
Appeal Decision

Site visit made on 9 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/L5810/C/18/3217122

Flat 4, 18 Belgrade Road, Hampton TW12 2AZ

- 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 Marcin Wiercinski against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 25 October 2018.
- The breach of planning control as alleged in the notice is the unauthorised installation of UPVC framed windows at first floor level of the property as identified as W1, W2, W3 and W4 in the attached photographs A and B.
- The requirements of the notice are:
 - i. Remove the windows that have been installed at first floor level; and
 - ii. Replace windows W1 and W2 with two timber top-opening windows to match in facsimile those previously in situ (shown in photograph C); and
 - iii. Replace windows W3 and W4 with timber framed windows to match in facsimile those previously in situ; and
 - iv. Make good any damage to the building caused by complying with steps 5(i), 5(ii) and 5(iii) above.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Application for costs

1. An application for costs has been made by Mr Marcin Wiercinski against the London Borough of Richmond-upon-Thames. This application is the subject of a separate decision.

The appeal on ground (c)

2. The 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.¹ The meaning of development is set out in s55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. As a matter of fact and degree I find that the installation of replacement windows is an operation as defined by s55(1).
3. 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

¹ S171a(1)(A)

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.

4. The installation of the replacement windows has clearly affected the exterior of the building. However, the courts have held² that it is the effect on the external appearance and not just the exterior which must be considered; and that the effect on the external appearance must be judged in relation to the building as a whole and not by reference to a part of the building to be taken in isolation. Matters that should be taken into account include the degree of visibility by an observer outside the building; the nature of the building and the nature of the alterations/works that have taken place.
5. The appeal property is a first floor flat in a red brick semi-detached property situated in the Hampton Village Conservation Area. The property is situated in a mainly residential area where there is a variety of types of property in terms of age and style. Replacement windows (W1 and W2) have been installed to the rear elevation of the property at first floor level, W3 has been installed on the side elevation and W4 on the front elevation. Each of the windows is UPVC framed and it is my understanding that the previous windows were timber framed.
6. With respect to W1 and W2 the windows are visible from private vantage points within the rear garden of the property and there are also some limited views from the adjacent properties, although the rear elevation is screened from some vantage points to the side and rear by trees and landscaping. Although the materials used are different, the replacement windows have a very similar appearance to those they replaced. Consequently, from views other than direct and very close, it is difficult to discern the difference.
7. W3 is on the side elevation of the property facing the adjacent property which only has obscure glazed windows facing the replaced window. The view of the window is not at all obvious and has to be actively sought. Also, as a consequence of its location, size and design of the window it is likely that there has been very little if any noticeable change in the appearance of the building when seen from this location.
8. Window W4 is clearly visible from the public realm to the front of the property. However, the window is set back significantly from the frontage of the building and a significant distance from the pavement that runs along the front boundary of the property. From public vantage points W4 is visible, but owing to its size, location and similarity in design to the window it replaced it is very difficult to discern, even from close by, any material difference in the external appearance of the building.
9. Drawing together my findings it is clear that the material changes have been made to the exterior of the building. From the public vantage points available, I have found that there is no noticeable change to the external appearance of the building – the change looking from that direction to be *de minimis*. There are a few other locations from where the alterations can be seen and in the main these private views afford only partial views which have to be sought rather than being in the main line of sight. The materiality of the changes should be assessed in relation to the building as a whole rather than just taking a small part or small parts in isolation. From private vantage points the degree

² Burroughs Day v Bristol CC [1996] 1 PLR 78; 1 EGLR 167

to which the appearance of the building as whole is affected is very small although not perhaps minimal.

10. In some circumstances the works that have taken place may be found to be development. They affect the exterior of the building and, to a degree, the external appearance of the building. However, I reiterate here that the test is whether the replacement windows materially affect the external appearance of the building and that is to be taken in the context of the building as a whole. In this respect having regard to the nature of the building, the relationship with the public realm, the limited private views and the extent of the alterations, I find as a matter of fact and degree that they do not materially affect the external appearance of the appeal building.
11. In coming to my decision I have had regard to the comments of the Council, including their comments regarding the type of property in question, the provisions of the GPDO and the Act.
12. Therefore, the installation of the UPVC frames windows do not amount to development within the meaning of s55 of the Act for which planning permission would be required. As no development has occurred, I do not need to go on to consider whether permission is granted by way of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. The alleged breach does not constitute a breach of planning control and the appeal on ground (c) succeeds.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (g) set out in section 174(2) of the Act 1990 as amended does not need to be considered.

Formal decision

14. The appeal is allowed and the enforcement notice is quashed.

A A Phillips

INSPECTOR