



Appeal Decision

Site visit made on 12 October 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2020

Appeal Ref: APP/U5360/C/20/3245283

108 Dalston Lane, Hackney, London, E8 1NG

- 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 DIP Systems (UK) Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2019/0410/ENF, was issued on 19 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of UPVC windows on the front and rear elevations of the property.
 - The requirements of the notice are 1. Remove from the property all uPVC windows installed at the front elevation; 2. Remove from the property all uPVC windows installed at the rear elevation; 3. Reinstate timber sash windows of the previous existing design, details and finish; and 4. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered
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Decision

1. The appeal is allowed insofar as it relates to the installation of uPVC windows on the rear elevation and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the installation of UPVC windows on the rear elevation of the property at 108 Dalston Lane, Hackney, London, E8 1NG.
2. It is directed that the enforcement notice be varied by the deletion of two months and the substitution of six months as the period for compliance.
3. The appeal is dismissed and the enforcement notice is upheld as varied, and planning permission is refused in respect of the installation of uPVC windows on the front elevation of the property at 108 Dalston Lane, Hackney, London, E8 1NG, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

4. The Hackney Local Plan 2033 ("the Local Plan 2033") was adopted on 22 July 2020 and replaces the Hackney Core Strategy (November 2010) and the Hackney Development Management Local Plan (July 2015) which were part of

the development plan when the notice was issued. The appeal has been determined in accordance with the relevant Local Plan 2033 policies.

Application for costs

5. An application for a partial award of costs was made by the Council against the appellant, and an application for both a full and partial award of costs was made by the appellant against the Council. These applications are the subject of separate Decisions.

Ground (c)

6. An appeal on this ground is on the basis that the matters stated on the notice do not constitute a breach of planning control. It is accepted that the works fall within the meaning of development under section 55(1) of the 1990 Act. The appellant's case is that the works do not materially alter the appearance of the building and so, pursuant to section 55(2)(a)¹, are not development and do not require planning permission. It is necessary to consider whether the works, the replacement windows on the front and rear elevations, are visible from a number of vantage points and whether they are material to the external appearance of the building as a whole. The appellant's case is that the replacement windows are so similar to the original windows that they do not materially alter the appearance of the building.
7. The white uPVC frames are slightly thicker than the frames that have been replaced and appear noticeably different from the painted wooden frames that can be seen elsewhere in the vicinity and on the photographs provided of the original windows at the property. The building, for the purposes of section 55(2)(a) is No. 108 but it is part of the terrace consisting of 98 - 108 Dalston Lane and changes may appear more obvious because of the context of comparison with the adjoining houses. The property is on a prominent corner location and is clearly visible by pedestrians and those travelling on both roads, particularly the busy road on Dalston Lane. The differences in the appearance of the materials and the arrangement of glazing bars has resulted in a material change to the external appearance of the building, particularly, but not limited to, the appearance of the front elevation. The appeal under ground (c) does not therefore succeed.

Ground (a)

Main issue

8. The main issue is the effect of the development on the character and appearance of the Graham Road and Mapledene Conservation Area ("the Conservation Area").
9. The property is located in the Conservation Area which is a designated heritage asset and there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area². Its significance in part comes from the fact that it mostly consists of dwellinghouses built during a relatively short period of time during the Victorian

¹ "The following operations or uses of land shall not be taken for the purpose of this Act to involve the development of the land – (a) the carrying out for the maintenance, improvement or other alteration of any building of works which....(ii) do not materially affect the external appearance of the building"

² Section 72(1), Planning (Listed Buildings and Conservation Areas) Act 1990

age, with similar architectural style and uniformity of scale. No.108, as part of the short terrace of three storey buildings between 98 and 108 Dalston Lane, contributes as an example of the prevailing type of residential building within the Conservation Area with a vertical emphasis on the window openings which accentuates its height. Dalston Lane is a busy road with a lot of passing pedestrians and traffic and the property is therefore prominent, particularly in its corner location, and seen by many people on a daily basis. The Character Appraisal for the Conservation Area³ states that PVC and aluminium are unsuitable materials for use in window replacements to older buildings and that where replacement is necessary it should match the original in style, detail, materials and appearance.

