The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 22 February 2017

Appeal Ref: APP/N1025/C/16/3160431
53-55 Market Place, Long Eaton, NG10 1JT

- 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 Nilesh Parekh against an enforcement notice issued by Erewash Borough Council.
- The enforcement notice was issued on 23 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the installation of 8 uPVC windows on the second floor of the building.
- The requirements of the notice are:
  Remove the 8 uPVC windows and frames from the second floor and restore the land to its condition before the breach of planning control took place as shown on the photograph attached to this notice ("Enforcement Photo 1").
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

The appeal on ground (d)

2. The main issue is whether the windows subject of the Council's enforcement action were installed more than four years before the issue of the enforcement notice (ie before 23 August 2012) so as to be immune from enforcement action. The burden of proving relevant facts on legal grounds of appeal, including ground (d), lies with the appellant and the relevant test of the evidence is the balance of probability.

3. The appeal site is a mature three storey building constructed in brick and tile located at the junction of Market Place and Regent Street in Long Eaton town centre. It comprises a commercial unit at ground floor and flats to the upper floors. Eight uPVC windows have been installed to the second floor; four to the Market Place elevation and four to the Regent Street elevation.

4. The appellant states that the windows were installed towards the end of 2010 and that documents confirming their installation would be submitted in support of the appeal. However, no documents or other corroboration has been submitted. In this regard the judgment in *Gabbitas v SSE and Newham LBC* [1985] JPL 630 makes it clear that the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence from the Council or others to contradict or otherwise make the appellant's version of

events less than probable, the appeal should be allowed provided that the appellant's evidence alone is sufficiently precise and unambiguous.

5. The Council's evidence includes photographs taken in February 2014 showing six of the original timber sash windows still in place, and a FENSA certificate confirming that 8 windows were installed at the property on 17 June 2014. Taken together, I find that this evidence strongly supports the Council's case that the eight uPVC windows were installed within the four year period before the notice was issued.

6. Taking account of all of the evidence before me I conclude, on the balance of probability, that the windows were not installed more than four years prior to the issue of the notice. Consequently, the breach of planning control is not immune from enforcement action.

7. The appeal on ground (d) therefore fails.

The appeal on ground (f)

8. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary.

9. The appellant's arguments on this ground relate to the merit of the uPVC windows on the basis that they could be retained. However, those arguments are not relevant to this ground of appeal, they relate to a ground (a) appeal; that planning permission should be granted. No appeal on ground (a) has been made.

10. When a ground (f) appeal is made it is essential to understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.

11. The breach of planning control is the insertion of the eight uPVC windows. Given that the requirement in Section 5 of the notice is for their complete removal and restoration (ie replacement with the original windows, or new timber sash windows to match the originals) the purpose of the notice clearly falls within section 173(4)(a); to remedy the breach of planning control that has occurred.

12. Since the requirement goes no further than restoration of the building to its former condition, it does not exceed what is necessary to remedy the breach of planning control.

13. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR