
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 3 January 2020

Appeal Ref: APP/Z5630/C/18/3218268
Flat 2, St James Road, Surbiton, KT6 4QH

- 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 Ms Alice Bordas against an enforcement notice issued by the Council of the Royal Borough of Kingston-upon-Thames.
 - The enforcement notice was issued on 29 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of upvc windows to the upper ground floor front of the Land ("the Windows").
 - The requirements of the notice are: 5.1 Remove the windows and frames from the Land; Replace the Windows and frames so that they match the profile, design and materials of the pre-existing windows as shown in the attached photographs; 5.2 Remove from the Land all materials and debris arising from compliance with steps 5.1 and 5.2 above.
 - The period for compliance with the requirements is 1 year after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. 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 has lapsed.
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Decision

1. The appeal is dismissed and the Enforcement Notice (EN) is upheld.

Costs

2. Costs applications made by Ms Alice Bordas against the Council of the Royal Borough of Kingston-upon-Thames (the Council) and the Council against Ms Alice Bordas are the subject of a separate decision.

Reasons

3. S171B(1) of the 1990 Act specifies that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, the appellant must show that, on the balance of probability, the uPVC windows attacked in the EN have been substantially in place for four years prior to the EN being issued, which was 29

November 2018 (hereinafter referred to as the “material date”). The burden of proof to make out their case rests with the appellant.

4. uPVC windows to the flat were originally installed in the summer of 2014. On its face, therefore, uPVC windows have been in place for over four years before the material date. In this regard I note all the background to an application for a Lawful Development Certificate under s191(1)(b) of the 1990 Act which was refused by the Council. However, it is common ground that the first set of uPVC windows were replaced by different Upvc windows in 2015. The date when the switch took place is confirmed as 19 January 2015. Apart from what may have been some minor remedial cosmetic works, the operation to fit the windows was substantially complete on that day.
5. The submitted photographs show that the original uPVC windows were plain and it appears were top opening. In contrast, the new 2015 windows are sash in style with two distinct planes and they have moulded decorative horns. They are materially different from the previous uPVC windows. It is clear that on 19 January 2015 a building operation took place when the current windows were installed. That operation was development requiring planning permission which has not been granted. Also, given the date when the EN was issued, it could only be attacking the existing windows and not the previous windows.
6. Consequently, despite uPVC windows being in place for more than four years, the current windows installed on 19 January 2015 have not been there for four years prior to the material date. Therefore, the Council was able to take enforcement action against this breach of planning control.

Conclusion

7. As such, the appeal must fail. I shall uphold the EN.

Gareth Symons

INSPECTOR