
Appeal Decision

Site visit made on 27 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 11 October 2016

Appeal Ref: APP/X5990/C/16/3147855

Land at Flat 12, Stone House, 9 Weymouth Street, London W1W 6DB

- 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 Irfahn Jetha against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 8 March 2016.
 - The breach of planning control as alleged in the notice is, within the last four years and without planning permission, unauthorised development consisting of the removal of a metal Crittall window to the rear elevation of the Property at third floor level and its replacement with uPVC-framed glazed double doors, as outlined in red on the Photograph A attached to the notice.
 - The requirements of the notice are:
 - a) Remove the unauthorised uPVC-framed glazed double doors installed to the rear (Hallam Mews) elevation of the Property at third floor level (as outlined in red on the Photograph A attached to the notice); and
 - b) Reinstall a white-painted, single-glazed metal Crittall window, the size, layout, proportions and design of which must match in facsimile the window previously in situ, as identified by the blue arrow and blue lines on the photographs B and C attached to the notice; and which must also match the windows located directly above and below the uPVC-framed glazed double doors, an example of which is shown in Photograph D attached to the notice; and
 - c) In complying with Requirement (2) of the notice, ensure that the window opening surrounding the reinstated metal Crittall window is reduced in size so that it matches in facsimile the dimensions of the brick-built window opening previously in situ and the window openings located directly above and below the unauthorised uPVC-framed glazed double doors to the rear elevation of the Property; and
 - d) In complying with Requirement (3) of the notice, ensure that the installation of any replacement brickwork surrounding the metal Crittall window matches the surrounding existing brick type and matches the existing coursing in situ to the rear elevation of the building.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected.

Procedural Matters

1. The requirements of the notice, of which there are four, are identified sequentially as a), b), c) and d). However, the text within requirements c) and d) refers to the preceding requirements as Requirement (2) and Requirement (3) respectively. This is clearly a typographical error and does not affect the
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meaning of the notice or the appellant's ability to understand what is required of him. I shall therefore correct this error. I am satisfied that correcting the notice in this way would not cause injustice to either the appellant or the local planning authority.

The appeal on ground (c)

2. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The appellant's case in this respect is that the uPVC-framed glazed double doors represent, at the very most, a minor and significant alteration and as such do not constitute development for the purposes of the Town and Country Planning Act 1990 (the 1990 Act).
3. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.
4. However, Section 55(2) (a) (ii) indicates that the carrying out of the maintenance, improvement or other alteration of any building or works that do not materially affect the external appearance of the building shall not be taken for the purposes of the 1990 Act to involve the development of land. The courts have held in this respect that the test relates to a material change in the 'external appearance' of the building as a whole and not just the exterior¹. The implication, therefore, is that changes to the external appearance of a building must be visible from a number of normal vantage points if they are to constitute development for the purposes of Section 55(1) of the 1990 Act.
5. Stone House is a large residential mansion block with primary elevations facing onto Weymouth Street and Hallam Street, with secondary elevations facing onto Hallam Mews. The principal elevations onto Weymouth Street and Hallam Street are well ordered with a consistent use of details and materials. The size, shape and design of the window openings vary but are consistent in the use of framing and their structured hierarchy throughout the elevation. As a consequence, the principal elevations of Stone House display a distinctive and cohesive appearance based upon the disciplined and rigid adherence to order and detailing.
6. The secondary elevations to Hallam Mews are, as may be expected, less well detailed and also feature a number of utilitarian features, such as flues and pipe work. They do, however, exhibit the same discipline of order and detailing in terms of the vertical alignment of openings and the consistent use of metal framed windows. In this respect, these secondary elevations complement the more formal and extravagant detailing of the principal elevations.
7. When viewed from Hallam Mews, the uPVC-framed glazed double doors are partly obscured by the balconies on this elevation. This is particularly so when viewed from the initial section of Hallam Mews where it joins with Hallam Street from where, due to the narrowness of the mews at this point, views of the uPVC-framed glazed double doors are largely obscured by the bases of the balconies. However, beyond this initial narrow section, Hallam Mews then opens out and from this wider section clear views of the uPVC-framed glazed

¹ *Burroughs Day v Bristol City Council* [1996] EGCS 126

double doors are obtained. In this view, the disparity in appearance of the uPVC-framed glazed double doors with the metal framed windows, in terms of the heavy white painted frames and greater overall width, is very apparent.

