
Appeal Decision

Site visit made on 28 January 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/C5690/C/19/3231247

17 Lind Street, London SE8 4JE

- 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 Mrs Sarah Livingston against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 3 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the installation of uPVC framed windows to the front elevation of the premises at ground and first floor level. The premises is subject to an Article 4 direction.
 - The requirements of the notice are: 1) Remove the unauthorised uPVC framed windows from the front elevation of the premises at ground and first floor level and replace with timber framed windows of the same design, detailing and appearance as the windows at ground and first floor level as shown on the photograph attached to the notice.
2) Remove all materials, debris, waste and equipment resulting from compliance with requirement (1) above from the land and premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld and the deemed planning permission is refused.

Ground (e)

2. In appealing on ground (e) the onus of proof is on the appellant to show on the balance of probabilities that copies of the enforcement notices were not served as required by section 172 of the Act.
3. The appeal form simply states that the notice was sent only to the tenant and not received by the owner of the property. The Council state the notice was served on "the occupier", "the owner" and "Sarah Livingstone" [sic] with each addressed to 17 Lind Street, London SE8 4JE. No further information has been provided by the appellant as to why she considers the notice has not been properly served. Given the burden of proof, the evidence presented shows that the statutory requirements have been met.
4. Even if the notice had not been correctly served, section 176(5) of the Act provides that failure to serve may be disregarded if an appellant has not been substantially prejudiced by the failure to serve him/her. Here, the appellant

was still able to submit an appeal against the notice before it was due to take effect and has had an opportunity argue her case fully in the course of the appeal proceedings. It cannot, therefore, be said that the appellant has suffered any substantial prejudice even if there was any failure to comply with the rules concerning service.

5. Accordingly, the appeal on ground (e) fails.

Ground (a) and the deemed planning application

Main Issue

6. The main issue is whether the proposal would preserve or enhance the character or appearance of the Brookmill Road Conservation Area (CA).

Reasons

7. The appeal site is located within the CA which was designated in 1972. It is also located within an area which is the subject to a Direction pursuant to Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 as amended, which was made in 1998 to control small scale alterations to the houses within the CA.
8. Within the Brookmill Road conservation area character appraisal (the Appraisal) specific reference is made to the cohesive character of the groups of buildings, expressed in terms of their architectural and historic features. The significance of this section of the CA lies mainly in its attractive Victorian buildings. The houses on Lind Street date from around the 1870s and share the design characteristics of this period. Some of these features are highlighted in the Appraisal which draws attention to, amongst other things, the traditional canted bay, vertical-sliding timber sash-in-case windows to both ground and first floor.
9. The appeal property forms part of a row of buildings with a sophisticated charm and architectural quality with a repetitive evenly proportioned form. The windows create an integral part of the design of the buildings and contribute to the visual interest of the street. Many of the properties retain their architectural integrity and the historic presence adds positively and distinctively to the character and appearance of the street scene and the wider CA.
10. No 17 Lind Street is one of a pair of semi-detached brick-built Victorian properties on the northwest side of the residential street. The architectural quality of the building is exhibited in the two storey canted bays with openings to accommodate swept-head sash windows which dominate the public façade of the property. These features are typical of the road and an important characteristic within the CA.
11. The timber windows on the front elevation of the appeal property have been replaced with uPVC framed windows, squared off at the head and with broader glazing bars. The windows are of an outward opening design which is at odds with the traditional vertical sliding sash arrangement of the traditional form of the windows in this part of the CA.
12. Although they demonstrate a similar style to those on neighbouring properties, the replacement windows are of a material that detracts from the historic nature of the building and the character and appearance of the CA. uPVC is a

- synthetic material whose smooth, shiny, modern appearance does not satisfactorily capture the character of the painted timber finish that would have typified the original windows. As a result, the windows appear discordant, and out of keeping with the natural traditional materials that are dominant within the facades of the surrounding buildings.
13. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
 14. I acknowledge the appellant's intentions in terms of thermal efficiency of the building and the requirements for an energy performance certificate. However, this would be a private benefit and would not be of benefit to the public. There are displays of unsympathetic modern alterations to windows on some buildings within the street. Nevertheless, these alterations do not justify visually harmful development as this kind of alteration has a detrimental visual effect upon the appearance of the historic buildings and the setting of the neighbouring buildings.
 15. Whilst uPVC window design has improved over the years and detailing has become more refined and slimmer, the technical finish is still different to wood. This difference is exacerbated by the prominence of the canter bays and size of the fenestration on this visually prominent elevation. Consequently, the significance of this historic asset would be eroded by allowing the replacement of timber windows with uPVC and the harm would be unacceptable.
 16. For the collective reasons above, the development does not preserve or enhance the character or appearance of the CA, albeit causing less than substantial harm to its significance as a heritage asset given the scale of the proposal. Nonetheless this harm must still be given considerable importance and weight. It follows therefore that the development conflicts with Policies 7.4, 7.6 and 7.8 of the London Plan 2016, Policies CS15 and CS16 of the Core Strategy 2011 and Policies DM30, DM31 and DM36 of the Lewisham Development Management Local Plan 2014 (the DMLP) which, broadly speaking, seek to support new development of the highest design which conserve and respect the architectural significance of heritage assets.
 17. Based on the evidence before me, there are no public benefits or other considerations that would outweigh the harm to the character and appearance of the CA. For the reasons set out above, I conclude that the appeal on ground (a) should fail.

S Hanson

INSPECTOR