front gardens and on the western side, they are much deeper giving a more spacious feel to the properties.
- 1.3 The Milton Conservation Area Character Appraisal notes that *16-18 Parkgate is a large detached two storey house built slightly later than its neighbours. Red brick to ground floor with render above and a hipped red clay tile roof with prominent chimneys. Corner turret with steep roof provides a mini landmark to the street. Two storey canted bay with boarded gabled top forms a secondary feature on the frontage. Square bay to first floor side supported by decorative columns providing open porch to what appears to be the main entrance. Additional simpler entrance porch to the front. Modern replica timber casement windows with stained glass detail to fanlight. Now divided into 3 flats as part of the Parkgate development. Yellow stock brick wall*

*to the front provides good enclosure and helps to screen the block paved parking area. Mature trees on the boundary provide good softening to the street.* In terms of the contribution to the Conservation Area from the dwelling, the appraisal states that this positive.

- 1.4 Milton Conservation Area is covered by an Article 4 Direction which seeks to protect this unique character. The Direction removes householder permitted development rights in relation to:
- The alteration of any window which fronts a highway.
  - The rendering of any brickwork which fronts a highway (other forms of cladding already need planning permission).
  - Re-roofing with different materials
  - The installation of a hardstanding for vehicles.
- 1.5 This means that planning permission would be required for these works.
- 1.6 UPVC windows are evident within this block (15 Parkgate) at ground floor level granted permission under ref: 14/00812/FUL. These windows are located to the rear of the site and are not visible from the street or wider public realm. There are some examples of UPVC windows within the conservation area however these either pre-date the adoption of the conservation area or are unauthorised. The installation of UPVC windows are considered to have had a negative impact on the character of the conservation area.

## **2 The Proposal**

- 2.1 The application seeks retrospective planning permission for 5 white UPVC framed windows with top hung fanlights. The windows are located within the first floor of the corner turret feature in the front elevation of the dwelling house. No details have been provided of the previous windows however site photographs taken in 2014 show the previous windows were timber framed windows with stained glass top lights.
- 2.2 This application follows the refusal of application Ref: 19/01743FUL - Replace single glazed timber windows with double glazed UPVC window at first floor flat (Retrospective). The application was refused for the following reason.

*01 The windows, by reason of their detailed design and materials are harmful to the character and appearance of the individual property and the street scene in the wider Milton Conservation Area of which it forms a part. Whilst this harm is less than substantial, the public benefits do not outweigh the harm. The development is therefore unacceptable and contrary to the National Planning Policy Framework; Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015); and advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Milton Conservation Area Appraisal 2010.*

- 2.3 The only evident difference between this refused application and the development is that the applicant has submitted a document listing some 15 other properties in Park Road, Park Terrace and Avenue Road within the Milton Conservation Area that have had UPVC windows installed.

## **3 Relevant Planning History**

- 3.1 19/01743FUL Replace single glazed timber windows with double glazed UPVC window at first floor flat (Retrospective). Refused.

Enforcement History

- 3.2 19/00190/UNAU\_B. Installation of Replacement windows.

## **4 Representation Summary**

### **Public Consultation**

- 4.1 27 neighbours were informed and a site notice displayed and press notice published. No letters of representation have been received.

### **Milton Conservation Area**

- 4.2 Objection. These windows cause harm to the conservation area and visible from the public highway. A grant of planning permission would set a terrible precedent.

## **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (NPPF), (2019).
- 5.2 Core Strategy (2007) Policies KP2 (Development Principles) and CP4 (Environment & Urban Renaissance).
- 5.3 Development Management Document (2015) Policies DM1 (Design Quality) and DM5 (Southend on Sea's Historic Environment).
- 5.4 Design & Townscape Guide, (2009) sections 9 & 10.
- 5.5 Milton Conservation Area Appraisal (2014).

## **6 Planning Considerations**

- 6.1 The main considerations for this application are the principle of the development, and the design including the impact of the proposed works on the character and appearance of the conservation area and whether it overcomes the previous reason for refusal. It is not considered that there would be any impact on neighbours or highway implications arising from this proposal.

