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## Appeal Decision

Site visit made on 24 April 2017

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 30 May 2017**

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**Appeal Ref: APP/X5990/C/17/3166444**  
**386 Harrow Road, London, W9 2HU**

- 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 Constantiou Athinodorou (Pama Property Investments Ltd) against an enforcement notice issued by City of Westminster Council.
  - The enforcement notice, reference 15/60517/M, was issued on 30 November 2016.
  - The breach of planning control alleged in the notice is failure to comply with condition No 6 of a planning permission Ref 14/01789/FUL granted on 28 April 2014.
  - The development to which the permission relates is the erection of mansard roof extension (third floor level), second floor rear extension and use of upper floors as 3 x 1 bed flats. The condition in question is No 6 which states that: All new windows shall be timber framed and painted white. The notice alleges that the condition has not been complied with in that uPVC windows have been installed in the front and rear elevations of the building at first, second and third floor levels.
  - The requirements of the notice are:
    - (a) Remove the two uPVC windows at first floor level in the front elevation of the building, comprising fixed upper and lower panes and top-hung central panes, shown outlined by red lines on Photograph A and Plan A (As-Built Front Elevation);
    - (b) Remove the two uPVC windows at second floor level in the front elevation of the building, comprising fixed upper and lower panes and top-hung central panes, shown outlined by red lines on Photograph A and Plan A (As-Built Front Elevation);
    - (c) Remove the two uPVC windows at third floor level in the front elevation of the mansard roof extension, partially shown outlined by red lines on Photograph A and Plan A (As-Built Front Elevation);
    - (d) Remove the six uPVC casement windows in the rear elevation of the building, including those in the rear elevation of the mansard roof extension shown outlined by red lines and highlighted by a red arrow on Photograph B;And
    - (e) Install two timber framed sash dormer windows at third floor level in the front elevation of the mansard roof extension to match the appearance and design of the windows shown outlined by green lines on Plan B (Approved Front Elevation – extract from Drawing No 091-06);
    - (f) Install two timber framed sash windows at second floor level in the front elevation of the building to match the appearance and design of the windows shown outlined by green lines on Plan B (Approved Front Elevation – extract from Drawing No 091-06);
    - (g) Install two timber framed sash windows at first floor level in the front elevation of the building to match the appearance and design of the windows shown outlined by green lines on Plan B (Approved Front Elevation – extract from Drawing No 091-06);
    - (h) Install six timber framed sash windows in the rear elevation of the building, including those in the rear elevation of the mansard roof extension, to match the appearance and design of the windows shown outlined by green lines on Plan C (Approved Rear Elevation – extract from Drawing No 091-06);
  - The period for compliance with the requirements is three months.  
The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and
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Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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**Procedural Matter**

1. The address quoted above is the address on the notice. The appeal was made in respect of 386A Harrow Road which is the number on the door leading to the residential accommodation on the upper floors of the property.

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

2. In an appeal on ground (a) the Appellant is saying that condition No 6 ought to be discharged which would have the effect of granting planning permission for the uPVC windows that have been installed in the front and rear elevations of the upper floors of the property.
3. The main issue in this appeal is therefore the effect of the uPVC windows on the character and appearance of the host building and the surrounding area.
4. The appeal property is located on Harrow Road which is a busy thoroughfare comprising various commercial uses with residential properties on upper floors together with purpose built blocks of flats and converted properties. The appeal property is Victorian terraced property with a restaurant on the ground floor and three floors of residential accommodation above.
5. Planning permission, subject to conditions, was granted on 28 April 2014<sup>1</sup> for the erection of mansard roof extension (third floor level), second floor rear extension and use of upper floors as 3 x 1 bed flats. In addition to condition No 6 which states that 'All new windows shall be timber framed and painted white' condition No 1 states that 'The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter ...' and one of the plans listed is drawing no.091-06. There is therefore no question that the windows proposed to be inserted as part of the approved development were to be those shown on the drawing, that is, timber framed and painted white. However, all the existing windows were replaced by the current double glazed uPVC casement windows.
6. Saved Policy DES 5 of the City of Westminster Unitary Development Plan says that permission will generally be granted for development involving alterations to buildings that reflect the style and details of the existing building; and the guidance to the Policy states that 'replacement windows should be designed to complement the architectural style and detailing of the existing building. If they must be replaced the new windows should be exact copies of the originals. The use of uPVC or aluminium windows will not normally be acceptable in such situations'<sup>2</sup>.
7. The Appellant made an application for the retention of the uPVC windows on 5 February 2016<sup>3</sup> but this was refused on 8 June 2016 for similar reasons to the reasons for issuing the notice. No appeal was made against this refusal and the notice was issued.
8. The property retains many of its original features and is part of terrace of similar properties. The design of the uPVC windows does not replicate the design of a sash window in that they have three panes, the middle one of

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<sup>1</sup> Ref 14/01789/FUL

<sup>2</sup> Paragraph 10.56 of the UDP

<sup>3</sup> Ref 16/00983/FULL

which appears to be openable. The frames are of thick white plastic and they have a heavy appearance which, together with the three pane design, results in the windows not reflecting the character and appearance of the Victorian building and terrace.

9. I appreciate that there are other uPVC windows in the terrace, and the area, but none appeared to me to have such heavy frames or to be of a similar design; other uPVC windows were, in the main, replicas of sash windows. In particular I noted that what appeared to be a recent development of three properties immediately adjacent to No 386 had traditional white, wooden sash windows. The contrast between the two was marked to the detriment of those at No 386.
10. The rear windows are not visible when walking along Chippenham Mews at the rear of the property but they would be visible from neighbouring properties. These windows are sash windows but they also have thick white frames which detract from the appearance of the rear elevation.
11. I note the Appellant's case that the uPVC windows are energy efficient, reduce noise pollution, require low maintenance and last the test of time, however, the Appellant has not provided any evidence to support these assertions. In the circumstances I give these matters very little weight.
12. The Appellant refers to the majority of properties in the vicinity which have uPVC windows in a variety of styles and patterns. He says that there are few timber windows as well as some examples of aluminium and metal crittall windows. However, the Council advise that none of the windows identified by the Appellant as uPVC windows has planning permission but the majority are now immune from enforcement action<sup>4</sup>. In any event, each appeal has to be treated on its own merits and the presence of inappropriate development does not justify the uPVC windows in this appeal.
13. I therefore conclude that the uPVC windows have a harmful effect on the character and appearance of the host building and the surrounding area and that they are contrary to Policy 7.1 of the London Plan; Strategic Policy S28 of the Westminster City Plan; and saved Policies DES 1 and DES 5 of the Unitary Development Plan, all of which, among other things, seek to ensure a good quality environment, exemplary standards of design and respect for the character and appearance of existing buildings.

## **Conclusions**

14. For the reasons given above, and taking all other matters into account, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

## **Decision**

15. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Gloria McFarlane*

Inspector

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<sup>4</sup> Appendix 1 to the Council's statement