

Appeal Decision

Site visit made on 15 November 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 30 November 2016

Appeal Ref: APP/N5090/C/16/3147834

Land at 9A Lyttelton Road, London N2 0DR

- 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 James O'Reilly against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 9 March 2016 under ref. ENF/01328/15.
 - The breach of planning control as alleged in the notice is "Without planning permission, the installation of uPVC windows at first and second floor levels".
 - The requirements of the notice are set out as follows:
"The removal of the uPVC frames and their replacement with white painted steel 'crittall' (sic) window frames to match those depicted in the attached extract from Google Street View (dated June 2014)".
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed following the limited success of the appeal on ground (b) that the enforcement notice be corrected as follows:
 - (a) By deleting the text within paragraph 3 in its entirety and replacing it with the text "Without planning permission, the installation of aluminium-framed windows at first and second floor levels in the front elevation of the Property."
 - (b) In paragraph 5, by changing the word "uPVC" to the word "aluminium" and the word "crittall" to the word "Crittall".
 2. It is directed following the limited success of the appeal on ground (g) that the enforcement notice be varied by deleting the text "2 Months" in paragraph 6 and substituting therefor the text "4 months".
 3. Subject to the above corrections and variation, the appeal is otherwise dismissed, 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.
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Background

4. The appeal property is one of the residential flats spread over the first and second floors within a long three-storey shopping block numbered 1-23 Lyttelton Road. The block occupies the land between Lyttelton Road's junctions with Ossulton Way and Greenhalgh Walk. The flat at no. 9A is accessed at the rear via Ossulton Way. The site falls within the designated Hampstead Garden Suburb Conservation Area.
5. The appeal and the enforcement notice concern the windows at first and second floor levels in the front elevation of the flat at no. 9A. There are six windows in total, three on each of those floors.

The appeal on ground (b)

6. An appeal on ground (b) is directed to the consideration of whether the matters alleged in an enforcement notice have occurred, as a matter of fact.
7. The appellant explains that the description of the alleged breach of planning control in the enforcement notice as the installation of uPVC windows is incorrect. He maintains that he has fitted aluminium-framed windows.
8. It was not possible to make an internal inspection of the property at my site visit to examine the windows from close up. However, the Council now accepts "... that the windows are most likely aluminium." I would expect the appellant to be in the best position to know the material the window frames are made from. My assessment of the evidence submitted by the parties leads me to conclude on the balance of probabilities that the breach of planning control is, as a matter of fact and degree, the installation of aluminium-framed windows and not uPVC windows.
9. As explained in an email dated 22 April 2016 from the Planning Inspectorate to the appellant, I have gone on to correct the allegation in the notice accordingly and the appeal has succeeded on ground (b) to this limited extent. Whilst the appellant does not agree to the suggestion of such an amendment, he does not explain how it would cause him injustice. Both sides have been able to argue fully the issues with regard to the installation of the windows and it is not clear how any other ground of appeal may have been brought arising simply from a change in the materials of construction.
10. In correcting the breach, there is a consequential correction to the requirements of the notice. I have also taken the opportunity to make reference to the front elevation of the property in the breach for greater clarity and to tie in with the photograph attached to the notice. Thirdly, the requirements also refer to "crittal" window frames. This is now more correctly put as "Crittall", taking it as a reference to metal casement-windows first developed in the period shortly after the First World War by a British company of that name. I am satisfied that these three additional minor corrections to the notice would not cause injustice to the parties.

The appeal on ground (c)

11. The appeal on ground (c) is that the matter stated in the notice (as corrected) did not constitute a breach of planning control; for example because no

development has taken place, or because planning permission has been granted, or because it is permitted development.

12. The appellant says that there has not been a breach of planning control as he has not fitted uPVC windows as alleged by the Council. This argument is more suited to ground (b). I have already considered this point under ground (b).
13. The installation of the six aluminium-framed windows to the front elevation of no. 9A constituted a building operation which has materially affected the external appearance of the building when comparing the before and after photographs. It is plain that the windows in question are significantly different from the originals. Development has therefore taken place. No planning permission has been granted. The works do not fall under permitted development; as the Council explains flats do not have permitted development rights for physical changes like this and in any event the Council says that this part of the conservation area is covered by an Article 4 Direction which removes permitted development rights to replace windows at any property.
14. Therefore, the operational development alleged in the notice (as corrected) constitutes a breach of planning control. The appeal on ground (c) must fail.

