



Appeal Decision

Site visit made on 11 July 2017

by Paul Dignan MSc PhD

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

Decision date: 28 July 2017

Appeal Ref: APP/X5210/C/17/3172176 16A Mackeson Road, London NW3 2LT

- 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 Mrs Victoria McNamara against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN15/1247, was issued on 8 February 2017.
 - The breach of planning control as alleged in the notice is: The unauthorised replacement of timber windows with uPVC at ground floor level to the front elevation, the unauthorised replacement of timber windows and door with uPVC windows and door to the rear elevation at lower ground level, the unauthorised creation of a new window opening and fitting of uPVC window to the side elevation at lower ground floor level, the unauthorised replacement of a timber window to the existing lower ground side elevation with uPVC, the unauthorised removal of a timber window and installation of a uPVC door at upper ground floor level and installation of railings to create a roof terrace at rear upper ground floor level.
 - The requirements of the notice are: a) To the front elevation: remove the uPVC windows to bay at ground floor level and reinstate timber to match those previously removed; b) To the rear elevation: remove 2 uPVC windows and door at lower ground floor level and reinstate timber sliding sash windows and timber door to match those previously removed; c) To the rear elevation: replace uPVC door and frame at upper ground floor level with timber sliding sash window to match that previously removed and reinstate wall beneath and make good to match the existing rear wall finish; d) Remove the railings around the rear terrace at upper ground floor level and decking from the roof surface and make good any resulting damage; e) To the side elevation: Either, remove the newly created window at lower ground floor level and reinstate the wall or replace the unauthorised uPVC window with a timber sliding sash window with obscure glazing and fixed shut (to be permanently maintained as such) to match the existing timber windows on the side elevation; and f) Remove the uPVC window at lower ground floor level and reinstate timber sliding sash window.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) 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 Act as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion in Part 3 of the notice of the description of the unauthorised development and the insertion in its place of the following description: "The unauthorised creation of a new window opening and fitting of uPVC window to the side elevation at lower ground floor level, the unauthorised removal of a window and installation of a uPVC door at upper ground floor level and installation of railings to create

a roof terrace at rear upper ground floor level.” The appeal is allowed insofar as it relates to the new window opening to the side elevation at lower ground floor level and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the creation of a new window opening and fitting of uPVC window to the side elevation at lower ground floor level at 16A Mackeson Road, London NW3 2LT.

2. It is directed that the enforcement notice be varied by the deletion, in Part 5 of the notice of the words "a) To the front elevation: remove the uPVC windows to bay at ground floor level and reinstate timber to match those previously removed; b) To the rear elevation: remove 2 uPVC windows and door at lower ground floor level and reinstate timber sliding sash windows and timber door to match those previously removed;" and the word "timber" in requirement c); and the words ";and f) Remove the uPVC window at lower ground floor level and reinstate timber sliding sash window".
3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied, and planning permission is refused in respect of the door and frame at upper ground floor level and the railings around the rear terrace at upper ground floor level and decking on the roof surface, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

4. The appeal property is a part ground floor part lower ground floor flat in a mid-terraced 3-4 storey property located in the Mansfield Conservation Area. Before the enforcement notice was issued the appellant made a retrospective planning application for the works. This was refused and subsequently dismissed at appeal¹ in October 2016
5. However, the description of the works in that appeal² differs from that in the enforcement notice insofar as the replacement of windows and a door is concerned. The notice refers to timber windows and a door being replaced, but the 2016 appeal description describes the windows and door, other than the bedroom window, as having been uPVC before replacement. He also recorded that it was his understanding that the new uPVC windows and doors had replaced existing uPVC fixtures. Evidence has also been submitted in this appeal that the replaced windows and door were uPVC, and it has not been challenged by the Council. I shall therefore proceed on the basis that the replaced windows were uPVC. This requires correction of the description of the breach. Both the appellant and the Council addressed this matter in their submissions and I consider that I can amend the notice in this way without causing injustice.

Ground (c)

6. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act and includes the

¹ Appeal Ref. APP/X5210/W/16/3155444

² The development proposed is to replace existing UPVC window to front ground floor bay, replace existing kitchen door (UPVC) ground floor, remove bedroom window and replace with door, fit railings around roof (steel) to form a balcony. Replace conservatory UPVC windows with same and replace garden door (previously UPVC) with new.

carrying out of building, engineering, mining or other operations in, on, over or under land. The replacement of windows and doors is a building operation as so defined. Section 55(2) of the Act, however, goes on to clarify at subsection (a)(ii) that the carrying out of works which do not materially affect the external appearance of the building shall not be taken to involve development of the land. Thus a judgement is to be made depending on the facts of the case.

7. In this case the appellant maintains that the replacement windows and rear door fitted were like for like replacement of the previous fittings, which had been in place for some 23 years. This is supported by statutory declarations, letters, and contracts for the replacement of "existing old UPVC windows". There is no evidence to the contrary. I do not doubt that uPVC is an inappropriate material in the Conservation Area, but in the circumstances, on the evidence before me, I consider on the balance of probabilities that the replacement works were not development requiring planning permission, and hence the appeal on this ground succeeds, albeit it is confined to the replacement works.

Ground (a)

8. This ground is that planning permission should be granted. Following my findings on ground (c) above, the planning merits of the development only need to be considered in respect of the insertion of new window in the side elevation, the insertion of a door opening, replacing a window, at upper ground floor level, and the installation of railings to create a roof terrace.
9. There is no objection to the principle of inserting a new window in the side elevation, the Council's concern is the inappropriateness of the material. However, the window is small, the side elevation at this level is not visually prominent, and, in the light of the partial ground (c) success, the window would be seen in the context of uPVC being the material used for the other openings at lower ground floor level. In my view the window materials in this case do not have a significant adverse effect on the appearance of the building as a whole, and hence cause no harm to the character or appearance of the Conservation Area.
10. The matter of the alterations at the rear upper ground floor level to create the roof terrace, comprising the insertion of a door leading onto the lower ground floor extension roof and the erection of railings around it, was fully considered by the Inspector in the 2016 appeal. He found significant harm in terms of overlooking into nearby private gardens and habitable room windows of nearby properties, causing what he terms an unacceptable loss of privacy prejudicial to residents' enjoyment of their properties. Having viewed the site I see no reason to come to a different view. The harm in terms of loss of privacy, which I also consider to be serious and unacceptable, would not be overcome by the use of a privacy screen as suggested.
11. It is rarely appropriate to further consider matters that have so recently been considered in an appeal made under section 78 of the 1990 Act and found to be unacceptable. Largely in the light of my conclusion on ground (c) I consider the side window to be acceptable and I shall grant planning permission for that. However, so far as it concerns the roof terrace works, the appellant's case fails to adequately address the concerns expressed by the previous Inspector. This part of the appeal is entirely without merit. I consider that the works to create the terrace conflict with Policy CS5 of the Camden Core Strategy 2010-2025

and Policy DP26 of the Camden Development Policies 2010-2025 so far as they aim to protect the living conditions of neighbours. In the absence of material considerations to outweigh the conflict with the relevant development plan policies I conclude that the appeal on this ground fails in respect of the roof terrace works set out above.

Ground (f)

12. This ground is that the requirements exceed what is necessary to remedy the breach or harm to amenity, as the case may be. The remaining requirements relate only to the rear terrace works, and the appellant has not suggested a lesser step. However, I shall vary requirement (c) to remove the reference to timber as a consequence of the outcome of the appeal on ground (c).

Ground (g)

13. It was submitted that the period of 3 months for compliance was too short a time to raise the necessary funds to complete the works. However, in view of the partial success of the appeal the works required to be carried out are significantly less. In my view the 3 month compliance period is reasonable in the circumstances.

Overall conclusions

14. There is partial success on grounds (c) and (a). I shall effect the ground (c) success by correcting the allegation in the notice, with consequent variation of the requirements, and the ground (a) success by granting planning permission for the side window. In order to avoid an additional planning permission for the side window due to compliance with the notice, rather than deleting the requirement I rely on section 180 of the 1990 Act to mitigate the effect of the notice so far as it is inconsistent with the permission granted on the deemed application.

Paul Dignan

INSPECTOR