



Appeal Decisions

Site visit made on 10 March 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal A Ref: APP/V5570/C/19/3227397

Land at First Floor (Flat 2), 10 Hungerford Road, London N7 9LX

- 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 Robin Lee against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice, reference 21/2019, was issued on 21 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of uPVC windows to the front elevation at first floor level.
 - The requirements of the notice are to:
 - Remove all the uPVC windows and frames from the front elevation at first floor level of the property
 - Reinstate timber sash windows to match the originals in terms of their detailing and design, thickness of frames, glazing pattern and profile, as noted on the attached photograph.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b], [c] and [f] 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 have lapsed.
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Appeal B Ref: APP/V5570/C/19/3227398

Land at Second Floor (Flat 3), 10 Hungerford Road, London N7 9LX

- 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 Robin Lee against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice, reference 22/2019, was issued on 21 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, the installation of uPVC windows to the front elevation at second floor level.
- The requirements of the notice are to:
 - Remove all the uPVC windows and frames from the front elevation at second floor level of the property
 - Reinstate timber sash windows to match the originals in terms of their detailing and design, thickness of frames, glazing pattern and profile, as noted on the attached photograph.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)[b], [d] and [f] 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 have lapsed.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 13 March 2020.

Decisions

1. Appeal A is dismissed, and the notice is upheld
2. Appeal B is dismissed, and the notice is upheld.

Procedural Matters

3. The appellant does not agree with the Council's reasons for issuing both notices which relate to the effect of the development on the character and appearance of 10 Hungerford Road and Hillmarton Conservation Area. He has submitted information, including annotated maps, to support his arguments. In a large part these arguments relate to the merits of the development. However, as there are no ground (a) appeals before me, and I cannot infer ground (a) as a hidden ground, these matters do not fall to be considered.
4. The appellant has not submitted Appeal A on the basis of ground (d), which is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. However, he has addressed this ground in his submissions, and I have considered it below.

Ground (b) (Appeals A and B)

5. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. The appellant does not dispute that uPVC windows have been installed in the front elevation at first and second floor level. Given the admissions of the appellant, the unauthorised development has taken place on the land and both appeals on ground (b) fail.

Ground (c) (Appeal A only)

7. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
8. The appellant has not provided any evidence under ground (c) to demonstrate that the installation of uPVC windows to the front elevation at second floor level is not a breach of planning control. He has explained why he disagrees with the reasons which the Council has given for issuing the notice against the works but this does not amount to an argument that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control.
9. For the reason set out above Appeal A fails on ground (c).

Ground (d) (Appeals A and B)

10. An appeal on ground (d) is also a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.

11. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for a four-year period in the case of operational development such as the installation of uPVC windows.
12. The appellant has submitted evidence to show that three windows were installed at 10 Hungerford Road in 2013 in the form of a quotation for three windows and payments made in September and November 2013 which match the quotation. However, it is unclear which windows were to be installed, although the designs shown are similar to the current windows at first and second floor level. The appellant himself says that the windows at 10 Hungerford Road have been replaced in stages over a course of years, but he does not set out which windows were replaced when.
13. A third party has also provided a copy of a letter regarding the installation of six uPVC windows in 2016. Again, there are no details to specify which windows these works related to.
14. Evidence from the Council casts further doubt on the timing of the installation of the uPVC windows at on the front elevation at first and second floor level. Moreover, the appellant has provided no further evidence in response to this information.
15. In order to be immune from enforcement the windows which are the subject of the notice would have to have been substantially completed on or before 21 March 2015, being the relevant date four years prior to the date on which the notices were served. There is some evidence that uPVC windows were installed in 2013 but it is not clear if these were the windows referred to in the notice. There is also evidence in the form of the FENSA certificate provided by the Council that uPVC windows were installed in 2016 and 2018. If these are the windows referred to in the notice, then they have not been in situ for sufficient time so as to be immune from enforcement.
16. Bringing all of these strands together, it is not clear when the uPVC windows were installed at first and second floor level on the front elevation, thus it has not been demonstrated that, on the balance of probabilities, the windows have been in situ for more than 4 years and are thus immune from enforcement.
17. For the reasons set out above both appeals fail on ground (d).

Ground (f) (Appeals A and B)

18. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. The appellant has not submitted an appeal under ground (a) against either of the notices and I have not considered the merits of the appeal schemes. Furthermore, he has not suggested any alternatives to full compliance with either of the two notices the merits of which may have been capable of consideration given that the purpose of the notices is to remedy an injury to amenity. Nor has he provided any evidence to show that the requirements of either notice exceed what is necessary.

20. It has not been shown that there is a viable alternative to full compliance with the requirements of either of the notices or that these requirements exceed what is necessary. For these reasons both appeals fail on ground (f).

Conclusion

21. For the reasons given above I conclude that the appeals should not succeed, and I uphold the enforcement notices.

Sarah Dyer

Inspector