Front elevation

10. The wooden sash window frames in the front elevation have been replaced with frames made from white uPVC which are slightly thicker around the edges of the glass panes than the originals. The increased thickness of the frames, along with the change in material, makes the frames appear more prominent in terms of the overall appearance of the front facade of the building. The replacement windows have horizontal and vertical bars generally in keeping with, but not identical to, the original windows and the differences in the width and position of these bars can clearly be seen when compared to the windows in some of the other properties in the same block (albeit that not all of the other windows are of the original wooden sash design). The horizontal bar across the middle of the window is wider than the original and has a small sash horn at each end which is not in keeping with those that it replaced or the rest of the windows in the front facade on the block. The vertical bars, whilst they do divide the windows into 6 sections as in the originals, divide the windows into noticeably different proportions to those replaced and different also to the windows on the neighbouring properties in the terrace. When looking at the block, it is clear that the windows do not reflect the rhythm or uniformity of the original windows on the front elevation.
11. The appellant argues that there are already many examples of non-wooden window frames in both the vicinity and the wider Conservation Area so that the nature of it has already changed and the uPVC windows are now part of the Conservation Area's character. It is clear from the evidence submitted during the course of this appeal and my observations during the site visit that there are examples of aluminium and uPVC window frames but there are also many examples of wooden sash windows, particularly in the older properties, which accord with the Character Appraisal and add to the significance in historic terms of the Conservation Area.
12. For the reasons set out above, I am satisfied that the replacement windows in the front elevation cause harm to the character and appearance of the area and causes harm to the significance of the Conservation Area which is less than substantial. These windows are contrary to development plan policies including the London Plan 2016 Policies 7.4, 7.6 and 7.8, Local Plan 2033 Policies LP1 and LP3 which are intended to conserve heritage assets and local character and promote high quality design.

³ The Graham Road and Mapledene Conservation Area Appraisal Document

Rear elevation

13. The windows in the rear elevation are less prominent, notwithstanding that the property is on the corner of Dalston Lane and Ritson Road so that can be clearly seen from the public highway. The fenestration on the rear elevations of the neighbouring properties on the same block (Nos 98 – 108) is less uniform than on the front with a variety of window shapes and sizes and placements within the wall. The view of the rear of the building from the public realm is oblique, as it is seen coming along Ritson Road to the side rather than face on, and the change to the window frames is altogether less obvious and does not stand out as being so obviously different to the adjoining houses. The configuration and detailing on these new window frames is also very similar to the windows that were replaced (and more so than in the replacement windows on the front elevation). The windows can be clearly seen from vantage points along Ritson Road but the change in appearance of the rear elevation is neutral in terms of its effect on the Conservation Area and does not cause harm. The windows in the rear elevation do not conflict with the development plan policies including 7.8 of the London Plan 2016 and Local Plan 2033 Policy LP3 which are intended to protect heritage assets. Whilst the material used in the window frames is different from the original, in this instance, the replacement windows at the rear are sympathetic to the form, scale and detail of the originals and are not so visibly different as to harm the significance of the Conservation Area. The development is of a design quality which respects the character and appearance of the local area and is not therefore in conflict with Local Plan 2033 Policy LP1 and London Plan Policies 7.4 and 7.6.

Public Benefits

14. Where harm is identified to the significance of a designated heritage asset, in this case the Conservation Area, the National Planning Policy Framework requires that the harm is weighed against the public benefits of the proposal. The appellant has argued that the development improves the appearance of the building which is a benefit to the wider Conservation Area and that the new windows provide environment benefits with reduced energy usage for the building. These improvements are not necessarily only achievable through the use of uPVC windows and I am not convinced that other solutions, such as maintenance works or replacement wooden window frames, would not have provided these same benefits. The public benefits do not therefore outweigh the considerable importance and weight that must be attached to the desirability of preserving or enhancing the character or appearance of the Conservation Area in accordance with the statutory test.

Other matters

15. The Council referred to an inspector's decision in relation to Graham Road and the appellant has submitted evidence about the use of uPVC windows which have been authorised in different locations. I do not have the full details regarding these other properties and each case must be determined on its own merits. The examples of the use of uPVC windows in other locations does not outweigh the harm that I have found to the significance of the Conservation Area.

Conclusion on ground (a)

16. I conclude that the replacement windows on the front elevation fail to preserve the character or appearance of the Conservation Area and would cause less than substantial harm to its significance as a heritage asset. In the absence of any public benefits to outweigh this harm it would be in conflict with the Local Plan 2033, the London Plan and guidance in the Framework. I conclude that the windows on the rear elevation do not result in such harm and the appeal should succeed in part.
17. I therefore grant permission for the development on the rear elevation of the property but otherwise uphold the notice and refuse the deemed application for planning permission in relation to the development on the front elevation. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.

Ground (g)

18. The appellant has requested 9 months in which to comply with the terms of the notice if upheld. I note that the Council's statement supporting the 2 month period included on the notice was submitted on 27 March before the longer-term implications of the Coronavirus Pandemic were evident and I am therefore minded to extend the compliance period to 6 months to take this into account. The appeal therefore succeeds on ground (g).

Zoë Frank

INSPECTOR