
Appeal Decision

by Katie Peerless DipArch RIBA

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

Decision date: 23 March 2018

2 Appeals at 31 Waldegrave Road, Brighton BN1 6GR

Refs: APP/Q1445/C/17/3180649 (Appeal A) and 3180650 (Appeal B)

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Daniel Wood (Appeal A) and Miss Rebecca Spicer (Appeal B) against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice, numbered 2014/0252, was issued on 1 June 2017.
 - The breach of planning control as alleged in the notice is the installation of uPVC sash windows to the front elevation.
 - The requirements of the notice are: remove the uPVC windows to front elevation from ground and first floor level.
 - The period for compliance with the requirements is four (4) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

The site and surroundings

2. The appeal site is a terraced house in the Preston Park Conservation Area, where a direction under Article 4 of the Town and Country Planning Act 1995 takes away permitted development rights relating to the replacement or alteration of windows in the front elevation of properties without first obtaining planning permission.

The enforcement notice

3. The enforcement notice requires the removal of uPVC sash windows that have been installed in the front elevation of the house in place of the top-hung uPVC casements that were previously in the openings. It does not, however, tell the appellants what would be acceptable replacements.
4. The previous windows are agreed to have been in place since 2009, as shown in the Google street view image dated April 2009. Therefore, by April 2013, those windows may well have been immune from enforcement action. The second set of windows was installed, according to the appellants, in July 2013 and this date has not been disputed by the Council. A Building Regulations Compliance Certificate dated 11 April 2014 confirms that work to replacement 5 windows and 1 door at the property had been completed.

5. The Council wrote to the previous owner in April 2015, after the outcome of an appeal into the refusal of the retrospective planning application for the sash windows upheld that decision. At that time, it was stated that no further action would be taken against the unauthorised windows because it was considered that they were an improvement on the ones they had replaced. However, the Council has now decided to take enforcement action contrary to that previous advice.
6. Normally, the requirements of such a notice would call for the windows to be replaced to match those that were in the building immediately before the breach of planning control took place but, in this case, the Council clearly does not want the uPVC top hung casements to be reinstated. Although it appears that the Council has indicated to the appellants that timber sash windows would be acceptable replacements, this is not included within the requirements of the enforcement notice and, as noted above, this is not what was in the building immediately prior to the change. If the previous windows were authorised, the appellants could not be required to install anything different to them.
7. Whilst the removal of the windows without replacements would comply with the notice, planning permission would also be granted for the building to be left in this state. This may be unlikely to happen but it is also the case that such a situation would fail to preserve or enhance the character and appearance of the Preston Park Conservation Area. In this respect, the requirements of the notice would fail to comply with the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area as set out in s.72.01(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
8. Nevertheless, the actual effect of the notice as worded is that the appellants would have to submit details of what they propose to install as replacements for the Council's approval prior to compliance with the notice, otherwise the house would be left without windows. An enforcement notice that is uncertain in its requirements or requires the recipient to seek further approval from the Council has been found by the courts to be a nullity. I consider that is the case here.
9. The appellants have appealed against the enforcement notice on grounds (f) and (g). A ground (f) appeal claims that the requirements of the notice go beyond what is required to remedy the breach of planning control and ground (g) claims that the time for compliance is too short.
10. However, I have concluded that the notice is a nullity and in these circumstances the appeals under these grounds, as set out in section 174(2) to the 1990 Act as amended, do not fall to be considered.

Katie Peerless

Inspector