8. This disparity is even more apparent in views from Hallam Street. I recognise that the uPVC-framed glazed double doors are set some 9 metres back from the principal elevation and are only visible from a relatively short section of Hallam Street. Nonetheless, when viewed from Hallam Street the greater width and heavy white-painted frame of the uPVC-framed glazed double doors appear as a stark contrast to the narrow metal framing of the other openings in this elevation. Moreover, even from this short section of the road, the disparity in the Hallam Mews elevation resulting from the replacement of the previously fitted Crittall metal windows with the uPVC-framed glazed double doors appears discordant in the context of the disciplined order and hierarchy of the principal elevation facing onto Hallam Street.
9. Having regard to the above, although the uPVC-framed glazed double doors are a change to just one part of the building, it is a change that is visible from a number of public vantage points outside of the site. Moreover, the effect of that change is to disrupt and upset the distinctive and cohesive appearance of the whole building, an appearance that is based upon the disciplined and rigid adherence to order and detailing. The effect of the change therefore extends beyond the immediate surroundings on the Hallam Mews elevation: it affects the way in which other elevations of the building are perceived. Consequently, the replacement of the previous Crittall metal windows with the uPVC-framed glazed double doors constitutes a material change in the external appearance of the building as a whole. As such, the replacement of the metal Crittall window with uPVC-framed glazed double doors does not benefit from the exemption provided by Section 55(2) (a) (ii) and therefore does constitute development for the purposes of Section 55(1) of the 1990 Act.
10. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

11. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
 - the effect of the development on the character and appearance of the host building, and
 - whether the development preserves or enhances the character or appearance of the Harley Street Conservation Area.

Character and appearance of the host building

12. Stone House is identified as a building of merit in the Harley Street Conservation Area Audit, and is therefore considered to be of special merit and of local significance. The character and appearance of Stone House derives in part from a rigidly structured hierarchy of openings set within the context of the consistent use of details and materials. As a consequence, and as set out above, the principal elevations of Stone House display a distinctive and cohesive appearance based upon the disciplined and rigid adherence to order

and detailing. This same discipline of form and detailing is carried over, albeit in a much simplified way, to the secondary elevations in Hallam Mews.

13. The replacement of the previously fitted Crittall metal windows with the uPVC-framed glazed double doors introduces a discordant feature into the otherwise well-ordered elevations of the building. The effect of that change is to disrupt and upset the distinctive and cohesive appearance of the building as a whole. This detracts from the very qualities, in terms of the rigidly structured hierarchy of openings and the consistent use of materials, that define the character and appearance of Stone House and therefore harms that character and appearance.

Character and appearance of the Harley Street Conservation Area

14. The character and appearance of the Harley Street Conservation Area is defined, in part, by the scale and architectural quality of the buildings within it, many of which are statutorily listed. In the vicinity of the appeal site, the buildings are substantial in scale with large residential mansion blocks and buildings in institutional use. These buildings typically feature a well-defined architectural form and a high level of detail. The principal elevations of these buildings front onto streets forming a grid-pattern where, by reason of their scale, they enclose the street and provide much of the visual interest.
15. The replacement of the previously fitted metal Crittall window with uPVC-framed glazed double doors harms the character and appearance of Stone House. Although not itself statutorily listed, Stone House is typical of the buildings in this part of the conservation area and is one of the buildings that helps define the character and appearance of the wider conservation area. The harm caused to character and appearance of Stone House in turn harms the character and appearance of the conservation area as a whole.
16. Although the development harms the character and appearance of the Harley Street Conservation Area, in my view that harm is less than substantial. In accordance with paragraph 134 of the National Planning Policy Framework (Framework), it is therefore necessary to weigh that harm against any public benefit of the development. In that context, the appellant has not identified any benefits arising from the development that would qualify as public benefits. Consequently, I am not aware of any public benefit arising from the development that would outweigh the harm caused to the character and appearance of this conservation area.

Conclusion on the ground (a) appeal.

17. Having regard to the above, I conclude that the replacement of the previously fitted metal Crittall window with uPVC-framed glazed double doors harms the character and appearance of Stone House and thereby fails to preserve or enhance the character and appearance of the Harley Street Conservation Area. I therefore conclude that this development is contrary to Policies 7.4, 7.6 and 7.8 of The London Plan as well as Policies S25 and S26 of Westminster's City Plan: Strategic Policies and Policies DES1, DES5 and DES9 of the City of Westminster Unitary Development Plan (UDP). These policies indicate, amongst other things, that development should use high quality materials appropriate to the building, and be sympathetic to the form and architectural detail of heritage assets. The development also fails to accord with the importance attached to good design in the Framework.

18. I am mindful that Policy DES5 of the UDP does indicate that permission will generally be granted for alterations that do not visually dominate the host building. Although I have concluded that the replacement of the previously fitted metal Crittall window with uPVC-framed glazed double doors harms the character and appearance of Stone House, I do not consider that it would be reasonable to suggest that this alteration dominates that building. However, Policy DES5 also requires that the design of alterations should reflect the detail of the host building and make use of external materials that are consistent with that building. I therefore conclude that, when read as a whole, the development does not accord with Policy DES5.
19. The appellant has not identified any considerations that would outweigh the harm caused to the character and appearance of the host building and the Harley Street Conservation Area. I therefore conclude that planning permission ought not to be granted for this development. Accordingly, the appeal on ground (a) fails.

The appeal on ground (g)

20. The ground of appeal is that the period for compliance specified in the notice falls short of what should be reasonably required. The appellant considers that a period of six months would be more appropriate.
21. The essence of the appellant's case on this ground is that the lead-in time for ordering of a replacement window would take some two to three weeks and that the manufacture of the new window would then take between two and four months. It is then suggested that final installation of the new window would take a further one month. This description of the process of reinstating metal windows is therefore consistent with the compliance period of six months sought by the appellant.
22. However, the timescales estimated above are not supported by any documentary evidence. I have, for example, been provided with no evidence from suppliers that the manufacture of a new window would take as long as two to four months, or from a builder to confirm that the installation would take a further month. I accept that the appellant is entitled to anticipate being successful on the other grounds of appeal and for that reason I do not consider that the time that has elapsed since the notice was issued should be taken into account. Nevertheless, the appellant has failed to demonstrate that the period of two months specified in the notice is insufficient to comply with the requirements of the notice.
23. I have also balanced the longer period of compliance sought by the appellant against the harm caused by the development. I accept that the development does not cause harm to the living conditions of the occupiers of any adjoining residents, although it is clear from representations received from the managing agents and other occupiers of the building that the alterations are of concern to them. The main consideration, therefore, is the harm caused to the character and appearance of the host building and the conservation area. In accordance with the Framework, this is a matter to which I attach great weight and accordingly I conclude that the period of compliance stated in the notice is proportionate and justified.
24. Accordingly, the appeal on ground (g) fails.

Conclusion

25. For the reasons set out above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and dismiss the appeal, and refuse to grant planning permission on the deemed application.

Formal Decision

26. I direct that the notice is corrected by deleting the words "Requirement (2)" and "Requirement (3)" in paragraphs 5 c) and d) and substituting the words "Requirement b)" and "Requirement c)" respectively. Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR