
Appeal Decision

Site visit made on 27 September 2016

by Paul Freer BA (Hons) LL.M MRTPI

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

Decision date: 25 October 2016

Appeal Ref: APP/X5210/C/16/3147636

Land at 12 Egbert Street, London NW1 8LJ

- 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 Rajen Patel against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 22 February 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of lamp, three (3) x security cameras and one (1) alarm box on the front elevation at ground floor level.
 - The requirements of the notice are:
 1. The existing security cameras (x3) and lamp shall be completely removed from the ground floor front elevation and any resulting damage caused shall be made good.
 2. Completely remove the alarm box **or** relocate it to its previous position at first floor level on the front elevation shown on plan 7419-04-a approved under application ref. 2014/5248/P and make good any resulting damage caused.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal succeeds in part but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Background

1. The appeal relates to a three-storey with basement terraced house within the Primrose Hill Conservation Area.
2. In November 2014, planning permission was granted by the Council for the erection of a mansard roof extension with two front dormer windows, one rear dormer windows with rooflight, and the erection of a two storey rear infill glazed extension at lower ground and ground floor level (Council Ref: 2014/5248/P). I understand that this planning permission has been implemented.

The appeal on ground (c)

3. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The appellant's case in relation to this ground of appeal is in two parts. In terms of the lamp and the alarm box, the appellant contends that these features do not constitute development for
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the purposes of the Town and Country Planning Act 1990 (the 1990 Act). In relation to the security cameras, it is claimed that these constitute permitted development under the Town and Country Planning (General Permitted Development) Order (GPDO). I shall consider these in turn.

The lamp and the alarm box

4. 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.

5. However, Section 55(2) (a) (ii) indicates that the carrying out of the maintenance, improvement or other alteration of any building of 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. In this context, the courts have held that it is not enough that alterations are made to the exterior of a building or that they affect the external appearance for them to fall within the definition of development. The test, the courts have held, is whether the alterations materially affect the external appearance. Such a judgement will involve considerations of the change to the external appearance of the building as a whole rather than a part taken in isolation.
6. The lamp is made of glass and chrome, and is mounted on the front elevation between the main entrance and a window. It is small but, because of its elevated position close to the entrance, is nevertheless conspicuous from the public highway in short views. I therefore accept that this alteration affects the external appearance of this part of the front elevation of the building. However, because of its small size, the effect on the front elevation is confined to the lower part of front elevation. Taking the front elevation as a whole, and beyond that the building as a whole, the small size of the lamp is such that it does not materially affect the external appearance of the building. I therefore consider that the lamp does not constitute development as defined at Section 55(1) of that Act.
7. In my opinion, the same also applies to the alarm box. This is positioned at ground floor level in a prominent position just above and to one side of the window in the front elevation. It is made of white plastic but is modest in overall size. For that reason, I consider that the alarm box does not materially affect the external appearance of the building as a whole and therefore does not constitute development as defined at Section 55(1) of that Act. Indeed, as the appellant points out, planning guidance recently published by the Council unequivocally states that burglar alarms are always classed as 'de minimis' in planning law and in the circumstances of this case I find that this an accurate description of the alarm box that has been installed.
8. The Council's position is that the alarm box was shown in a less prominent position at first floor level in both the existing and proposed drawings that accompanied the planning application for the extensions granted planning permission in November 2014 under reference 2014/5248/P. However, the description of development on the planning application form does not make specific mention of the alarm box. Similarly, the description of development in the Council's formal Decision Notice granting planning permission for the

extensions makes no reference to an alarm box. The alarm box is shown on the application drawings, but the fact that it appears in the same position in the drawings for both the existing and proposed elevations suggests to me that it was included as a matter of detail rather than as part of the development proposed.

9. Consequently, on my reading, there is nothing in that application or decision to indicate that the alarm box is development that formed part of that proposal. I therefore consider that the inclusion of the alarm box on the application drawings does not provide a sound reason for concluding that the alarm box constitutes development for the purposes of the 1990 Act.