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

15. In assessing whether planning permission ought to be granted for what is alleged in the corrected notice, I consider the main issue is whether the unauthorised development preserves or enhances the character or appearance of the Hampstead Garden Suburb Conservation Area.
16. Hampstead Garden Suburb is internationally recognised as one of the finest examples of early 20th century domestic architecture and town planning. It is predominantly residential in character, but it also includes local shopping areas such as the one within which the appeal site is situated. There can be no doubt that the conservation area is a designated heritage asset of some significance.
17. The purpose-built shopping parade at 1-23 Lyttelton Road, like those parades alongside the Market Place on Falloden Way a short distance to the west, is a good example of 1930s commercial architecture. The parade above ground floor level is of brick construction and is finished with a roof of red clay tiles. It is virtually symmetrical in form and displays considerable unity across the first and second floor levels, particularly in terms of the positioning, size, detailing and materials for the windows. This is most evident when standing on the opposite side of Lyttelton Road from where the block can be viewed as a whole.
18. All the upper units at 1A-23A Lyttelton Road appear to have retained their original Crittall steel windows except no. 3A (above part of Barclays Bank) which has had uPVC replacement windows installed, no. 7A (above Bishops Pharmacy) where the windows have been sympathetically replaced in the recent past to match the thin frames employed in Crittall steel windows and no. 9A (the appeal property). I do not know the planning circumstances behind the case at no. 3A but it is not a good example to copy.
19. The aluminium-framed, double-glazed windows now fitted at no. 9A have thick frames and an overtly modern appearance. Compared with the consistent slender proportions of the Crittall steel windows previously in place, the

aluminium windows are clumsy in their appearance especially where the opening and fixed lights meet, are unsympathetic to the traditional appearance of the host property and are out of keeping with the intricate and original window detailing that still characterizes the parade in which the host property is located. The change that has taken place is not minuscule; it has detracted from the unity of the block and the well preserved and remarkably intact character and appearance of the conservation area.

20. Whilst the former windows at no. 9A were in a dangerous condition and many of the original Crittall steel windows I saw are admittedly now rather scruffy, this does not justify replacement windows that are inappropriate to the period and character of the building. No evidence has been brought from respected window manufacturers, approved window installers or other experts in the building trade to justify the appellant's assertion that metal Crittall windows are no longer used or in production. Painting a thin strip on the outer edge of the frames in the same colour as the surrounding brickwork would not overcome the design drawbacks; the chunkiest profiles of the frames appear where the opening and fixed lights meet.
21. The materials and design of the windows are inappropriate. The windows harm the character and appearance of the Hampstead Garden Suburb Conservation Area. I attach considerable importance and weight to this matter given my statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The significance of the designated heritage asset – the conservation area – has been diluted. The development conflicts with Policies DM01 and DM06 of Barnet's Local Plan Development Management Policies and Policy CS5 of Barnet's Local Plan Core Strategy which read together seek to protect Barnet's character, amenity and heritage.
22. In terms of the National Planning Policy Framework (the Framework), the magnitude of the harm to the significance of the designated heritage asset may properly be considered to be less than substantial. That being the case, paragraph 134 of the Framework advises that the harm should be weighed against the public benefits of the development, including securing optimum viable use. In this respect, the appellant has not really articulated any points in this appeal that could be included as a public benefit. There are no public benefits identified that can be considered to outweigh the harm I have found. The balance of judgment therefore remains firmly in favour of the preservation of the conservation area. Paragraph 132 of the Framework indicates that great weight should be given to a designated heritage asset's conservation when considering the impact of development upon its significance.
23. I find on the main issue that the unauthorised development does not preserve or enhance the character or appearance of the Hampstead Garden Suburb Conservation Area. There is conflict with the development plan and I find no other material considerations of sufficient weight to justify a grant of planning permission. I conclude that the appeal on ground (a) should fail and that planning permission should not be granted on the deemed planning application.

The appeal on ground (g)

24. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. Two months has been given

but a minimum of nine months is requested by the appellant. He says that bearing in mind the timescale and the costs already incurred in replacing the windows nine months does not seem too long. The Council believes that a two-month period is adequate to organise and complete the required works but is happy to defer to my discretion to amend the compliance period as I see fit.

25. I am not completely satisfied that two months would be sufficient to source, measure up and gain quotes for, manufacture and install suitable white painted steel Crittall window frames to match those depicted in the photograph attached to the notice. This is a rather specialized area of window construction and installing suitable replacements will require careful thought and attention to detail. The appellant may also wish to involve the Council to ensure that he is proceeding along the right lines. Whilst a period of nine months would allow the harm to the conservation area to persist for an excessive period of time, I consider that the compliance period should be extended to four months. The appeal on ground (g) succeeds to this limited extent.

Andrew Dale

INSPECTOR