
Appeal Decision

Site visit made on 11 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 1 December 2016

Appeal Ref: APP/K5600/C/16/3152614

Land at 2 Warwick Close, 355 Kensington High Street, London W8 6NP

- 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 Dr Nicole Ryan against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The notice was issued on 6 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of uPVC windows at ground floor and first floor levels on the front and side elevation of the property.
 - The requirements of the notice are:
 - (i) Remove the unauthorised uPVC windows from the front and side elevations, at ground and first floor levels at 2 Warwick Close, 355 Kensington High Street, London W8 6NP, and restore the land to its previous condition.
 - The period for compliance with the requirements is two calendar 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 is dismissed and the enforcement notice is upheld as corrected.

Procedural Matter

1. The breach of planning control alleged in paragraph 3 of the notice refers to the front and side "elevation" in the singular rather than the plural, as in the requirements at paragraph 5 of the notice. It is clear that the notice is intended to apply to both the front and side elevations, and I am satisfied that I can correct this minor typographical error without causing injustice to any party.

The appeal on ground (c)

2. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The essence of the appellant's appeal on this ground is that the appeal property is a dwellinghouse, and as such the uPVC windows constitute permitted development as an alteration to a dwellinghouse under the Town and Country Planning (General Permitted Development) Order ("GPDO").
 3. Before considering the whether the installation of the uPVC windows accords with the provisions of the GPDO, it is first necessary to establish which version of the GPDO was in force at the time these windows were installed. In this
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respect, both the appellant and the Council initially considered the alleged breach of planning control against the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, which came into force on 15 April 2015.

4. However, the appellant has subsequently confirmed that the windows were in fact installed in December 2014. It follows that the installation of the uPVC windows pre-dates the 2015 version of the GPDO coming into force. The corollary is that the breach of planning control alleged in the notice falls to be considered not against the 2015 version of the GPDO but against its predecessor, the Town and Country Planning (General Permitted Development) Order 1995 (as amended). I have sought the views of the appellant and the Council as to whether the installation of the uPVC windows accords with the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), and have taken these views into account.
5. Under the Town and Country Planning (General Permitted Development) Order 1995 (as amended), the enlargement, improvement or other alteration of a dwellinghouse is permitted under Article 3, Schedule 2, Part 1, Class A, subject to the limitations at Classes A.1 and A.2, and the Conditions at Class A.3. The Council does not dispute that the appeal premises is a dwellinghouse for this purpose, and is satisfied that the installation of the uPVC windows accords with the limitations at Classes A.1 and A.2. I see no reason to take a different view. The main area of dispute is therefore whether the installation of the uPVC windows accords with the Condition at A.3 (a) that:

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse:
6. The appellant's case is that the Condition at Class A.3 (a) was introduced to ensure that the extensions to dwellinghouses were compatible with their host building, such that the requirements of Class A.3 (a) are not relevant to the installation of uPVC windows. In this context, the appellant draws a comparison with alterations to a front door of a property which would not require a planning application.
7. I do not agree. On my reading, there is nothing in the language of Class A.3 (a) to indicate that it does not apply to the installation of uPVC windows. Indeed, the construction of Class A.3(a) points to the opposite, insofar as there is a specific exclusion for materials used in the construction of a conservatory. Had it been intended that Class A.3(a) should not apply to uPVC windows, then the wording could similarly have specifically referred to that. The fact that it does not do so is, in my view, a clear indication that, with the sole exception of conservatories, Class A.3(a) was intended to apply to all forms of enlargement, improvement or alterations of a dwellinghouse, including the installation of uPVC windows.
8. Furthermore, the comparison drawn by the appellant is not an accurate one. The appellant has not contended that the installation of the uPVC windows does not constitute development for the purposes of Section 55(1) of the 1990 Act. Rather, the appellant claims that it accords with the provisions within Article 3, Schedule 2, Part 1, Class A. The appellant thereby accepts that planning permission is required for installation of the uPVC windows, unlike the example given in relation to a front door that does not require a planning application.

