



Appeal Decisions

Site visit made on 17 July 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 28 August 2020

Appeal A: APP/U5930/C/20/3248985

Land at 226-228 Cann Hall Road, London E11 3NF

- 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 Zubair Bux (Capital Investment Assets Limited) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is: In contravention of condition 2 of planning permission (ref: 170583) granted on 18 April 2017 for "*Variation of Condition 2 pursuant to planning ref: 162355, dated 8/9/2016 to allow the use of UPVC framed sash window in the proposed extension, varying the wording of Condition 2 to reflect the details contained in the substituted drawing*", the failure to construct the Woodhouse Road elevation of the development in accordance with drawing numbered PA/1750/001 received on 16 February 2017, namely,
 - Failure to provide matching cornice and coursing detailing at 1st floor level;
 - Failure to install two one-over-one UPVC sash windows with architrave at ground floor level; and
 - Failure to install three recessed 'false' windows with architrave at ground floor level.
 - The requirements of the notice are:
 - 1) Install cornice and coursing detailing at first floor level on the Woodhouse Road elevation of the Land as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 2) Install two one-over-one UPVC sash windows with decorative architrave at ground floor level as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 3) Install three recessed 'false' windows with decorative architrave at ground floor level as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 4) Remove all resulting materials, rubble and general detritus from the Land following compliance with steps 1-3 above.
 - The period for compliance with the requirements is within 6 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/U5930/C/20/3249345

Land at 226-228 Cann Hall Road, London E11 3NF

- 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 Bushra Khaled against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice was issued on 21 February 2020.

- The breach of planning control as alleged in the notice is: In contravention of condition 2 of planning permission (ref: 170583) granted on 18 April 2017 for "*Variation of Condition 2 pursuant to planning ref: 162355, dated 8/9/2016 to allow the use of UPVC framed sash window in the proposed extension, varying the wording of Condition 2 to reflect the details contained in the substituted drawing*", the failure to construct the Woodhouse Road elevation of the development in accordance with drawing numbered PA/1750/001 received on 16 February 2017, namely,
 - Failure to provide matching cornice and coursing detailing at 1st floor level;
 - Failure to install two one-over-one UPVC sash windows with architrave at ground floor level; and
 - Failure to install three recessed 'false' windows with architrave at ground floor level.
 - The requirements of the notice are:
 - 1) Install cornice and coursing detailing at first floor level on the Woodhouse Road elevation of the Land as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 2) Install two one-over-one UPVC sash windows with decorative architrave at ground floor level as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 3) Install three recessed 'false' windows with decorative architrave at ground floor level as shown in drawing numbered PA/1750/001 (attached to this Notice) to comply with condition 2 of planning permission (ref: 170583) granted on 18 April 2017; and
 - 4) Remove all resulting materials, rubble and general detritus from the Land following compliance with steps 1-3 above.
 - The period for compliance with the requirements is within 6 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The enforcement notice is varied as follows:

Delete Requirements 1, 2, 3 and 4 and replace them with the following:

"Requirement 1

The Woodhouse Road façade of the rear/side extension, permitted under planning permission ref 170583 dated 18 April 2017, shall be altered in accordance with its terms and conditions; notably condition 2 which requires for the installation of two one-over-one UPVC sash windows with decorative architrave at ground floor level, and the installation of three recessed 'false' windows with decorative architrave at ground floor level, with reference to drawing no PA/1750/001."

"Requirement 2

Remove all resulting materials, rubble and general detritus from the Land following compliance with Requirement 1."

2. Subject to the above variation both appeals are dismissed and the enforcement notice is upheld.

Matters concerning the Enforcement Notice

3. At my site visit I noted that the matter referred to in Requirement 1 of the enforcement notice appears to have been complied with. Although I observed

that two new windows, as stipulated under Requirement 2, have been installed their design and associated featuring does not match the other windows as required by the relevant planning permission and the approved drawing. This is discussed below. It leaves both this irregularity and that addressed by Requirement 3 as outstanding.

4. Given that no appeal has been made on ground (a) I am unable to take into account the planning merits and/or impacts of the development in reaching my decision which, in the circumstances, has to be based on evidential fact, alone.

Background

5. In September 2016 planning permission (ref 162355) was granted for the construction of a part single, part two-storey rear/side extension in association with the creation of a 2-bed flat. The windows to be installed were white painted, timber-framed, double glazed sash windows, with painted features to match the existing architectural detailing of 226-228 Cann Hall Road.
6. A standard condition was imposed requiring that the permission be implemented in accordance with the specified drawings.
7. All existing windows along the Woodhouse Road return are white UPVC framed sash and, subsequently, a s73 application was submitted to the Council, requesting a variation of condition 2 to permit the use of UPVC framed sash windows to match those existing in materials, colour and design. Planning permission ref 170583 was granted in April 2017.
8. Both permitted schemes required the installation of two new windows and also three false window recesses at ground floor level.
9. The decision was not appealed, and the Council subsequently considered it expedient to issue the enforcement notice.

Appeal A - The Appeal on ground (b):

10. The appeal on ground (b) is whether the matter alleged to be a breach of planning control has occurred as a matter of fact. The appellant must show on the balance of probability that those matters have not occurred. The relevant date is that of the issue of the notice.
11. The matters referred to in the notice, involving the absence of a number of features approved for the extension's Woodhouse Road façade, are evident from the photograph included by the Council, as an attachment to the enforcement notice.
12. Appellant A indicates that the 2017 planning permission only involved allowing the extension's windows to be of UPVC rather than timber, and not for the alteration of the façade of the new building. He does not demonstrate the basis of this assertion nor explain further save for referring to a "discrepancy with the plans" and citing three particular drawings (refs P900/201 – ground floor, P900/201- first floor, and P900/206). He suggests that, as the drawings depicted details at odds with the original 2016 planning permission, the enforcement notice is "excessive and unreasonable". However, reference to the said drawings shows clearly the wording "Issued As Preliminary", and I further note that these drawings were not included in the list mentioned in Condition 2 on the 2016 decision notice.

13. Approved drawing no PA/1750/001, the subject of permission ref 170583, identically depicts the proposed façade shown on drawing no P900/206/Rev A approved under permission ref 162355 in terms of the number of sash windows proposed on the Woodhouse Road facade, their feature surrounds, and also the three ground floor false window recesses. In that respect, save for the changes in the drawings' annotations relating to timber and UPVC respectively, it is patently obvious that both planning permissions require for an identical fenestration arrangement, and also the inclusion of the three false recesses.
14. The appellant has submitted a copy of a letter submitted by MLM Building control which indicates that the works relating to the initial Building Notice comply with Building Regulations. This confirmation, though, is exactly what it says, and no more. It makes no reference to, and does not relate to the terms and conditions of, the relevant planning permission granted, and is concerned only with matters controlled by Building Control legislation.
15. Although the appellant's appeal on ground (b) would assert that the breach of planning control was not occurring at the time the enforcement notice was issued I find it only conceivable that, given the photograph attached to the notice, the Council's decision to issue an enforcement notice was as a result of the planning permission having been implemented incorrectly.
16. The appellant, has not convincingly shown otherwise on the balance of probabilities, and the appeal on ground (b) therefore fails.

Appeal B - The Appeal on ground (c)

17. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
18. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
19. The appellant, in this instance, questions why she has been served with a copy of the enforcement notice. As the leaseholder of the flat affected by the notice she indicates that, by the terms of her lease, she is unable to effect any works to the building itself. I sympathise with her position but planning legislation requires that in instances where a Council takes formal enforcement action against an identified breach in planning control, all parties with an interest in the land should be served with a copy of the enforcement notice.
20. I see from the notice's covering letter that a number of parties were served in this particular instance, including Appellant A, the Director of Capital Investments Assets Limited. Given the implications of the enforcement notice it will fall on those responsible for, and able to, alter the fabric of the building. Given the terms of Appellant B's lease it appears that, although the required works might affect her, it would practicably fall on the party/parties holding freehold title to ensure that the notice's requirements are complied with.
21. The appellant says that the notice is unreasonable, excessive and unfair. However, it arose as a result of the failure to observe the terms and conditions of the relevant planning permission. At the time of the notice's issue there

was, therefore, a clear breach of planning control and, as such the ground (c) appeal cannot succeed.

Overall Conclusions

22. The notice's requirements are directed only to making the building accord with the approved plans. Although it appears that during the appeal period Requirement 1 has been met, there are still matters of significant materiality outstanding. As such, it is appropriate to consolidate the requirements so as to explicitly require that the development be implemented in accordance with the terms and conditions of the planning permission granted.
23. In the absence of an appeal under ground (a), and any deemed planning application falling to be determined, I shall uphold the enforcement notice, having varied its requirements, accordingly.
24. With the said variation it will now be a matter for the Council to monitor compliance with the terms of the upheld enforcement notice, as modified.

Timothy C King

INSPECTOR