



Appeal Decision

Site visit made on 20 July 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2021

Appeal Ref: APP/Z1775/C/21/3272348

Land at 36 Campbell Road, Portsmouth PO5 1RW

- 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 Michael West of Hampshire Homes and Property Limited against an enforcement notice issued by Portsmouth City Council.
- The enforcement notice was issued on 5 March 2021.
- The breach of planning control as alleged in the notice is without planning permission that would have been required in the light of the Article 4(2) Direction that came into force on 4 March 2010 in relation to 1-25 and 28-66 Campbell Road: (i) Firstly, the replacement of timber framed sash windows to the front elevation of the building on the land with white UPVC double glazed casement style windows. (ii) Secondly, the alteration of the porch on the front elevation of the building on the land. Specifically, the said alteration includes the truncation of the long windows to the side elevation of the porch to form a set of windows with horizontal emphasis with a wide central window; the aforementioned heavier windows comprise of heavier glazing bars than the previous glazing bars; the replacement of stained glass on the front elevation of the porch with plain glass bearing the property address; the application of grey mineral boarding in a horizontal orientation below the truncated windows. The cumulative impact of these alterations is that the porch lacks the finesse of the historic architecture that is characteristic of the Conservation Area.
- The requirements of the notice are; (i) Remove the white UPVC casement style windows from the front elevation of the land and replace with single glazed timber sliding sash white painted windows; (ii) Remove from the porch the grey mineral boarding /UPVC weatherboarding and associated fixings and render the side of the retaining wall of the entrance steps concealed by the mineral boarding/UPVC weatherboarding to produce a consistent, smooth rendered finish to the whole of the retaining wall and paint the render of the retaining wall of the entrance steps to match the colour of the render plinth of the main property at 36 Campbell Road. (iii) Remove from the land all associated building materials, rubble and fixtures and fittings from compliance with (i) and (ii).
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. I am satisfied that the enforcement notice is not a nullity. It complies with s173 of the 1990 Act as well as the relevant Regulations¹ and tells the appellant fairly what they have done wrong and what they must do to remedy it. The notice is not "...*hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged he had developed the land without permission or in what respect it was alleged he had failed to comply with the condition or again, he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches*"². My understanding is that *Egan*³ was largely concerned with whether certain works were included in the enforcement notices in the context of a Council seeking to undertake the remedial works in default of compliance. Therefore, I am not clear of the relevance of that Court case to the matter at issue. At s176, the 1990 Act provides for the correction or varying of an enforcement notice, including in respect of any defect, error, or misdescription in the notice, subject to the test of injustice. Whether the requirements of the notice are excessive is a matter considered in the ground (f) appeal below.
2. There is no ground (a) appeal and no deemed planning application. Therefore, planning merits considerations, including whether the works attacked by the notice preserve the Campbell Road Conservation Area (CA), the effect on the living conditions of existing and future occupiers and the effect in terms of mitigating and adapting to climate change, have no bearing on my decision.
3. There is no firm evidence to suggest that any administrative errors made by the Council in the appeal procedures have prejudiced the appellant. A site visit made by a Council Officer in connection with a previous planning application has no bearing on the Council's discretion to issue an enforcement notice.

Background

4. The appeal site contains a semi-detached dwelling with a mostly glazed porch at the side. The notice attacks the installation of UPVC framed casement style windows in the front elevation of the dwelling and the covering of lower parts of the porch with horizontal grey cladding. A planning application in respect of the UPVC windows was refused by the Council, a subsequent appeal against that decision being dismissed on 15 October 2018⁴. The Council also refused a planning application including the cladding and a subsequent appeal was dismissed on 14 June 2019⁵.

Ground (f) appeal

5. The ground of appeal is that the requirements of the notice are excessive.
6. Replacing the UPVC framed windows with single glazed timber framed sliding sash windows would restore the dwelling to its condition before the breach specified in paragraph 3 (i) of the notice took place. In relation to the breach specified in paragraph 3 (ii), the Council made it clear in the notice that the requirement to remove the cladding and replace it with render but to not require a remedy to other works to the porch, such as the truncated windows,

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

² *Miller-Mead v MoHLG* [1963] 2 WLR 225.

³ *Egan v Basildon Borough Council* [2011] EWHC 2416.

⁴ Ref: APP/Z1775/W/18/3197546.

⁵ Ref: APP/Z1775/W/19/3223629.

