



Appeal Decision

Site visit made on 10 December 2019

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

Appeal Ref: APP/Y5420/C/19/3222418

14 De Quincy Road, London, N17 7DL.

- 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 F D Ngameni against an enforcement notice issued by London Borough of Haringey.
- The enforcement notice, numbered UNW/2017/00569, was issued on 8 January 2019.
- The breach of planning control as alleged in the notice is the installation of upvc windows and door to the front and side elevations of the property.
- The requirements of the notice are to: (1) remove the upvc door and windows and (2) replace the upvc with fenestrations with timber door and windows.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the notice is upheld but the period of compliance is increased.

The appeal on ground (c)

1. Although the appellant refers to ground (b) in the title to this part of his case, it is clear from the detailed submissions that the appeal is on ground (c) which he quotes and states that there has not been a breach of planning control. There is no submission that the installation of the upvc windows in the property has not taken place.
2. The appellant refers to the many other properties nearby that have had replacement upvc windows installed and argues that this indicates that permission was already granted (for the windows) through the absence of corrective action in these cases.
3. However, this is mainly an argument of planning merits to be considered under ground (a). The fact that locally there are many similar examples of apparently unauthorised development does not in itself make a specific development permitted in law. The work specified in the notice relates to an alteration to a dwelling house. While such work would normally be 'permitted development' by virtue of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, in this case within the Tower Gardens Conservation Area it is clear that these provisions have been taken away by an Article 4 Direction.
4. I am satisfied that the work set out in the notice is development that requires planning permission and that in the absence of a specific permission the

installation of the upvc windows constituted a breach of planning control. The appeal on this ground fails.

The appeal on ground (a)

5. The main issue is whether the installation of the upvc windows and door preserves or enhances the character or appearance of the host property and its setting in the Tower Gardens Conservation Area.
6. The appeal site comprises a two storey end of terrace property which lies in a prominent position on the corner of De Quincey Road and Morteyne Road. The local part of these roads fall within the Conservation Area. The Council says the host property is a good example of the 'arts and crafts' style and this forms the basis of the area's designation as a heritage asset. I note that a retrospective application for the installation of the windows was refused by the Council in 2018 under ref. HGY/2018/0686.
7. I have no reason to doubt the Council's claim that the upvc windows replaced timber sash windows and at my site visit I saw examples of such windows in other properties in De Quincey Road and Morteyne Road. This timber fenestration makes a positive contribution to the appearance of these 'arts and crafts' properties and the overall significance of the heritage asset.
8. The upvc windows and door in the appeal property are materially and significantly different in appearance to the traditional sash windows. The upvc frames are much thicker and the two panes of the window abut rather than overlap and do not have much relief or shadowing which are essential characteristics of a sash window. Moreover, it appeared to me at the site visit that the windows are 'top hung' in that the opening part will project out at an angle to the vertical plane of the window rather than slide up and down. The glazing bars also appeared to be applied to the glass rather than be an integral part of the form of the window or door.
9. The appellant's main argument in favour of the work is the degree of other properties in the locality which now have non-traditional sash windows with many of these being of upvc construction. He pointed out many of these at the accompanied site visit. The evidence submitted by the appellant suggests that approximately 50% of the properties in De Quincey Road and Morteyne Road are said to have upvc windows of some form and many of these are said to be Council owned.
10. I have some sympathy with this argument on a practical basis but conversely the assessment also demonstrates that about half of the properties retain the original form of fenestration. Moreover, the Council points out that the Conservation Area Map indicates that most of the houses in Morteyne Road adjoining the appeal site are excluded from the area to which the Article 4 Direction applies. There is therefore no local control over changes to the windows and doors in these properties. This may explain why there is a concentration of upvc windows in this area. In any event I have to consider the appeal development on its individual merits.
11. I have also taken into consideration the appellant's representations that the old windows were difficult to operate and gave rise to a number of accidents and injuries including to his children. I understand these concerns but in principle timber sash windows can be updated and maintained so as to be operated in a

safe and convenient manner. Therefore, I am not able to place much weight on these aspects in favour of the retention of the upvc replacements.

12. Overall, I find that the form and materials of the windows and door mean that they do not preserve or enhance the character or the appearance of the host property but harm it together with its setting in the Conservation Area. This harm means that the unauthorised work conflicts with the provisions of Policy 7.8(D) of the London Plan; and Policy DM9(E) and Policy SP12 of the Local Plan.
13. In terms of the National Planning Policy Framework (NPPF) I find that the proposal amounts to 'less than substantial harm' as set out in paragraph 196 but it has not been demonstrated that the proposal would give rise to any public benefits. Moreover, the guidance in paragraph 193 of the NPPF makes clear that great weight should be given to the conservation of the heritage asset whatever the degree of harm.
14. Overall, I find that the conflict with the development plan and the harm I have identified is not outweighed by any other consideration and this indicates that planning permission should not be granted. The appeal on this ground fails.

The appeal on ground (g)

15. Under this ground the appellant says that the period specified in the notice (at 3 months) is much too short given his financial circumstances, and if the appeal is not successful, he seeks a longer period of not less than 7 years to comply with the notice.
16. The period of compliance must be based on what is reasonable to comply with the notice rather than an appellant's personal circumstances although, as the Council says in its representations, a council may take account of any hardship when considering compliance and has powers to extend the period.
17. Given the number of windows involved and the need to have replacement ones manufactured and fitted, I find that three months is too short for a compliance period and 9 months strikes a reasonable balance between the appellant's practical ability to comply and the need to remedy the harm imminently in the public interest. To this limited extent the appeal on this ground succeeds.

Formal decision

18. It is directed that the enforcement notice be varied by the deletion from paragraph 5 of the Notice the words "Three (3) months" and the substitution therefor of the words "nine (9) months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Murray

INSPECTOR