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## Appeal Decision

Site visit made on 28 August 2019

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 9 September 2019**

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**Appeal Ref: APP/H5390/C/18/3212996**  
**393 King Street, London W6 9NJ**

- 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 Tombstone Ltd against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
  - The enforcement notice was issued on 23 August 2018.
  - The breach of planning control as alleged in the notice is the installation of UPVC windows in the front elevation at first floor level and second floor level, on a Building of Merit in a Conservation Area.
  - The requirements of the notice are:
    - a) Remove the replacement uPVC windows from the front elevation at first and second floor level; and
    - b) Reinstate timber sliding sash windows to the front elevation to match the detailed design and method of opening of the original windows as shown in the attached photo 001.
  - The period for compliance with the requirements is stated as "The steps specified in paragraph 4b) of this notice must be complied with within 6 (six) months of the date on which this notice takes effect".
  - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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### Decision

1. It is directed that the enforcement notice is corrected by:
  - Within the first paragraph of the notice which starts with the words "This is a formal notice", deletion of the words "paragraph (b)" and their substitution with the words "paragraph (a)"; and
  - Within section 5 of the notice setting out the time for compliance, deletion of the words "paragraph 4b)" and their substitution with the words "paragraphs 4 a) and 4b)".
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matters

3. I have a duty to ensure that the notice is in order. If I consider that the notice is defective, I have broad powers under the provisions of S176(1)(a) to make

corrections. I can only do so however where I am satisfied that this will not cause injustice to either the appellant or the Council. If the notice cannot be corrected, I must quash the notice.

4. The paragraph on the notice that begins with "This is a formal notice..." refers to the breach of planning control falling under paragraph (b) of s171(A)(1) which relates to a failure to "comply with any condition or limitation subject to which planning permission has been granted". However, the allegation on the notice does not refer to a condition or limitation of any planning permission.
5. The description of the alleged breach indicates that the Council consider building or other operations have taken place within the meaning of s55(1) of the Act which includes the carrying out of building, engineering, mining or other operations in, on, over or under land (operational development). This is also consistent with the first reason for issuing the notice at paragraph 3(a), that the development has taken place within the last 4 years. That is the time-limit for taking enforcement action against operational development, as set out within s171B. Given that the time limit is correct for the breach described, the appellant would not be under a false apprehension if an appeal under ground (d) was being contemplated, that it was too late to take enforcement action. Correcting the notice to refer to s171(A)(a) would therefore not cause injustice.
6. Furthermore, there are 2 requirements set out in section 4 of the notice. Within section 5 there is only a specified period for compliance with respect to the requirement at paragraph 4(b). S173(9) of the Act makes it a requirement to specify the period at the end of which any steps are required to have been taken. The notice does not therefore comply with s173(9). However, it would not be possible to reinstate timber sliding sash windows as required at 4(b), unless the uPVC windows have already been removed as required at 4(a). It is clearly possible to deduce that requirement 4(a) also needs to be undertaken within 6 months otherwise, requirement 4(b) cannot be undertaken. I can correct this defect in the notice by simply stating that both of the steps in section 4 must be complied with, within 6 months. Such a change would not alter the practical effect of the notice and therefore it does not cause injustice to the appellant.

### **The Appeal on ground (c)**

7. The appeal on this ground is that the alleged breach of planning control does not constitute a breach of planning control.
8. A breach of planning control comprises the carrying out of development without the required planning permission. Operational development as described above is alleged to have taken place. It is further clarified by s55(2)(a) and (2)(a)(ii) that the carrying out for the maintenance, improvement or other alteration of any building or works which materially affect the external appearance of the building, fall within the definition of development.
9. The notice was accompanied by a photograph showing the windows before they were replaced with the current UPVC units. This confirms that the previous windows were very similar to those that are currently in place within the first and second floor of the adjoining property at No 391. The previous windows in both the first and second floor were timber sliding-sashes with curved meeting rails and the top sashes were subdivided into individual lights and the timber joinery was refined.

10. The joinery of the UPVC units is more bulky with a more regular and lustrous surface than before. The lower panels stand proud of the inner frame rather than sitting inside the box of the previous sashes. Some of the windows were open when I visited, indicating that the lower parts of the windows are casements, hinged at the middle glazing bar therefore appearing even more different than the sliding sashes they replaced, when open. The new windows also have a far more regular and rectilinear shape.
11. The appellant states that permission was given in December 2007. I am not provided with any details of a planning permission from that time nor evidence to demonstrate that, if planning permission was given, that it has been implemented. The appellant states that the previous windows were defective and allowed cold weather to penetrate the building but I cannot consider the planning merits of this case.
12. The replacement windows have materially affected the external appearance of the building and the insertion of them therefore involved development within the meaning of s55 of the Act and they required planning permission. I have no evidence that planning permission exists for the windows. Accordingly, the appeal on ground (c) fails.

### **Conclusion**

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

*A Harwood*

INSPECTOR