The question is therefore not one as to whether planning permission is required for the installation of the uPVC windows: the question is whether that permission is deemed to have been granted under the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

9. To answer that question it is necessary to consider whether, in the language of Class A.3(a), the materials used in the construction of the uPVC windows that have been installed are of a "similar" appearance to those used in the construction of the exterior of the existing dwellinghouse. The English Oxford Dictionary defines "similar" as being like something but not exactly the same. The comparison to be made is that between the materials used in the construction of the uPVC windows alleged in the notice as being a breach of planning control and the materials used in the construction of the then existing dwellinghouse as a whole, albeit that the materials used in the construction of the window frames is of particular relevance in this case. Moreover, the comparison to be made should be confined to the appearance of the materials used, for example in terms of their colour and texture, rather than the appearance of the window as a unit.
10. The appeal property was built circa 1923 and is constructed of materials that were contemporary in that period. The principal materials used on the exterior of the dwellinghouse include brick and render, with detailing also in brickwork.
11. As a material, uPVC has a distinctive plastic-like lustre and texture, as demonstrated by the uPVC windows installed at the appeal property. The appearance of this material is quite unlike the appearance of any of the materials used in the construction of the existing dwellinghouse in terms of colour, lustre and texture.
12. There is little evidence before me in relation to the appearance of the materials used in the construction of the windows that were replaced by the uPVC windows now in situ. No photographs of those windows have been provided. However, the Delegated Report prepared by the Council for the purposes of considering whether it was expedient to take enforcement action describes the frames of those windows as being constructed of aluminium. That description, which has not been challenged by the appellant, therefore remains as the only evidence before me in this respect.
13. I have no information to indicate whether the windows previously fitted in the appeal property were painted white but, even if the frames were constructed from white-painted aluminium, they would not have had the same distinctive plastic-like lustre of uPVC windows. Consequently, in terms of the materials used in their construction, they would neither be exactly the same as or like the windows that they replaced: they would be different due to the inherent composition of the material used.
14. The materials used in the construction of the uPVC windows are therefore not of similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Consequently, the installation of the uPVC windows does not accord with Condition at A.3 (a).
15. Furthermore, Condition A.3 (b) is also relevant in this case. This states that development is permitted by Class A subject to the condition that:

(b) any upper floor window located in a wall or roof slope forming a side elevation of the dwellinghouse shall be-

(i) Obscure glazed, and

(ii) Non-opening unless the parts of the window which be opened are more than 1.7 metres above the floor of the room in which the window is installed.

16. This is relevant in this case because the windows at first floor level on the side elevation are not obscure glazed. These uPVC windows therefore immediately fail to comply with Condition A.3 (b) (i). The construction of Condition A.3 (b) is such that upper floor windows in side elevations must comply with the requirements at both (b)(i) and (b)(ii). In relation to the latter, whilst none of these windows were open at the time of site visit, they do not appear to be fixed shut. I also have no information to indicate whether these windows are more than 1.7 metres above the floor of the room. However, given that the windows fail to comply the requirements at (b)(i), it is not necessary for me to reach a definitive conclusion as to whether the windows comply with (b)(ii).
17. I therefore conclude that the uPVC windows that have been installed do not accord with the Conditions at A.3 (a) and A.3 (b) , such that the installation of those windows does not constitute development permitted by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). It follows that the installation of these windows does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

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

18. 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 issue raised is the effect of the development on the character and appearance of the host building, the residential block of which it forms a part and the surrounding area.
19. The appeal property forms part of a two-storey residential block of five dwellinghouses collectively known as Warwick Close, located on the south side of Kensington High Street. The front elevation, which faces onto Kensington High Street, is symmetrical about a central gated entrance. This latter feature is constructed in raised and articulated brickwork and, because detailing elsewhere on the building is simple and restrained, provides the focus for this elevation. The symmetry of the front elevation extends to the hipped roof and the positioning of the chimney stacks. The building as a whole, including the side elevation facing onto St Mary Abbott's Place, is unified by the clear divide in the use of external materials that wraps around the building, with the rendered first floor sitting above the brickwork of the ground floor.
20. In contrast to the traditional appearance of the appeal property itself, the uPVC windows have an overtly modern appearance. Despite the thickness of the frame being the minimum achievable to allow the fitting of triple glazing, the uPVC windows are bulky in appearance with the opening panes also being set forward in relation to the surround. For that reason, the uPVC windows are

visually obtrusive and dominate the relatively plain elevations of the host building. Despite the presence of the central gated entrance, this applies equally to both the elevation facing Kensington High Street and that facing St Mary Abbott's Place.

21. In the context of the front elevation of Warwick Close, the appeal property is that to the left of the central gated entrance. When viewed from Kensington High Street, the frames and surrounds of the uPVC windows that have been installed at No 2 Warwick Close are noticeably thicker in profile than those of the windows to the property to the right of the central gated entrance. As a result, the uPVC windows appear excessively bulky and incongruous when viewed in comparison with the more carefully proportioned windows of the other property forming the front elevation of the building. In addition to upsetting the symmetry of the otherwise well balanced front elevation, the uPVC windows are therefore out of keeping with the traditional character and appearance of the host building as a whole.
22. Although not itself within a conservation area, the side elevation of the appeal property is clearly visible from the Edwards Square/Scarsdale & Abingdon Conservation Area, the boundary of which follows the east side of St Mary Abbott's Place. The front elevation of the appeal property is also clearly visible from the Holland Park Conservation Area, the boundary of which runs along the centre of Kensington High Street at this point. It is when viewed from the north side of the latter, and thus within the Holland Park Conservation Area, that the full width of the front elevation of Warwick Close can be best appreciated. It is therefore in these views that the harm to the traditional character and appearance of the host building caused by the installation of the uPVC windows becomes most apparent. Consequently, to the extent that it harms the character and appearance of the host building and therefore harms views from within the two conservation areas, I consider that the installation of the uPVC windows harms the setting of both the Edwards Square/Scarsdale & Abingdon Conservation Area and the Holland Park Conservation Area.
23. I conclude that the installation of the uPVC windows has unacceptably harmed the character and appearance of the host building, the residential block of which it forms a part and the surrounding area, including the setting of the two conservation areas. I therefore conclude that the development is contrary to Policies CL1, CL2, CL3 and CL11 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (Local Plan). These policies require, amongst other things, all development to be of the highest architectural quality and to respect the existing context, character and appearance of buildings.

Other Matters

24. The appellant explains that the uPVC windows were installed to protect the amenities of the occupiers of No. 2 Warwick Close in respect of the significant traffic noise from Kensington High Street, a main arterial A-road that generates a large volume of traffic. The appellant considers that this is in accordance with Policy CL5 of the Local Plan which, amongst other things, seeks to ensure good living conditions for occupants of existing buildings. In support of that position, the appellant refers to a planning permission granted by the Council in October 2015 for the replacement of timber sliding sash windows with uPVC sliding slash windows in respect of a property at 80 Warwick Road, where the purpose of the replacement windows was also to reduce traffic noise.

25. I can fully understand the wish of the appellant to optimise the living conditions at the property. However, I have been provided with no information about noise levels within the property prior to the installation of the uPVC windows or the benefit in terms of noise attenuation that has accrued as a result of them being installed. I therefore have no means of quantifying the benefit to the living conditions of the occupiers in that respect. Against that, I must balance the discernable harm to the character and appearance of the host building, the residential block of which it forms a part and the surrounding area. In weighing that balance, and notwithstanding that the development may accord with the development plan in respect to living conditions, I am not convinced that any benefit in relation to the living conditions within the property outweighs the harm in terms of character and appearance.
26. In reaching that conclusion, I have had regard to the planning permission granted in respect of No 80 Warwick Road. However, whilst the purpose of the replacement windows was clearly to reduce traffic noise, I find nothing in the Council's reasons for granting planning permission to suggest that this was a primary consideration in favour of the development proposed. On my reading of the Officer's Report for that application, the reason why the Council granted planning permission was that the proposed uPVC windows in that case were considered acceptable on their own merits in relation to character and appearance, subject to the imposition of appropriate conditions. That is clearly a very different scenario to that in the present appeal, where the uPVC windows are harmful in planning terms and where the sound attention properties of the uPVC windows are being advanced in support of a development that I have found contrary to the development plan. I therefore consider that the planning permission in relation to No 80 Warwick Road does not provide any justification for the retention of the uPVC windows in the appeal property.

Conclusion on the ground (a) appeal

27. Having regard to the above, I find that the installation of the uPVC windows is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

28. 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 are to remove the uPVC windows from both the front and side elevations, and then to restore the land to its previous condition. The purpose of the notice must therefore be to remedy the breach.
29. The appellant considers that the requirement to restore the land to its previous condition is unclear, but I do not agree. In the context of this breach of

planning control, the requirement to restore the land to its previous condition can only mean the re-instatement of the aluminium framed windows that were in place before the uPVC windows were installed. If, as the appellant explains, these have been destroyed, the onus falls on the appellant to commission replacements that are a facsimile of those that have been destroyed. I note that other residents of Warwick Close have replaced windows with units manufactured by a company that specialises in producing windows that match the design of those found in older buildings. This would equally be a solution available to the appellant. I therefore consider that the requirements of the notice to remove the uPVC windows and to restore the land to its previous condition are neither unclear nor excessive.

30. Accordingly, the appeal on ground (f) fails.

Conclusion

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

Formal Decision

32. It is directed that the notice is corrected by deleting the word "elevation" in the requirements at paragraph 5 of the notice and replacing it with the word "elevations". Subject to that correction, 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