

Appeal Decision

Site visit made on 9 November 2016

by John Whalley

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

Decision date: 15 November 2016

APPEAL A

Appeal ref: APP/H5390/C/16/3147354
21 Burlington Road, London SW6 4NP

- The appeal was made by Hilary Charlewood under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Hammersmith and Fulham Council.
- The notice was issued on 22 February 2016.
- The breach of planning control alleged in the notice was: Without planning permission the installation of two roof lights in the front roof slope.
- The requirements of the notice are to:
 - (a) *Remove from the land the two roof lights installed in the front roof slope; and*
 - (b) *reinstate the original Welsh slates to match existing to the front roof slope.*
- The period for compliance with the requirements is three months.
- The appeal was made on ground (c).

Summary of Decision: The enforcement notice is upheld

APPEAL B:

Appeal ref: APP/H5390/W/16/3147361
21 Burlington Road, London SW6 4NP

- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal was made by Hilary Charlewood against the decision of the London Borough of Hammersmith and Fulham Council.
- The application, ref: 2015/05732/FUL, dated 3 December 2015, was refused by a notice dated 17 February 2016.
- The development was described as the retention of 2 no. rooflights in the front roofslope and rear roofslope; demolition of 2 no chimney stacks at roof level, (retrospective).

Summary of Decision: Planning permission is not granted

Appeal property

1. The appeal property, No. 21 Burlington Road, is a 2 storey brick built terrace house with a low pitched pyramid hipped slate roof. No. 21 lies within the Fulham Park Gardens Conservation Area.
2. The works the subject of the enforcement notice, (Appeal A – s.174 of the Act), were described as the installation of two roof lights in the front roof slope.
3. The Appeal B, (s78), project was described as the retrospective application for planning permission for the retention of 2 no. rooflights in the front roofslope and 2 no. rooflights in the rear roofslope; the demolition of 2 no. chimneystacks at roof level.

APPEAL A - s.174 enforcement notice appeal

The appeal on ground (c)

4. The appeal on ground (c) asserts that there has not been a breach of planning control. The burden of proof in an enforcement appeal on a legal ground such as this lies with the Appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position.
5. The Appellant, Hilary Charlewood, said the two rooflights installed in the front roofslope were conservation rooflights. They had a low profile. Their installation was development permitted by virtue of Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
6. Section 55(1) of the Act sets out the meaning of development and new development. It says: *Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means 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 buildings or other land.* Section 55(1A) says:
For the purposes of this Act "building operations" includes —
 - (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
7. The Council said the development carried out was a building operation. It was a structural alteration or addition to the building normally undertaken by a builder. The works had materially affected the external appearance of the building. They had required planning permission.
8. The Appellant pointed out that, as the lawful planning use of the property was as a single dwelling house, it could benefit from permitted development rights under the Order. However, No. 21 is subject to Article IV Directions. They are set out in the Fulham Park Gardens Article 4 Direction.
9. The Direction restricts various works from being undertaken as permitted development. The restrictions apply to, amongst others, alterations to roof coverings. Also, development is not permitted for the alteration to a roof under Class B if - (f) the dwellinghouse is on article 2(3) (Conservation Area) land. Finally, the rooflights protrude, albeit only slightly, above the plane of the

roofslope. Limitation B.1(c) does not permit works that extend beyond the plane of any existing roof slope that forms the principal elevation of the dwellinghouse and fronts a highway. The appeal on ground (c) fails.

10. There was no appeal on ground (a). The planning merits of retaining the front roof slope rooflights are, with other works, considered below in Appeal B.

APPEAL B - s.78 planning application appeal

11. Retrospective planning permission is sought for the 2 rooflights in the front roof slope of the house at No. 21, for the 2 roof lights in the rear roofslope and for the demolition of 2 chimneystacks at roof level. The above enforcement notice's allegation makes no reference to the rear roof lights or to the chimneystacks. Nor does the Council's formal reason for refusing the s.78 appeal 2015/05732 planning application. They are, however, discussed in the Officer's report on the application. The report concluded that the 2 rear rooflights were not highly visible from public vantage points. They had limited impact on the character and appearance of the Fulham Gardens Conservation Area. As to the chimneystacks, the Council came to the same conclusion largely because the flank wall of the adjoining No. 23 Burlington Road had mostly screened the chimneys. That, however, was not the view of 2 local residents who objected to the loss of the chimneys and to the installation of the roof light windows to the front and rear of the roof at No. 21.
12. The reasons for issuing the enforcement notice said the new windows were an incongruous addition to the building that was harmful to the character and appearance of the property, the street scene and to the Fulham Gardens Conservation Area. That was contrary to policy BE1 of the Core Strategy 2011, policies DM G3 and DM G7 of the Development Management Local Plan 2013, design policy 31 of the Planning Guidance Supplementary Planning Guidance 2013 and to the Fulham Gardens Conservation Area Character Profile.
13. I agree with the objectors' concerns in relation to the front roof slope windows. Although the Burlington Road facing triangular section of the pyramid roof of No. 21 can only be seen from limited stretches on the opposite side of the road, the appeal roof lights appear inharmoniously intrusive alongside the row of houses to the north-west that have what look like original slate roofing and which have no roof lights.
14. The appeal roof lights are of a moderately subtle design, described by the Appellant as "conservation" windows. But they nevertheless have, in my view, particularly because they take up a relatively large part of the small triangular shaped slate roof that faces onto Burlington Road, failed to preserve or enhance the character and appearance of this part of the Conservation Area, contrary to local policy.
15. In concluding that the appeal in relation to the front facing roof windows should fail, I am also concerned that allowing their retention could make it difficult for the Council to reasonably refuse possible other similar applications to install roof lights in the attractive row of houses immediately to the north-west of No. 21.
16. This retrospective planning application also considers the demolished chimneystacks and the rear roof windows. I agree with the objectors that planning permission should be withheld. From the information and photograph supplied, the chimneys looked as if they formed attractive original features that were entirely in character with the building at No. 21. They, and the rear roof

windows were excluded from the enforcement notice allegation because the Council were of the opinion that those elements were acceptable. Their view would seem to make it unlikely that the Council will seek the rebuilding of the chimneystacks. Neither is it likely they will seek the removal of the rear roof windows, whose adverse effect is of a similar nature to the front roof lights, albeit that they are less easily seen. However, I do not grant planning permission for any part of the works that form the s.78 appeal project.

FORMAL DECISION - APPEAL A - S174 ref: APP/H5390/C/16/3147354

17. The appeal fails. The enforcement notice is upheld.

FORMAL DECISION - APPEAL B – S.78 ref: APP/H5390/W/16/3147361

18. The appeal fails. Planning permission is not granted for the retention of 2 no. roof lights in the front roof slope and the retention of 2 no. roof lights in the rear roof slope at No. 21 Burlington Road, London SW6 4NP. Planning permission is not granted on the retrospective application for the demolition of 2 no. chimneystacks at roof level at No. 21 Burlington Road, London SW6 4NP.

John Whalley

INSPECTOR