## **7 Appraisal**

### **Principle of Development**

- 7.1 The proposal is considered in the context of the NPPF, Core Strategy Document (2007) Policies KP2 and CP4, Policies DM1, DM3 and DM5 of the Development Management Document (2015) and advice contained within the Southend Design and Townscape Guide (2009). These policies and guidance support development in most cases but require it to respect the existing character and appearance of the building and preserve or enhance the character of the Conservation Area and respect the amenities of neighbours. The building is located within a residential area where extensions and alterations are generally acceptable. Therefore, the principle of development is acceptable subject to the detailed design considerations below.

- 7.2 The Article 4 Direction for Milton Conservation Area requires that planning permission be obtained for the alteration of any window which fronts a highway because they are considered to be important to the historic character and significance of the conservation area. Applications for replacement windows will therefore need to demonstrate that the replacement windows would preserve or enhance the historic character of the conservation area i.e. they are of an appropriate style and material. If this can be justified then replacement windows would be acceptable. The principle of replacement windows would therefore be acceptable on this basis.

**Design and impact on the character of the existing building and the wider conservation area**

- 7.3 Section 72(1) of the Planning and Listed Buildings and Conservation Areas Act 1990 states that special attention should be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Policy DM5 of the Development Management Document states the Council has a statutory duty to preserve or enhance their character and appearance. Development proposals must demonstrate a high quality design that not only integrates with the surroundings but also conserves and enhances its intrinsic character.
- 7.4 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF (section 12) and in Policies KP2 and CP4 of the Core Strategy and also in Policies DM1 and DM3 of the Development Management Document. The Design and Townscape Guide also states that “the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.”
- 7.5 The NPPF states *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this.”* (Section 12 Para 124 – ‘Achieving well-designed places’).
- 7.6 Policy KP2 of the Core Strategy advocates the need for all new development to *“respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design”*.
- 7.7 Policy CP4 of the Core Strategy states *“development proposals will be expected to contribute to the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend. This will be achieved by:*

*5. Maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development.*

*9. safeguarding, protecting and enhancing nature and conservation sites of international, national and local importance;*



- 7.8 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. It states that:

*'In order to reinforce local distinctiveness all development should:*

*(i) Add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features giving appropriate weight to the preservation of a heritage asset based on its significance in accordance with Policy DM5 where applicable;'*

- 7.9 Policy DM5 of the Development Management Document states that all development proposals that affect a heritage asset will be required to demonstrate the proposal will continue to conserve and enhance its historic and architectural character, setting and townscape value. In relation to development within Conservation Areas the policy states: *"Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal and will be resisted where there is no clear and convincing justification for this."* The site is located in the Milton Conservation Area and therefore special attention must be paid to the desirability of preserving or enhancing the character or appearance of the conservation area as stated in Policy DM5. *The NPPF states that: "When considering the impact of a proposed development on the significance of a designated heritage asset, the Local Planning Authority should take account of the desirability of new development making a positive contribution to local character and distinctiveness (Paragraph 192 2018)".*
- 7.10 In relation to development with conservation areas Paragraph 302 of the Design and Townscape Guide states; *'New buildings, extensions and alterations visible from public places should positively enhance the character and appearance of the Conservation Area.'*
- 7.11 In relation to Article 4 Directions Paragraph 308 of the Design and Townscape Guide states: *'There are a number of key building features of particular significance to the character of Conservation Areas and it is important that these are preserved and respected. Where necessary the Council has introduced Article 4 Directions to give greater protection to these features.'*
- 7.12 Paragraph 309 of the Design and Townscape Guide states: *"Traditional windows, especially timber sliding sashes, are vital for the character of Conservation Areas. Original windows can be given a new lease of life by overhauling them and installing draft proofing brushes in the sash rebates. Secondary glazing is also acceptable if it is unobtrusive".* Paragraph 310 continues: *If replacement or reinstatement is necessary, purpose-made windows to match the original materials and external appearance should normally be installed. For most buildings, double glazing within timber frames is acceptable if the external appearance is unaltered and the metal frames and seals are not visible. Non-traditional materials, especially plastic, cannot match traditional timber windows and are normally not acceptable.*

