The Planning Inspectorate

Appeal Decision

Site visit made on 27 May 2021

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/Y5420/C/18/3205531
Ground floor flat, 49 Myddleton Road, London N22 8LZ

- 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 Paul Muir against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 21 May 2018.
- The breach of planning control as alleged in the notice is without planning permission, the installation of UPVC windows on the ground floor front elevation.
- The requirements of the notice are to remove the unauthorised UPVC windows on the ground floor front elevation.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. In an email sent on 29 January 2019, Mr. Muir stated he would like to add ground (c).
- This decision supersedes that issued on 2 April 2019. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.

Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the word "windows" and the substitution of the word "window" in the allegation. Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

Procedural Matters

2. The challenge to the previous Inspector's decision dated 2 April 2019 proceeded on ground (c) only but the whole decision was remitted for re-hearing and re-determination by an Inspector. I therefore need to re-determine the ground (c) appeal and determine the ground (f) appeal.

3. The original ground of appeal was just (f) but this was later changed to include (c) and the Council were given an opportunity to respond to this additional ground. Most of the appellant's submissions relate to planning merits but ground (a) has not been pleaded and as such they cannot be considered.

4. The previous Inspector drew attention to the discrepancies in how the site was referred to by the Council. The site address specified in the heading above (referring to the ground floor flat at 49 Myddleton Road) is taken from the enforcement notice. The same address is quoted in the covering letter sent with the enforcement notice, though this letter was addressed to "The owner, 49a Myddleton Road". On the title page of their appeal statement, the Council state the site address as 49a Myddleton Road. Despite the slight differences in

the way the address of the appeal property is specified in different places, there appears to be no dispute about what the enforcement notice is directed at. The allegation and the requirements in the enforcement notice both refer to windows in the "ground floor front elevation". I will proceed on the basis that the enforcement notice is directed at the ground floor bay window facing north towards Myddleton Road.

5. The allegation is framed as the "installation of UPVC windows" on the ground floor front elevation. However, at the site visit I saw that there was only one window on the ground floor front elevation, which is a square bay, containing three panels of UPVC glazing at the front and one panel on each side. I shall therefore direct that the allegation is corrected to refer to one window. There would be no injustice caused to the parties by this correction as it appears the use of 'windows' in the plural was an oversight and the submissions from both parties refer to one window.

6. The previous Inspector wrote to the parties prior to his determination of the appeal and mentioned two court judgments, namely *Church Commissioners* and *Burroughs Day*[1]. It was later found by the High Court that it was not appropriate to refer to Church Commissioners in this case. I will discuss *Burroughs Day* in due course in my consideration of the appeal.

The ground (c) appeal

7. The appeal property is on the south side of Myddleton Road, next to the junction with Palmerston Road. The site is within the Bowes Park Conservation Area, though this has no bearing on my consideration of the ground (c) appeal. In addition to the window facing north towards Myddleton Road, the ground floor flat at the appeal property has a window facing east towards Palmerston Road, as well as windows at the rear.

8. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission. In this case the appellant submits that the new window replicates the original design and, as such, it does not amount to development. In particular, the frames surrounding the glazing are white, as were the previous frames, and they incorporate the original Georgian cross design.

9. The meaning of development is set out in section 55(1) of The Town and Country Planning Act 1990 (the Act) and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 55(1A) confirms that such operations include rebuilding, structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder.

10. Section 55(2) of the Act goes on to clarify at subsection (a)(ii) that the carrying out of works that do not materially affect the external appearance of the building shall not be taken to involve development of the land. Therefore, a judgement needs to be made depending on the facts of the case.

11. The building in this case comprises an end of terrace dwelling that is now divided into flats. The installation of the new window has clearly affected the

[1] Church Commissioners v Secretary of State for the Environment [1995] 71 P&CR 73; 2 PLR 99 and Burroughs Day v Bristol City Council [1996] 1 PLR 78

exterior of the building. I find the building to be considered in this case is not the ground floor flat known as No 49a, as submitted by the Council, but the whole of the property, namely the ground floor, first floor and roof area. This is because when looking at No 49 it is not possible to discern from its external appearance that there is more than one residential unit and therefore the change in the window should be considered in respect of the building's original design as one house.

12. Section 336 of the Act defines "building" as "'Building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery, comprised in a building." No 49 is not a substantial building and whilst it is possible to consider the effect of the changes on the external appearance on part of a building, I find this would only be the case when dealing with a large building, such as for example a school, with different facades within public view, where new fenestration might have a material effect on part of the building but not the whole.

13. In the case of *Burroughs Day,* it was held that it is the effect on the external appearance and not just the exterior which must be considered. Furthermore, judging the effect must be in relation to the building as a whole[2] and not by reference to a part of the building taken in isolation.

