



Appeal Decision

Site visit made on 6 February 2009

by **Paul V Morris** DipTP MRTPI

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

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Decision date:
17 February 2009

Appeal Ref: APP/F1040/C/08/2088683

9 Castle Mills, Castle Street, Melbourne DE73 8BF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Derek Hawkins against an enforcement notice issued by South Derbyshire District Council.
- The Council's reference is E/2008/00117.
- The notice was issued on 17 September 2008.
- The breach of planning control as alleged in the notice is, without planning permission, the replacement of three timber framed windows with uPVC windows on the front elevation of the ground floor flat, which is located within Melbourne Conservation Area.
- The requirements of the notice are to:
 - (1) permanently remove the three uPVC windows from the front elevation of the flat;
 - (2) replace the timber windows to be designed as a direct copy of those in the front elevation of the remaining flats in the block in respect of design, materials and dimensions.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice.

Reasons

2. An appeal on ground (c) claims that there has not been a breach of planning control.
3. The appellant has given a full account of his contacts with the Council concerning the replacement windows, and the various opinions that have been offered about the question of whether the matter constitutes development both in relation to his own property, and in relation to other properties in Castle Mills and nearby in the centre of Melbourne. Whilst I have noted this account, I can only determine the appeal on the basis of the facts and the legal position as they apply to this case.
4. The Council was correct in the information it gave to the appellant, by letter dated 14 July 2008, that there are no permitted development rights for the replacement windows. Whilst the Town and Country Planning (General Permitted Development) Order 1995 gives rights for works, as defined in Schedule 2 Part 1 of the Order, to be carried out to a dwellinghouse, Article 1

- of the Order says that a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building.
5. The Town and Country Planning Act 1990, Section 55, sets out the meaning of development, and Section 57 of the Act says that planning permission is required for development. However, Section 55(2)(a)(ii) provides that the carrying out of operations for the maintenance, improvement or other alteration of any building shall not be taken for the purposes of the Act to involve development of the land if the operations do not materially affect the external appearance of the building.
 6. The Council has drawn attention to the case of Burroughs Day v Bristol CC [1996] 19 E.G.126 and I acknowledge that this judgement gives guidance on the question of 'material effect' which applies to the external appearance, and not the exterior, of the building. The phrase was taken to imply that the change in appearance must be visible from a number of vantage points; visibility from the air or from a single building, for instance, would not be sufficient. The change in external appearance had to be judged for its materiality in relation to the building as a whole, and not by reference to a part of the building taken in isolation.
 7. In this case, the three windows subject of the enforcement notice are side-by-side on the front elevation of the building, at ground floor level beside the footway. They differ markedly in design and material from the significant number of matching timber windows on the rest of this elevation at both ground and first floor levels. The effect on the appearance of the building is noticeable from a variety of vantage points on Castle Street, which is a main street in the centre of Melbourne, and from the properties on the other side of the street. I find, therefore, as a matter of fact and degree, that the replacement of the windows has materially affected the external appearance of the building.
 8. The appellant has carried out works which materially affect the external appearance of the building. They do not fall within the exception set out in Section 55(2)(a)(ii) and the works therefore amount to development within the meaning of Section 55. Planning permission has not been granted as required by Section 57, and there has been a breach of planning control.
 9. The appeal on ground (c) therefore fails.

Paul V Morris

Inspector