*To safeguard the building's character, new windows should normally:*

- Be of good quality softwood or hardwood from renewable sources;*

- *Be painted (not stained);*
- *Copy the original pattern of glazing bars and horns, if any - glazing bars should be built into the window and not stuck on to the glass;*
- *Use the original method of opening;*
- *Retain or restore the dimensions of the original window opening and the position of the frame within the opening – most openings are well-proportioned and most frames in older brick buildings are well set back from the face of the wall to give weather-protection, shadow and character;*
- *Give adequate ventilation;*
- *Retain decorative surrounds - they give elegance and distinction to many Victorian and Edwardian buildings.*

- 7.13 The Milton Conservation Area has generally retained a good proportion of its original features and in Parkgate and Park Road this includes timber sash windows. The front windows are considered to be a key part of the character of the conservation area and are therefore protected from inappropriate replacements under the Article 4 Direction.
- 7.14 Section 10 of the character Appraisal (Problems and Pressures) states, “*UPVC windows and doors, modern timber casements, picture windows and louvres are present in a number of properties and where there is a concentration of these the impact on the historic character of the area is severe. Unfortunately many of these alterations are historic and the Council cannot prevent exact like for like replacements although the reinstatement of original styles and materials is always encouraged. However, the alterations of windows which front the highway is controlled by the Milton Article 4 Direction and where changes are proposed to the design or materials of already inappropriate windows the reinstatement of the original design and materials will be sought. Where original windows remain, the Article 4 Direction will be used to protect them... The reinstatement of traditional windows where they have been lost can have a hugely positive impact on the quality and attractiveness of the conservation area*”.
- 7.15 The proposal seeks permission for the replacement white UPVC framed windows. No.18 has recently replaced all the windows within the front turret feature with new UPVC windows. Prior to this the property had its white painted timber framed windows with top hung fanlights with stained glass. The square bay above the porch is timber framed with casement windows with stained glass within the top hung fanlights. The windows on the street facing level at first floor level are timber framed with alternate opening casement windows and stained glass detailing lazing for the top hung fanlights. The windows at ground floor level are set within different window surrounds to those at first floor but are timber framed, alternate opening casement windows with stained glass detailing within the top hung fanlights. The timber windows are considered to make a positive contribution to the character of the conservation area.
- 7.16 The application form states that the new windows installed in 2018. They are very visible from the public realm and located within a prominent corner turret feature on the dwelling. Although the replacement windows appear to be similar in design, differences are apparent in their design detailing as well the different look of the materials. In particular the thickness of the windows frames which appear thinner than the windows that were replaced, as shown in the 2014 photographs. This is clearly evident in the narrow transom. The fanlights in the replacement windows are clear glazed in direct contrast with the former fanlight windows and the fanlights in the street facing elevation of the building at both ground and first floor levels which all appear to be opaque stained glass. The joins within the plastic frame were evident at

the corners, which would normally be concealed behind paintwork. The black lines of the sealed glazing units on the inside of the UPVC frames are also evident. It is considered that these differences have contributed to an erosion of historic character. Whilst UPVC windows having been installed at ground floor level in this building, they are located to the rear elevation of the property aside from two small sidelight windows to a blank bay like projection located towards the rear of the side elevation hidden behind the porch and are not visible from the public realm. In contrast to the proposed windows are located within a highly prominent feature on the building clearly visible from the public realm. It is therefore considered that the proposal is contrary to the objectives of the Milton Conservation Area Appraisal, and that the new windows have not preserved or enhanced the character of the application property or the wider conservation area and so this application cannot be supported.

- 7.17 The applicant submitted a supporting document which states “our client has gathered some evidence of other properties in the vicinity with the same proposed UPVC windows in the same conservation area which we would like to witness as part of our application.” The document lists the following properties as examples where UPVC windows have been installed:

*1-5 Park Road*  
*12 Park Road*  
*14 Park Road*  
*84a Park Road*  
*96 Park Road*  
*100 Park Road*  
*Edith Ville, Park Terrace*  
*Hereford House, Park Terrace*  
*3 Park Terrace*  
*4 Park Terrace*  
*12 Park Terrace*  
*14 Park Terrace*  
*13 Avenue Road*  
*28 Avenue Road*  
*32 Avenue Road*

- 7.18 Having checked the planning history of the cited examples, there are no historic applications for the replacement of existing windows with UPVC at these properties. It is noted that at No.32 Avenue Road, Planning permission Ref: 17/00448/FULH – “Replace seven windows to front elevation at ground and first floor” permission was granted to replace aluminium casement window with timber windows. In any event alleged historic examples do not justify or mitigate the development when it is unacceptable in its own right.
- 7.19 The application is therefore found to be contrary to the policies and guidance outlined above which seeks to preserve and enhance the historic character of the conservation area unless the harm to the heritage asset is outweighed by the public benefit. There are no public benefits to justify the retention of these windows in this case and this application fails to overcome the previous reason for refusal.
- 7.20 The development is therefore considered to be unacceptable and contrary to policy compliant in the above regards.

**Community Infrastructure Levy (CIL) Charging Schedule.**

- 7.21 The proposal for the existing property equates to less than 100sqm of new floor space, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

## **8 Conclusion**

- 8.1 Having taken all material planning considerations into account, it is considered that the development is unacceptable in terms of its impact on the character of the existing property and that of the streetscene and that it would fail to preserve or enhance the character of the Milton Conservation Area. The proposal fails to overcome the previous reason for refusal and the proposal therefore conflicts with the development plan policies and guidance set out above and is recommended for refusal.

## **9 Recommendation**

**It is recommended that the application be REFUSED for the following reason:**

- 01 The windows, by reason of their detailed design and materials are harmful to the character and appearance of the individual property and the street scene in the wider Milton Conservation Area of which it forms a part. Whilst this harm is less than substantial, the public benefits do not outweigh the harm. The development is therefore unacceptable and contrary to the National Planning Policy Framework; Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015); and advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Milton Conservation Area Appraisal 2010.**

**The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development, should the applicant wish to exercise this option in accordance with the Council's preapplication advice service.**

### **Informatives**

- 01 The proposal for the existing property equates to less than 100sqm of new floor space, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.**
- 02 The applicant is advised that an installation of traditional timber windows which could include slim line double glazing would be considered more acceptable but these will require a revised planning application. If you require further**

**advice regarding this please contact the Council's Conservation Officer on 01702 215330.**



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## Appeal Decision

Site visit made on 1 June 2021

**By Terrence Kemmann-Lane JP DipTP FRTPI MCMi**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 June 2021**

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**Appeal Ref: APP/D1590/W/20/3261209 18 Parkgate, Westcliff-on-Sea, SS0 7NY**

- 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 Dr Alistair England against the decision of the Southend-on-Sea Borough Council.
  - The application Ref. 20/00393/FUL dated 27 May 2020, was refused by notice dated 27 July 2020.
  - The development proposed is replace single glazed timber windows with double glazed uPVC windows to first floor flat (retrospective).
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The application form stated that the development was 'replacement windows retrospective'. However, the council revised this description to read 'Replace single glazed timber windows with double glazed uPVC windows to first floor flat (retrospective)'. I note that this description has been adopted on the appeal form. Since this is a more accurate way to describe the proposed development in this appeal, I have used it in the heading above.

### Main Issue

3. The main issue in the case is the effect of the replacement windows, in respect of their design and materials, on the character and appearance of the appeal property and the street scene and the wider Milton Conservation Area of which it forms a part.

## Reasons

4. The appeal concerns the first floor flat of a detached two storey house located on the western side of Park Road. The site is within the Milton Conservation Area. The Milton Conservation Area Character Appraisal notes that *"16-18 Parkgate is a large detached two storey house built slightly later than its neighbours. Red brick to ground floor with render above and a hipped red clay tile roof with prominent chimneys. Corner turret with steep roof provides a mini landmark to the street. Two storey canted bay with boarded gabled top forms a secondary feature on the frontage. Square bay to first floor side supported by decorative columns providing open porch to what appears to be the main entrance. Additional simpler entrance porch to the front. Modern replica timber casement windows with stained glass detail to fanlight"*.

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5. Milton Conservation Area is covered by an Article 4 Direction which seeks to protect this character. The Direction removes householder permitted development rights, including in relation to the alteration of any window which fronts a highway.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan policies that are most relevant to the issues in this case are Core Strategy Document (2007) Policies CP4, and Policies DM1, DM3 and DM5 of the Development Management Document (2015), and advice contained within the Southend Design and Townscape Guide (2009).
7. In brief, Policy CP4, at item 7 provides for the safeguarding and enhancing of the historic environment, heritage and archaeological assets, including listed buildings, conservation areas and ancient monuments. Policy DM1 supports Good design including, at item (ii), providing appropriate detailing that contributes to and enhances the distinctiveness of place. Policy DM3, at item 5, requires that alterations and additions to a building will be expected to make a positive contribution to the character of the original building and surrounding area. Policy DM5 sets out detailed policies on Southend-on-Sea's historic environment. Item 2 of this policy is particularly relevant, including the statement that *"Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal, and will be resisted where there is no clear and convincing justification for this"*.
8. These policies are in accord with the policies in the National Planning Policy Framework (the Framework). The appeal proposal must be considered in the context of Framework section 16, which concerns 'Conserving and enhancing the historic environment'. The first paragraph (184) sets the direction of policy. It includes *"These assets (which include sites and buildings of local historic value to those of the highest significance) are an irreplaceable resource, and should be conserved in a manner appropriate to their significance..."*. It gives guidance on levels of harm and how this should be weighed in paragraph 196, which states: *"Where a development proposal will lead to less than substantial harm (rather than substantial harm which signifies a greater degree of 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”.*

9. The appellant’s case can be summarised as the need to replace single glazed rotten timber windows, that resulted in excessive damp and mould in the flat; the replacement windows are double glazed and are energy efficient and easier to maintain than wooden windows; there is a lack of companies that repair wooden windows, and their upkeep and replacement is prohibitively expensive; the definition of ‘fronts the highway’ is questioned; the windows do not detract from the character and look of the building; and a substantial number of examples of uPVC windows within the conservation area are cited, including the downstairs flat that has uPVC windows that were granted planning permission.
10. At my site visit I went to see many of the examples of uPVC windows that are referred to. Generally it was not necessary for me to be careful about looking at the house numbering, because these examples were easy to pick out. Whilst I fully recognise the indignation that the appellant feels, in my judgement these examples for the most part fully demonstrate the harm to the character and appearance of the conservation area that results from inappropriate replacement windows.
11. Turning to the windows the subject of the appeal, they are clearly visible, for instance when looking across the entrance to Parkgate from the south. I appreciate that this is looking against the flow of traffic in the one-way Park Road, but such detail is much more apparent on foot than in a vehicle. They are certainly windows that ‘front a highway’. I understand the advantages of modern materials, and of uPVC windows in particular, but living in an attractive historic conservation area, in a building that helps to contribute to its qualities, will often bring additional expense and sometimes a little inconvenience.
12. The council’s Design and Townscape Guide provides good advice about dealing with traditional timber windows in relation to the character of conservation areas. Paragraph 309, which is quoted in the officer’s report, suggests ways in which original windows can be overhauled, with draft proofing and secondary glazing. The replacement windows subject of this appeal conflict with the guidance and policy set out. They are prominent in the turret feature, and stand out as incongruous because of the different character of plastic to painted timber, and the difference in profiling and detailing and the appearance of the glazing.
13. The council has given an explanation for some of the windows that are drawn to my attention, including its attitude to those windows at ground floor level in this building, taking account that they are located at the rear elevation of the property, aside from two small sidelight windows to a blank bay-like projection located towards the rear. This, it appears to me, demonstrates that the council takes a considered and sensible approach to these matters. It is, of course, regrettable that a more proactive lookout for unauthorised and inappropriate replacements has not been achieved, but there are probably reasons for this that have nothing to do with my consideration of this appeal. The Article 4 direction, in place since 1989, would have been well publicised and certainly should be revealed on any property searches since then.

Conclusion



14. National planning policy, as well as that in the development plan for the borough, places considerable weight on avoiding harm to conservation areas. In addition, there is a general duty placed on a planning decision maker, including myself, under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, with respect to any buildings or other land in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
15. In drawing a conclusion on this appeal, my judgement is that the subject windows bring 'less than substantial harm' to the character and appearance of the appeal property and the street scene and the Milton Conservation Area due to their design and materials. There is nothing put before me, in terms of public benefits of the proposal, that overrides this harm.
16. I have taken account of all other matters raised, including the fact that some of the appellant's messages to the council have gone unanswered, but these are not considerations for me. In view of my conclusion, reached on the basis of the considerations that I have set out, I dismiss the appeal.

*Terrence Kemmann-Lane*

INSPECTOR

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