14. The use of the word "appearance" means that it is not sufficient for the external surface of the building to be affected by the alteration. The alteration has to be one which affects the way in which the exterior of the building can be seen by an observer outside the building. In addition, the external appearance has to be materially affected. That effect must be more than minor to merit consideration.

15. The position of No 49 means that all three elevations, namely the front, side and rear are in clear view to passers-by. At my site visit I saw that the window in question is visible from along Myddleton Road and to a lesser degree from Palmerston Road, notwithstanding that there is a boundary hedge to the front and side and a tree in the front garden. There are differences between the design of the new window and the three original timber first floor windows on the front elevation and part of an original timber window that remains within the side elevation. Essentially, these relate to the way the new window opens, in that it does not contain sliding sashes but top hung, outward opening lights and the thickness of the glazing bars. These features are more noticeable than the slimmer original first floor window frames and what remains of the original ground floor side bay window.

16. There are some minor differences in that the new window includes details such as trickle vents and omits sash window horns. The appellant though, has fitted the new window so that it retains the same depth of reveal as the original windows above and it also retains the same design proportions as the original. It has the appearance of four small panes occupying the top third of the frame and a larger pane occupying the remaining part of the frame.

17. Windows are an important element in the composition and design of most buildings and at No 49, a late Victorian-style building, they are a principal

[2] In *Burroughs Day* the Court was considering an application for a declaration that certain works to a listed building did not consist of "development" for the purposes of section 55 of the Act. The building(s) in issue were three Georgian houses, Nos 14-16, forming part of a terrace. It was apparently not contested in that case that the individual property, No 16, was the building for the purposes of section 55.

feature. In particular, there is a two storey bay window element which adds interest to the side elevation as well as the ground floor bay window on the front elevation with matching, but flush, three windows above. Other decorative elements include a prominent chimney stack on the side elevation and a string course running round from the front elevation to the side, but these details are not as prominent as the windows due to all the brickwork being painted white. At the rear there is an original two storey, half width extension and a later two storey extension infilling part of the lightwell area. At roof level there is an original dormer window on the front elevation with a pitched roof and a later flat roof dormer on the rear roof.

18. Given the size and design of the building, there are several windows and most of them have been replaced or altered to varying degrees. On the front elevation, only the first floor windows are original as the dormer window has been replaced with a UPVC casement window. On the side elevation, the first floor bay window has been replaced with UPVC sliding sashes with Georgian crosses and sash horns. Beneath this window the middle portion of the bay has been replaced with a pair of UPVC French windows. The two windows within the gable end of the roof have also been changed to UPVC. On the rear elevation, what would have been a pair of sash windows, one above the other in the end elevation of the original extension, have been replaced with UPVC windows. These appear to have a fixed upper pane and a top hung, outward opening lower pane. The windows within the later addition at the rear vary between casement opening, top opening lights and louvre windows.

19. I find in this context, having regard to the whole of the building, that the external appearance of the building, as a matter of fact and degree, has not been materially affected by the new window. The Council have placed great emphasis on the finer points of the design of the new window and attribute significant weight to the harm caused by the use of UPVC as a material. They also refer to a previous appeal decision[3], which concerned the replacement of timber sash windows with UPVC windows of which part of the design comprised a top hung, outward opening pane. However, this can be distinguished from the current appeal in that it appears all the original windows in that case were timber sashes and their complete replacement with a different design and material resulted in a significant change to the appearance of that building. This is not the case with the current appeal.

20. To use the analogy in the *Burroughs Day* case of the Coca-Cola sign, whether the external appearance of the building is "materially affected" is likely to depend on both the nature of the building and the nature of the alteration. There is a difference between the fixing of a Coca-Cola sign to the front of a newsagent shop in a busy high street and the fixing of a similar sign to the front of a listed building. In the first case this might not be material, whereas, in the second case, this would be likely to be material. "Materiality" must in every case consider the nature of the particular building which it is proposed to alter.

21. I find that the installation of the new window does not, therefore, amount to development within the meaning of section 55 of the Act, for which planning permission would be required. As there has been no development, I do not need to go on to consider whether planning permission has been granted by

[3] Reference APP/Y5420/C/18/3199822

way of The Town and Country Planning (General Permitted Development) (England) Order 2015. The alleged alteration does not constitute a breach of planning control and the appeal on ground (c) succeeds.

Conclusion

22. The allegation in the notice is incorrect, in that it refers to "windows" and I shall direct that it is corrected to refer to "window".

23. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (f) set out in section 174(2) to the Act as amended does not need to be considered.

D Fleming

INSPECTOR