- represented under-enforcement. Accordingly, the purpose of the notice must be to remedy the breach of planning control in respect of the UPVC framed windows and to remedy the injury to amenity in respect of the porch works.
7. Anything less than replacement of the UPVC framed windows with single glazed timber framed sliding sash windows would not restore the dwelling to its condition before the breach took place and so would not remedy the breach. Therefore, step (i) at paragraph 5 is not excessive given the purpose of the notice. Varying the notice to leave the UPVC framed windows in place would be tantamount to a grant of planning permission. However, as noted above there is no ground (a) appeal and ground (f) is not an alternative route to obtaining planning permission. If as in this instance the purpose is to remedy the breach, it is not open to me in a ground (f) appeal to vary the notice to require something that would stop short of doing so; the notice cannot be varied in a way that would attack its substance. As a result, retaining the UPVC framed windows is not an obvious alternative to step (i). I accept that the remedial works might be costly for the appellant. However, that has limited relevance in terms of whether the notice requirements are excessive in the context of this appeal.
 8. The notice refers at paragraph 5 step (ii) to removing the "*grey mineral boarding/UPVC weatherboarding*" from the porch. The cladding material is not UPVC. However, I do not regard any error in this respect as significant, especially as UPVC is only referred to in the alternative. Mineral board is a manufactured material similar to UPVC. The appellant is clearly aware of exactly what works the Council are referring to. Therefore, in my view the notice could, if I were so minded, be corrected by deleting references to UPVC in the step without causing any injustice.
 9. Based on the information before me, I am not persuaded that the cladding was permitted by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Article 4 (2) Direction restricts development including alterations to architectural details on the front elevation which might otherwise have been permitted by Class A, unless express planning permission is obtained. There was no firm evidence to show that the cladding on the porch side elevation was applied other than as part of one continuous building operation which also included applying the cladding on the porch front elevation. Where works are undertaken in breach of planning control the whole of the development is unauthorised, not just that element in excess of permitted development limits.
 10. In any event, the dwelling is in the CA; the cladding of any part of its exterior with materials including plastic is not permitted, having regard to Class A paragraph A.2 (a). The pre-existing external finish was removed prior to application of the cladding. It was not disputed that the cladding currently in situ was applied less than four years prior to the notice being issued and there is no evidence before me to suggest otherwise. Consequently, the cladding is not lawful for planning purposes. As there is no realistic prospect of the cladding being re-applied following its removal, this does not represent a realistic 'fallback' position. It follows that varying the notice to retain the cladding does not represent an obvious alternative to step (ii).

11. Nevertheless, I am concerned that the requirement to render and paint the relevant parts of the porch following removal of the cladding would impose a requirement that is more onerous than restoring the dwelling to its condition prior to the breach. In photographs of the dwelling before the works took place, the parts now covered by the cladding were mostly covered by what appears to be white coloured timber weatherboard, not painted render. The appellant's description of the weatherboard as 'shiplap timber' reinforces my view on the likely material of the pre-existing external finish. Also, as there is under-enforcement in respect of the truncated porch windows, it is evident that the cladding currently covers a small section of the porch that was not covered by the pre-existing weatherboard but was in fact part of the larger area of glazing. Given these factors, I intend to vary the notice to delete step (ii) and replace it with a requirement to remove the cladding and restore those parts of the porch to their condition before the breach took place. This should be sufficiently clear and precise, the appellant being in the best position to know the pre-existing condition of the relevant parts of the porch. There would be no injustice.

12. Therefore, the ground (f) appeal succeeds to the extent set out above.

Ground (g) appeal

13. The ground of appeal is that the time specified for complying with the requirements of the notice is unreasonably short.

14. As far as I am aware, the appellant did not specify an alternative compliance period that they thought might be reasonable. The remedial works required are relatively small-scale and straightforward. In my view, the time involved in securing any necessary finance, given the likely considerable sums involved, having the new timber windows fabricated and arranging for and having those windows installed together with the works to the porch, is unlikely to exceed the twelve months specified in the notice.

15. The principal physical effects associated with undertaking the works would be on the exterior of the dwelling. Provided the works were undertaken with reasonable care, I cannot see a good reason why the dwelling would be unable to remain weathertight and habitable throughout. In my estimation, the works themselves are unlikely to take longer than a couple of weeks at most to complete. Therefore, although there would probably be some short-term disruption to the living arrangements whilst the works were undertaken and some prior notice of such works would have to be given, particularly in respect of replacing the windows, I do not see that the eviction of tenants would be necessary.

16. Furthermore, twelve months affords the appellant ample opportunity to explore further with the Council the possibility of installing replacement windows of an alternative design which both addresses the harm to the CA identified in the notice and by the Inspector in the previous planning appeal, as well as achieving good levels of energy efficiency. It would also present an opportunity for discussions regarding the application of any suitable alternatives to the cladding.

17. Accordingly, in my view the compliance period specified in the notice is not unreasonably short. It is proportionate to the legitimate public interest the notice is seeking to achieve. Any longer period would perpetuate the breach of

planning control and the harm identified unnecessarily. The ground (g) appeal fails.

Conclusion

18. For the reasons given above I conclude that whilst the compliance period specified in the notice is not unreasonably short, step (ii) of the requirements is excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

19. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by at paragraph 5 the deletion of step (ii) and its replacement by the following step (ii):

"Remove the grey mineral boarding on the parts of the porch shown hatched red within Appendix B of Annex B of the enforcement notice and restore those parts of the porch to their condition before the breach took place."

20. Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR