

Appeal Decision

Site visit made on 15 November 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 15 December 2016

Appeal Ref: APP/N5090/C/16/3148801

11 Union Street, Barnet, London EN5 4HY

- 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 Richard Eagleton of Old Estates Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 1 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission the installation of uPVC windows at ground and first floor level.
 - The requirement of the notice is:
 1. The removal of the uPVC windows and their replacement with white-painted, timber-framed sash windows to match the pre-existing specification as displayed in the photograph of neighbouring properties (attached).
 - The period for compliance with the requirements is three months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with variations.

Procedural Matters

2. The enforcement notice relates to a mid-terraced property, and although it does not state in terms which elevation or elevations are within its scope, the Council's statement refers to "*both visible elevations*" (my emphasis).
 3. An enforcement notice must by virtue of section 173(1)(a) of the 1990 Act state the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with these requirements if it enables any person receiving a copy of the notice to know what are those matters (section 173(2)).
 4. The Council mistakenly refers in its statement to "this prominent High Street building" and states that the notice alleges the installation of uPVC windows at second floor level, whereas it refers only to the ground and first floors. The site visit was arranged as an accompanied visit so I was able to see that uPVC windows had been installed in the front and rear elevations. However I also note that in replying to the questionnaire and in the appeal form, the Council and appellant respectively stated that the relevant parts of the appeal site could be seen from public land.
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5. Matters external to the enforcement notice itself are generally circumstantial in considering its validity. One should be able to tell from its "four corners" what is alleged to be the breach of planning control. I note that the reasons for its issue focus on the incongruity of windows in the "host property and parade". It is clear from the Council's statement that it contains drafting errors relating to another property, and I am satisfied that these include the reference to "both visible elevations". However there is nothing to suggest that the enforcement notice itself is misleading or defective and on the evidence I am of the view that its scope does not extend beyond the front elevation of the premises.
6. The photograph referred to in the notice is missing from the copy supplied by the appellant as well as from that supplied by the Council. The latter notice was certified by the Council as a true copy which was served on the appellant. Given the reasons for its issue in my view it is obvious that the windows should be reinstated as they were prior to the breach of planning control taking place. The appellant is best placed to know the design, materials and finish of the windows that were previously in place and therefore what is required to replicate them in order to return the property to its original condition.
7. Accordingly no injustice would result if I were to vary the notice to omit reference to a photograph and require reinstatement of the windows to their condition before the unauthorised development took place. The Council could still refer to relevant evidence it possesses in seeking compliance. I will also vary the requirement so as to speak directly to the recipient of the notice. I am satisfied that I can make these variations using the powers available to me by reason of s176(1)(b) of the 1990 Act as amended.

Ground (a) and the deemed application for planning permission

Main Issue and Reasons

8. The main issue on this ground is the effect of the development on the character and appearance of the Wood Street Conservation Area (CA) in which the appeal property is situated.
9. 11 Union Street is a mid-terrace two-storey building in an area of mainly residential properties, close to High Street and the local centre. The CA Appraisal (CAA) which is a material consideration, states that timber casements of varying ages are found throughout the CA, the main window types being vertically sliding sashes which reflect the 18th and 19th century taste for classical architecture, with windows almost exclusively painted white or cream.
10. The Council's Design Guidance Note: The Replacement of Windows and Doors (SPD) states that the use of non-traditional materials and modern window and door designs is considered inappropriate in conservation areas. The SPD is detailed, has undergone statutory consultation and, as a material consideration I accord it significant weight.
11. I saw that on Union Street there was a mix of window types. The traditional timber constructed, vertically hung, sash windows make a significant contribution to the appearance and character of the dwellings. Several properties had front elevations with uPVC windows in place but not so many as to render them a prevailing or predominant characteristic of the street scene.
12. The Council has not commented on the planning status of any of the uPVC windows in the street or what enforcement action could or is being taken in

relation to them. Its references to properties in the High Street, even if intentional which is doubtful, are generalised and not relevant to the immediate street scene surrounding the appeal property.

13. The appellant relies on the precedent effect of the property next door, No 13 which has also had windows replaced with uPVC. Although the unauthorised windows at No 11 match those of this adjacent house, they contrast unfavourably with the traditionally hung sash windows of No 9, also adjacent to the appeal property. uPVC is not a traditional material and, as found on the front elevation of No 11 it appears heavier, smoother and glossier in finish.
14. Overall the windows have a modern and less traditionally refined appearance. Original window types are an important part of the building's character and their replacement with uPVC windows has caused significant harm to the appearance of the main dwelling, the street scene and the CA as a whole.
15. As required by statute, I have paid particular attention to the desirability of preserving or enhancing the character or appearance of the CA.
16. I conclude that the uPVC windows are out of keeping with the traditional form of windows in this part of the CA and cause harm to the architectural integrity of the host property and the wider street scene. They fail to protect or enhance the character or appearance of the CA contrary to the SPD, Policies DM01 and DM06 of the Barnet's Local Plan Development Management Policies: *Development Plan Document* 2012, and Policy CS5 of Barnet's Local Plan: *Core Strategy Development Plan Document* 2012. The policies require development to respect distinctive local character, including the appearance of surrounding buildings, and to preserve or enhance the character and appearance of the CA.
17. The appeal on ground (a) therefore fails.

Overall Conclusion

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

Formal Decision

19. It is directed that the requirement of the enforcement notice be varied by:
 - a) The deletion of "1. The removal of" and the substitution of "Remove"
 - b) The deletion "their replacement" and the substitution of "replace them"
 - c) The deletion of "pre-existing specification as displayed in the photograph of neighbouring properties (attached)" and the substitution of the following:
"design, materials and finish of those which previously existed prior to the breach of planning control."
20. Subject to these variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR