
Appeal Decisions

Site visit made on 26 July 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2021

**Appeal Refs: APP/Q1445/C/20/3260943 & APP/Q1445/C/20/3260944
33 Gardner Street, Brighton BN1 1UN**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Nuia Chaperro and Mr Nasroolah Koorehpaz against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 15 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the insertion of two unauthorised UPVC double glazed windows on the first floor front elevation of the property.
 - The requirements of the notice are:
 1. Restore the Property to its condition that existed prior to the breach of planning control referred to above by replacing the two UPVC double glazed windows with metal framed Georgian style windows. to match the appearance, size and proportions of the frames and glazing bars, fenestration pattern and method of opening of the windows at number 32 Gardner Street.
 - The period for compliance with the requirements is 5 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. 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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Decisions

1. It is directed that the enforcement notice be corrected by:
 - deleting the allegation under section 3 (the matters which appear to constitute the breach of planning control) and its replacement with: "Without planning permission, the insertion of two unauthorised UPVC double glazed windows on the front elevation of the property at first and second floor levels".
 - corrected by deleting the 'full stop' (".") after the words 'Georgian style windows' under section 5 (What you are required to do) and its replacement with a 'comma' (",").
2. Subject to these corrections, the appeals are dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The allegation in the Enforcement Notice, refers to the insertion of two unauthorised UPVC double glazed windows on the 'first floor' front elevation.

However, it is clear that the two new windows are actually at first and second floor levels. However, the appellants appear to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation of the notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

4. Furthermore, the requirements of the notice, under section 5 (What you are required to do) is also poorly worded in so far as there is an incorrect full stop after the words 'Georgian style windows' which should be a comma. My understanding of the notice is not affected by this minor error and nothing within the appellants submission indicates to me that it has been misunderstood by them as a result. Therefore, I consider that this minor correction is therefore necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeals on Ground (f)

5. The appeals on this ground are "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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
6. The enforcement notice requires the removal of the UPVC windows and the restoration of the property to its condition prior to the breach of planning control, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
7. The appellants state that the steps required are excessive in terms of remedying the breach and that they have previously suggested to the Council that they could "replace the glass to have the lines it used to have as the style and opening is still the same as before". However, it is clear that the current windows are significantly different than the pre-existing windows and this suggestion by the appellants would not remedy the breach.
8. The appellants further explain that these windows were installed as part of the refurbishments works and also highlights that there are a variety of window styles in the area. However, given that the ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and I must take the notice at face value.
9. The Council's previous advice, prior to issuing the notice, to replace the windows with timber framed windows may have indicated a degree of pragmatism and discretion in considering the expediency of taking enforcement action as they are entitled to do. However, I have to consider the purpose of the notice as issued. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellants whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
10. On this basis, the Ground (f) appeals fail.

Conclusions

11. For the reasons given above I consider that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR