Purpose

This report concerns the unauthorised installation of a replacement uPVC window to a Building of Townscape Merit.

Recommendations

To resolve that the Director of Growth and the London Borough of Merton (for Shared Legal Service) are authorised to:

1. Issue an Enforcement Notice (s) under S. 172 of the Town and Country Planning Act 1990 (as amended), subject to any necessary legal amendments being made for which authority is delegated to the Head of Planning and Regeneration in consultation with officers from the London Borough of Merton (for Shared Legal Service SLLP),

2. withdraw and to vary such notice (s) under S. 173A, and

3. In the event of non-compliance, take action (s) by way of prosecution under S. 179, S.187A and/or direct action under S. 178 of the Act in respect of the breach of planning control/or for injunctive relief under S.187B.

Site and surroundings

1. The subject site is located on the south side of St James Road and comprises a large semi detached building in use as flats. The building itself is a building of Townscape Merit (locally listed) and is located within the St. Andrews Square Conservation Area. This report concerns the ground floor flat known as 17A.

Relevant planning history

2. 15/16380/FUL- retention of replacement front bay window at upper ground floor level with mock-timber UPVC sash windows. Refused on 28/08/2015 and appeal dismissed on 07/04/2016.

Breach of planning control

3. In the summer of 2014 the Council received a complaint that the front bay windows at upper ground floor level had been changed from timber to uPVC. A photo of the original windows are presented at Appendix 1 and a photo of the replacement windows are presented at Appendix 2.
4. In an attempt to remedy the matter the owner instructed a company to replace the unauthorised windows with a replica of the original, in UPVC, however, officers did not consider the replacement window to be an acceptable replica of the original windows. Photos of this window is presented at Appendix 3.

5. The owner subsequently applied to retain these windows which was refused on 25 August 2015. An appeal against the refusal was lodged and dismissed on 7 April 2016.

6. The owner has applied for planning permission to replace the current window with timber framed windows to better replicate the original. The application was submitted on 29 June 2018 and at the time of writing this report the application is still pending due to outstanding information required from the applicant.

7. Officers have worked with the owner to resolve this use and recognised that she has made attempts to remedy and regularise the breach, however, officers are concerned that the case has been ongoing for nearly 4 years and therefore the windows are on the brink of becoming immune from enforcement action and once immune the owner cannot be compelled to change the windows with an appropriate replacement. Authority is therefore being sought to pursue the breach of planning control, in the event the owner does not replace the windows by 24 November 2018.

Planning considerations

8. The development is assessed against policies of the current development plan which consists of the 2018 National Planning Policy Framework, London Plan July 2016 (consolidated with alterations since 2011) and the Council’s adopted LDF Core strategy April 2012. The main considerations of the development are impact on the Conservation Area and Impact on character and appearance of the host building.

Impact on Conservation Area and host building


10. In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 when considering any planning application that affects a Conservation Area a local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of that area. These requirements are echoed in Policies CS 8 and
DM 12 of the LDF Core Strategy, where amongst other things, they require
development to "preserve or enhance the existing heritage assets of the
Borough..."

11. Paragraph 193 of the NPPF states when considering the impact of a proposed
development on the significance of a designated heritage asset (in this case the
St Andrews Square Conservation Area), great weight should be given to the
asset's conservation (and the more important the asset, the greater the weight
should be). This is irrespective of whether any potential harm amounts to
substantial harm, total loss or less than substantial harm to its significance. Any
harm to, or loss of, the significance of a designated heritage asset (from its
alteration or destruction, or from development within its setting), should require
clear and convincing justification.

12. Policy DM12 of the Core Strategy stresses that the Council will "respect
features of local importance and special interest through the consideration of
form, scale, layout, and detailed designs of a site, area or streetscape."

13. The application site falls within the St Andrew's Square Conservation Area and
a Listed Grade II building stands nearby in the vicinity of Surbiton Town Centre.
St Andrew's Square is an area of Victorian housing dating from the 1860s-
1880s, in Gothic and Italianate styles, with strong historic assets found in the
mix of historic houses in terms of fenestrations, cornices and timber windows.
This significance is enhanced by many of the buildings in the Conservation Area
retaining their original features. Most windows in the front are timber double
hung sliding sash windows with large glass panes. These windows fall into 2-
over-2 divisions (i.e. with a central vertical mullion).

14. The subject site is part of a large Victorian dwelling house that consists of two
semi-detached parts on the South side of St James Road at its end close to
Surbiton Centre. The building has basements and three principal floors above
this in the main front elevation. The windows stand in a projecting, 3 sided and
splayed bay. There are narrow bays at the side and there is a central broad
window facing the front. This is six-over-six with a broad central bay and two
narrow ones on each side. These windows form a matching pair between the
neighbouring houses and thus a sense of symmetry is important in the
architectural appreciation of the pair

15. Officers recognise that the windows in question were installed in an attempt to
remedy the harm being caused by the previous ones, however, the current
windows, despite the owners intentions, do not follow the pattern of the windows
in the pair of semi-detached properties at 17-19 St James Road, that have the same architectural details and appearance.

16. The Inspector who determined the appeal to retain the current windows stated ‘...the windows attempt to replicate the profile and detail of the original timber sash window, however, the glazing bars are thicker and starker than timber. The detailing on the sash horn is not as fine as their timber equivalents and the runners within which the upper sash slides are deeper and more obvious from the street.' The Inspector further adds ‘the appeal windows therefore have a jarring and overly dominant appearance with the host property. They detract from the symmetry that previously existed between Nos 17 and 19 as a pair of semi-detached properties and negatively affect the character and appearance of Nos 17 to 23 as Buildings of Townscape Merit. They result in harm to the significance of the Conservation Area through the loss of traditional features. The harm is less than substantial in terms of the National Planning Policy Framework, but there is still a need for the public benefits of the proposal to be weighed against that harm.’

17. It is not disputed that the previous windows may have needed repair or even replacing for better sound insulation or environmental performance. The site is located near a busy road and therefore it is plausible that noise from the road is a concern, however, there are other means available to address these concerns without the loss of the timber windows.

18. There are other examples of uPVC windows within the conservation area, many that do not have permission but have become immune due to the ’4 year rule’, however, they are exceptions within the Conservation Area and serve to highlight the harm caused to the Conservation Area and cannot be used to justify retention of the windows under consideration here.

19. The windows, owing to design and materials have led to the loss of traditional features and the symmetry that existing between No.s 17-19. The windows have harmed the significance of the St. Andrews Square Conservation Area. The development is therefore contrary to policies CS8 and DM12 of the Kingston Local Development Framework Core Strategy and policy 7.8 of the London Plan and Paragraph xx of the National Planning Policy Framework.

Requirements of the enforcement notice(s)

20. Remove the bay windows and frames at upper ground floor front
21. Replace the windows and frames so that they match the profile, design and materials of the pre-existing windows as shown in the attached photographs.

**Timescale for compliance**

22. Section 173(9) of the 1990 Town and Country Planning Act (as amended) requires that an enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. Ground (g), as set out in section 174(2) of the aforementioned Act, provides that an appeal may be made if it is considered that any period specified “falls short of what should reasonably be allowed”.

23. In determining a suitable compliance period, consideration must therefore be given to all factors such as length of occupation tenancies, secure the services of the builder to carry out works and build time whilst weighing this up against the ongoing impact of the development on the character and appearance of the surrounding area.

24. A compliance period of 5 months is recommended.

**Reasons for issuing the notice**

25. The operational development has occurred within the last 4 years.

26. Planning conditions would not overcome planning objections and render the development acceptable.

27. The windows owing to the design and materials has led to the loss of traditional features and the symmetry that existing between No.s 17-19. The windows have harmed the significance of the St. Andrews Square Conservation Area. The development is therefore contrary to policies CS8 and DM12 of the Kingston Local Development Framework Core Strategy and policy 7.8 of the London Plan and Paragraph xx of the National Planning Policy Framework.

**Background papers held by Harsha Bhundia**

**Author of report** - Harsha Bhundia - Planning Enforcement Officer, harsha.bhundia@kingston.gov.uk, 02085474697
Appendix 1- Original windows

Appendix 2- windows installed circa August 2014
Appendix 3- Present day windows