The security cameras

10. The appellant accepts that the security cameras constitute development for the purposes of the 1990 Act but contends that, if not all three, then at least one of these cameras constitute permitted development under the GPDO. In this respect, the appellant relies upon Article 3, Schedule 2, Part 33, Class A of the 1995 version of the GPDO. Notwithstanding that a new version of the GPDO came into force in April 2015, I note that the Council has responded on this ground of appeal by reference to the 1995 version. I shall therefore proceed on the basis that the appellant and the Council concur that the security cameras were installed at a time when the 1995 Order was still in force. In any event, the provisions within the 2015 GPDO relating to closed circuit television cameras, although now set out in Class F of Part 2, are for the present purpose essentially equivalent to those in the 1995 Order.
11. Class A of Part 33 of the 1995 GPDO indicates that the installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes is permitted development, subject to the limitations set out in Class A.1 and the conditions set out in Class A.2. One of the limitations at Class A.1(f) is that development is not permitted if any part of the camera would be less than 10 metres from any part of another camera installed on a building. Furthermore, development is permitted by Class A subject to the condition at Class A.2 (a) that the camera shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building on which it is situated.
12. It is apparent that all three cameras are located within 10 metres of each other on the front elevation, such that none of them accord with the limitation at Class A.1(f). Moreover, all three cameras are located in prominent positions either on the front elevation or in the front entrance. I am not convinced and the appellant has not demonstrated that alternative locations for these cameras could not be found that would have less effect on the external appearance of this building. Consequently, the cameras as presently installed do not comply with the condition at Class A.2 (a).
13. I conclude that the security cameras do not constitute permitted development under Article 3, Schedule 2, Part 33, Class A of the 1995 version of the GPDO. The security cameras therefore required express planning permission at the time they were installed. Because of the presence of the same limitations and conditions within Class F of Part 2 of the 2015 GPDO, I would have reached the same conclusion had the security cameras been said to have been installed when that version of the GPDO was in force.

Conclusion of the ground (c) appeal

14. I have found that the lamp and the alarm box do not constitute development for the purposes of the 1990 Act. The appeal on ground (c) succeeds to that extent.
15. However, I have found that the three security cameras do not constitute permitted development under the GPDO. These matters, as alleged in the enforcement notice, do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails in this respect.

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

16. 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 Primrose Hill Conservation Area.

Character and appearance of the host building

17. The host property forms part of a terrace of similar properties on the northern side of Egbert Street and dates from the mid-19th Century. The ground floor and basement are rendered and painted pale blue, with the decorative entrance, window frames, banding and some details painted in white. The upper floors are in brickwork, with window frames and decorative features also picked out in white. The host property, together with the other houses in the terrace, is identified in the Primrose Hill Conservation Area Statement as making a positive contribution to the character and appearance of the conservation area.
18. Although the three security cameras are individually small, two are located prominently on the front elevation of the house and one is located in the entrance. Moreover, all three cameras are housed in a cover made of white plastic or composite material and have an overtly modern appearance. For these reasons, the security cameras are out of keeping with the traditional character and appearance of the host property.

Character and appearance of the Primrose Hill Conservation Area

19. The character and appearance of the Primrose Hill Conservation Area is derived in part from the terraces of mid-19th Century houses that are the dominant building form. In relation to Egbert Street, this character is expressed by terraces on each side of a cul-de-sac terminated by a more modern development known as "Utopia Village". The houses that form these terraces are of similar design, such that Egbert Street displays a consistent and distinctive character and appearance derived from the rhythm generated by the repetition of the elevations of the individual houses. This character is not compromised or dominated by the presence of the more modern buildings of "Utopia Village" which, whilst forming part of the overall character of the street, stands apart from the traditional appearance of the terraced houses.

