Appeal Decision

Site visit made on 1 July 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: 3 August 2017

Appeal Ref: APP/X5990/C/17/3168877
82 Droop Street, London, W10 4DD

- 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 William Moultrie against an enforcement notice issued by City of Westminster Council.
- The enforcement notice, Ref 13/52711/M was issued on 19 January 2017.
- The breach of planning control as alleged in the notice is without the requisite planning permission and within the last four years, the removal of four timber sliding sash windows and their replacement with four uPVC windows on the front elevation of the property.
- The requirements of the notice are:
  1) Remove the four unauthorised uPVC windows outlined in red on Photograph A (attached to the notice); and
  2) Return the property to its previous condition by installing timber-framed sash windows to match the design, dimensions, materials and detailing of the windows previously in situ as shown outlined on Photographs B and C (attached to the notice); and
  3) Make good any damage caused by the removal of the unauthorised windows and/or installation of the replacement windows.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matters

1. The Appellant originally made appeals on grounds (b) and (g), however, within his grounds of appeal for ground (b) he raised the issue of when the development had been undertaken and this is a ground (d) appeal; the ground (d) appeal was considered by the Council in its statement. I will determine the appeal accordingly.

2. The Appellant in his statement dated 6 July 2017 raises a number of matters relating to the planning merits of the development, however, he has not made any appeal on ground (a) and these matters do not fall to be considered in this appeal.

The appeal on ground (b)

3. In an appeal on ground (b) the Appellant has to show that the matters stated in the notice have not occurred.

4. In his grounds of appeal the Appellant states that he has not changed the windows since he purchased the house in April 2011 but he does not dispute that the windows in the front elevation of the property are uPVC windows and that they replaced timber-framed sash windows as alleged in the notice.

5. There are four uPVC windows in the front elevation of the property and as a matter of fact the matters stated in the notice have occurred. The appeal on ground (b) fails.

The appeal on ground (d)

6. In an appeal on ground (d) the onus is on the Appellant to prove on the balance of probability that at the date when the notice was issued no enforcement action could be taken in respect of the breach of planning control alleged in the notice. This means in this appeal that the Appellant has to prove that the four uPVC windows on the front elevation of the property replaced the four timber sliding sash windows on or before 17 January 2013.

7. The Appellant has provided a letter from Estate Agents which repeats the Appellant's grounds of appeal where he states that he purchased the property in 2011. The writer goes on to say that he visited the property in May 2017 and 'to the best of our knowledge and opinion the front four windows are the same as when the property was sold'. The writer does not say whether he had knowledge of the property in 2011 or whether he was involved in the sale.

8. However, in his response dated 8 June 2013 to a Planning Contravention Notice (PCN) the Appellant says he has been the freeholder of the property since he purchased it on 10 March 2012 and he did not know when the uPVC windows had been installed.

9. The Council has provided photographs dated May 2012 which show timber framed windows at the front of the property[1]. The photographs show that the same Estate Agent referred to above had placed a 'sold' notice in the front of the property. This indicates to me that the Appellant's response to the PCN about the year in which he bought the property was correct, rather than the earlier date of 2011quoted by the Appellant and the Estate Agent.

10. A letter from the current occupier of the premises states that the four front windows are the same as when she first viewed the property in March 2015 and that they have not been changed since her residence began in May 2015. This letter is of no assistance in resolving the question of whether the uPVC windows were in place before January 2013.

11. The Council received a complaint on 20 February 2013 that the uPVC windows were being installed in January 2013[2] and in March 2013, following an inspection by the Council, the Appellant was advised by letter that the uPVC windows should be replaced with windows matching the design and appearance of those previously existing[3].

12. The Appellant's case is that the uPVC windows were present when he purchased the property and he has provided two different dates for his purchase – 2011 and 2012. From the Council's photographic evidence and the response to the PCN I consider it more likely than not, as a matter of fact, that

[1] Figures 1.00 and 2.00 of the Council's statement
[2] Part 4 of the Officer's Report Appendix 1 to the Council's statement
[3] Appendix 2 to the Council's statement

the Appellant purchased the property sometime in 2012 and that the uPVC windows were inserted since that date.

13. From the complaint made to the Council it appears that the uPVC windows were being installed in January 2013. The four year immunity period runs from the date of the substantial completion of the development. In this case this means that the replacement of the timber sash windows by the uPVC windows must have been substantially completed on or before 17 January 2013. There is no evidence before me that establishes the date of substantial completion. However, it appears to me that the Appellant is likely to have knowledge about when the timber sash windows were replaced and the works to install the uPVC windows were completed but he has chosen not to present it and relies instead on his case that the uPVC windows were present when he purchased the property and as I have found above they were not.

14. In this appeal the onus of proof is firmly on the Appellant on the balance of probabilities[4]. The Appellant's own evidence does not need to be corroborated by independent evidence provided his evidence alone is sufficiently precise and unambiguous. For the reasons set out above I consider that the Appellant has not provided evidence that is sufficiently precise and unambiguous to prove his case and I find as a matter of fact that the installation of the uPVC windows is not immune from enforcement action and the ground (d) appeal fails.

The appeal on ground (g)

15. In an appeal on ground (g) the Appellant is saying that the period specified for compliance with the requirements in the notice falls short of what should reasonably be allowed and instead of the stated four months the Appellant asks for 18 months in which to comply with the notice. He asks for this extended period because, among other things, he says that the windows would have to be specifically designed and manufactured; time would be needed to find a manufacturer and an installation specialist; the internal and external damage arising from the removal and installation would take time; the works would leave the property insecure, open to the elements and uninhabitable; and the current tenants would have to vacate and find alternative accommodation.

16. Whilst I appreciate that an Appellant is entitled to anticipate success in his appeal, the Appellant has not provided any information about the availability or otherwise of window manufacturers and/or installers. The windows would more than likely be made away from the property and the removal and installation of four separate sash windows is not a lengthy or onerous undertaking that would, in my opinion, render a house uninhabitable.

17. I consider that the period of four months is a reasonable one in which to comply with the requirements of the notice. If exceptional circumstances should I arise I note that the Council is aware of its powers in s.173A(1)(b) of the 1990 Act to extend any period specified for compliance with the notice.

18. The appeal on ground (g) fails.

Conclusions

19. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

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[4] *Gabbitas v Secretary of State for the Environment* [1985] JPL 630 reviewed in *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin).

Decision

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

Gloria McFarlane

Inspector