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# Appeal Decision

Site visit made on 7 April 2014

**by S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 22 April 2014**

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**Appeal Ref: APP/Q1445/A/14/2212562**

**Twisted Lemon, 41 Middle Street, Brighton, East Sussex BN1 1AL**

- 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 Martin Friel against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02678, dated 5 August 2013, was refused by notice dated 28 October 2013.
  - The development proposed is replacement of existing timber windows and rooflight with uPVC windows and rooflight (retrospective).
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## Decision

1. I dismiss the appeal.

## Reasons

2. The building is located within the Old Town Conservation Area and the main issue in this appeal is the effect of the windows, which have been installed, on the character and appearance of that area. Local Plan Policies QD14 and HE6 seek alterations that are well designed and detailed in relation to the property and the surrounding area, and preserve or enhance the character or appearance of the conservation area, among other things. This last requirement is in line with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The Council has also referred to the Supplementary Planning Document on architectural features which makes clear that windows are a crucial element of historic streetscapes and their historic significance should be retained.
3. The Government launched web based Planning Practice Guidance on 6 March 2014, after the receipt of representations to this appeal. The content of the Guidance has been considered, but in light of the facts of this case that content does not alter the conclusions reached.
4. The building is not listed, but is clearly of historic interest, and the Officer's Report suggests that it is reminiscent of a fishermen's cottage. Within the Old Town area it is an interesting building that harks back to the earlier history of the town and it also retains an interesting architectural and townscape presence by reason of its partly hidden position, allowing glimpses between the frontage buildings. In the terms of section 12 of the National Planning Policy Framework, the building should be considered as a heritage asset, albeit not a

designated one, and paragraph 131 states the need to take account of the desirability of sustaining and enhancing the significance of heritage assets. With regard to the conservation area, this is a designated heritage asset and paragraph 132 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

5. Whilst it is often the case that the effect on the conservation area is with respect to the impact on the public realm, the Council are reasonable here to include those areas accessible to patrons of the business, the rear courtyard and inside. In any event, those areas are part of the heritage asset even if not visible from Middle Street as a public highway in the conservation area.
6. The windows as installed use a thick profile and in some cases, a non-original opening arrangement that does not sit well with the architectural composition of the building, and erodes its historical interest. To the front, where the effect on the conservation area is particularly acute, the style of framing and opening, being chunky and with the overlapping casement rather than being set within a frame, detracts from the cobble walls and lessens the historic interest of the building and its contribution to the conservation area. The wood grain finish to the rear windows does not overcome the failing of the inappropriate framing style and size, rather it draws attention to the items, as wood grain would rarely show through in painted joinery of the age denoted by this building.
7. The effect on the heritage asset of the building is unacceptable and contrary to the aims of the Framework, the Development Plan policies referred to and the guidance in the Supplementary Planning Document. The effect on the designated heritage asset of the conservation area is similarly unacceptable, and thus fails the statutory test in the 1990 Act.
8. The level of harm to the conservation area is nevertheless considered to be 'less than substantial', a distinction required between paragraphs 133 and 134 of the National Planning Policy Framework. Paragraph 134 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The Guidance contains advice on considering the levels of harm and optimum use.
9. The appellant has put forward an explanation of the situation, the need for replacement due to deterioration and to enhance the security of the premises. This latter must be a concern due to the somewhat hidden nature of the building. The cost of timber windows was also mentioned. However, the need for maintenance and periodic repairs or even replacement is not an unusual occurrence in a building of this age, and its historic interest and architectural detailing indicate that any replacement should be carried out sympathetically.
10. In this case the balance lies in the harm to the conservation area by reason of the replacement windows not being outweighed by the public benefits, as opposed to benefits to the business. Paragraph 134 is specific as to the benefits to be weighed being public. Whilst the works may well assist in keeping the premises in a viable use, the Guidance makes clear that it is important that any use is viable, not just for the owner, but also the future conservation of the asset. In this case the windows used do not aid the future conservation of the Old Town Conservation Area.

11. There is harm to the building as a heritage asset, and the harm to the character and appearance of the conservation area is not outweighed by the benefits, as sought by the Framework. As a result, the development is unjustified and is unacceptable in its effect. For the reasons given above it is concluded that the appeal should be dismissed.

*S J Papworth*

INSPECTOR