20. The installation of the three security cameras detracts from the character and appearance of the host property, and therefore detracts from one of the buildings that makes a positive contribution to the character and appearance of the Primrose Hill Conservation Area. This harm derives from the introduction of modern features on a building that exhibits the traditional character and appearance common to other buildings in the terrace, which in turn represent a largely intact example of the dominant building form on which the character and appearance of the wider conservation area is itself derived.
21. The appellant points to the security cameras installed on Utopia Village as a precedent for those installed on the appeal building. However, Utopia Village is of an entirely different period and appearance to the terraced properties on either side of Egbert Street. Unlike the latter, Utopia Village is not identified in the Primrose Hill Conservation Area Statement as making a positive contribution to the character and appearance of the conservation area. The security camera installed on Utopia Village, whilst prominently positioned and larger than those on the appeal property, is consistent with the scale and modern design of that building. It therefore does not provide any justification for permitting security cameras on a building of traditional appearance that does make a positive contribution to the character and appearance of the conservation area.
22. The appellant has also produced a comprehensive photographic survey of other buildings in the Primrose Hill Conservation Area Statement on which security cameras have been installed. I was able to view these buildings from the public highway as part of my site visit. However, whilst there are a number of houses on which security cameras have been installed, the majority are not so equipped, such that the overwhelming impression is that security cameras are not an intrinsic characteristic of the conservation area. Moreover, I have not been provided with any details of the planning history relating to these cameras and I therefore cannot be certain that those cameras which are present have the benefit of planning permission, either in terms of being permitted development under the GPDO or through the granting of express planning permission. I also noted that, in most cases, the cameras appeared to be single units rather than the multiple units on the appeal property. For all these reasons, I attach little weight to the presence of security cameras on other buildings in the conservation area.
23. Having regard to the above, I conclude that the security cameras harm the character and appearance of the host building, and fail to preserve or enhance the character or appearance of the Primrose Hill Conservation Area. I therefore conclude that the installation of the three security cameras is contrary to Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy, as well as Policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies. These policies indicate, amongst other things, that the Council will preserve and enhance Camden's rich and diverse heritage assets.
24. Whilst I consider that the development harms the character and appearance of the Primrose Hill Conservation Area, the harm to the significance of this designated heritage asset is less than substantial. In accordance with paragraph 134 of the Framework, it is necessary to weigh this harm against the public benefits of the proposal but in this case I have no evidence before me to suggest that there is any public benefit arising from the development.

Other Matters

25. The appellant explains that he works abroad for long periods, such that his wife and daughter are left alone at the property for these periods. However, the Framework confirms that great weight should be given to the conservation of designated heritage assets. I am not persuaded that the personal circumstances of the appellant's work commitments outweigh the great weight to be afforded to the conservation of the Primrose Hill Conservation Area as a designated heritage asset, or in itself amounts to exceptional circumstances that might justify a personal permission. Consequently, whilst I do not dismiss lightly the appellant's concerns in this respect, I consider that the appellant's circumstances do not justify planning permission being granted for the security cameras.

Conclusion on the ground (a) appeal

26. I conclude that planning permission ought not to be granted in respect of the breach of planning control stated in the notice, insofar as it relates to the security cameras. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include the complete removal of the three existing security cameras. The purpose of the notice must therefore be to remedy the breach.
28. The essence of the appellant's appeal on this ground is that the notice could be varied to require the replacement of the security cameras with smaller versions, the retention of fewer cameras or the repositioning of the cameras in another location to be agreed with the Council. However, none of these steps would achieve the purpose of the notice, which is to remedy the breach of planning control.
29. Moreover, whilst I have a wide discretion to consider obvious alternatives to the steps required by the notice, the steps proposed by the appellant are not supported by clear details in terms of the size and number of cameras proposed, or the alternative locations in which they might be positioned. Given the prominence of the front elevation of this building in the street scene and the positive contribution that this building makes to the character and appearance of the Primrose Hill Conservation Area, in the absence of such details I cannot be certain that the lesser steps proposed by appellant would in fact overcome the harm to that designated heritage asset. On the information available to me, I am therefore satisfied that the requirements of the notice in relation to the security cameras do not exceed what is necessary to remedy the breach of planning control that has occurred in that respect.
30. Accordingly, the appeal on ground (f) fails.

Conclusion

31. For the reasons set out above, I conclude that should succeed in part on ground (c) but otherwise that the appeal should not succeed. I shall uphold the notice with corrections and variations, and refuse to grant planning permission on the deemed application.

Formal Decision

32. It is directed that the notice be corrected by deleting reference to the lamp and one (1) alarm box in the breach of planning control alleged at paragraph 3 of the notice, and varied by deleting the words "and lamp" from requirement 1. in paragraph 5. of the notice and by deleting requirement 2. entirely. Subject to those corrections and variations, 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