



Appeal Decisions

Site visit made on 31 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal A Ref: APP/N5090/C/20/3258284

Land at 1 Sunset View, Barnet EN5 4LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ahmet Eren against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0667/20, was issued on 22 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission (1) the insertion of new Windows on the sides of the house facing Sunset View and/or St Albans Road; (2) the replacement of garage doors facing Sunset View with new windows and underlying brick and (3) the installation of replacement garage door in front of the works in (2) above
 - The requirements of the notice are to:
 - 1 Remove the newly installed windows facing Sunset View and/or St Albans Road remove the infill brick from the garage.
 - 2 Elsewhere, replace the windows with metal framed windows, finished in white and with glazing bars, to match the originals (as shown in the attached photographs).
 - 3 Reinstate the garage to the state in which it was prior to the breach by removing the new garage door and associated fitting and fixtures and replacing underlying brick with wooden garage doors with 6 paned windows to match the originals (as shown in the attached photograph)
 - The period for compliance with the requirements is: 2 Months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/N5090/C/20/3255320

1 Sunset View, Barnet EN5 4LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ahmet Eren against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0495/20, was issued on 28 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission the insertion of new uPVC Windows on the sides of the house facing Sunset View/and or St Albans Road and the replacement of the garage doors facing Sunset View with uPVC windows and underlying brick
 - The requirements of the notice are to:
 1. Remove the double glazed uPVC windows facing Sunset View and/or St Albans Road and remove the infill brick from the garage.
 2. Reinstate the garage to the state in which it was prior to the breach by replacing the windows and underlying brick with wooden garage doors with 6 paned windows to match the originals (as shown in the attached photograph)
Elsewhere, replace the uPVC windows with timber casement windows, finished in white and with glazing bars, to match the originals (as shown in the attached photographs).
 - The period for compliance with the requirements is: 3 months.
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- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal A Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - In section 3 of the notice, delete ‘/or’ so that it says ‘...Windows on the sides of the house facing Sunset View and St Albans Road;’
 - In section 5 of the notice, delete ‘/or’ and insert the word ‘and’ so that it says ‘1 Remove the newly installed windows facing Sunset View and St Albans Road and remove the infill brick from the garage.’
 - In section 5 of the notice, delete ‘Elsewhere,’ so that it says ‘2 Replace the windows with metal framed windows, finished in white and with glazing bars, to match the originals (as shown in the attached photographs).’
 - In section 6 of the notice, delete ‘2’ and replace it with ‘6’ so that it reads ‘6 Months after this notice takes effect.’
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Decision

3. The notice is quashed.

Matters concerning the notice: Appeal A

4. The wording of the requirements is not sufficiently precise. The use of and/or makes it unclear what the appellant has to do. Furthermore, the use of the term ‘elsewhere’ is unclear. Given the sanctions for non-compliance with an enforcement notice, it is essential that the requirements are clear. I am satisfied that I can correct the notice without causing injustice to either party, since it is clear from the photographs what the appellant is required to do and shall correct the requirements accordingly.

Matter concerning the notice: Appeal B

5. The appellant suggests that the Council’s website indicates the enforcement notice which is the subject of Appeal B, has been withdrawn. However, the Council has not confirmed whether the notice has been withdrawn, despite a request for clarification on this matter. In the absence of such clarification, I shall therefore determine the appeal.
6. Although the wording of the notice differs to the wording in the notice which is the subject of appeal A, it is clear from the evidence that both notices attack the same development, which is the insertion of windows and the replacement of the garage door. There is a risk of uncertainty and injustice if two enforcement notices subsist in respect of essentially the same breach of planning control.

7. I shall therefore quash the notice. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) do not fall to be considered.

Ground (b)

8. The appellant states that the description of the enforcement notice is incorrect and the garage door and the windows and have been replaced 'like to like'. However, an appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred. It is not disputed that the windows and door have been replaced. Consequently, the appeal under ground (b) must fail.

Ground (c)

9. An appeal under ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse, subject to conditions and limitations, unless a direction restricting permitted development has been issued under Article 4 of the GPDO.
10. The main thrust of the appellant's case under ground (c) is that the site benefits from permitted development rights under as they cannot see any Article 4 Direction on the 'interactive map'. However, the Council has provided a map of the Monken Hadley Conservation Area, which shows that the appeal site is within an area which is subject to an Article 4 Direction. The officer report also confirms that the site is within an area where there is an Article 4 Direction.
11. A copy of the Article 4 Direction has been provided by an interested party and includes Class A of Part 1 of Schedule 2, namely the enlargement, improvement or other alteration of a dwellinghouse, where any part of the enlargement, improvement or alteration would front a relevant location. Although the Council ticked 'no' on the questionnaire in response to the question 'Is the appeal site subject to an Article 4 Direction' this appears to be an error.
12. The windows and garage door materially affects the external appearance of the building and is development for the purposes of section 55 of the Act. Planning permission is therefore required for the insertion of the windows and garage door. It has therefore not been demonstrated that the works benefit from permitted development rights and the appeal under ground (c) must fail.

Ground (a)

Main Issue

13. The main issue is the effect of the appeal scheme on the character or appearance of the Monken Hadley Conservation Area (MHCA).

Reasons

14. The appeal building is located in a prominent location on the corner of Sunset View and St Albans Road, within the Monken Hadley Conservation Area (MHCA). In my view, the significance of the MHCA is derived from the layout of

buildings, fine architectural detailing, use of traditional materials and its green and leafy character. The Monken Hadley Conservation Area Character Appraisal Statement (2007) advises that materials should match the existing building except in cases where a contrast is being promoted.

15. Sunset View is characterised by substantial dwellings set in generous plots constructed using traditional materials in an Art and Crafts style. Although dwelling design varies, the architectural detailing and use of traditional materials contributes to the MHCA. The windows and garage door which have been replaced appear typical of the Arts and Craft style and would have made a positive contribution towards the MHCA.
16. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the MHCA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
17. Whilst the windows are stated to be aluminium, the bulky appearance of the mullions and frames fails to replicate the delicate architectural features of the windows they have replaced and are uncharacteristic of the Arts and Craft style of the dwelling. The appeal property is, in my view, the most prominent of the buildings along Sunset View, given its position and orientation towards St Albans Road.
18. The appellant asserts that existing street properties have already replaced their windows to aluminium and uPVC framed double glazing. However, I do not have full details of the installation of the windows referenced. Furthermore, interested parties suggest the properties and associated windows referenced by the appellant were installed before the Monken Hadley Conservation Area was designated.
19. The appellant has also drawn my attention to a number of examples where planning permission has been granted by the Council for the replacement of windows. However, I do not have full details of the examples cited and cannot be sure they are comparable to the appeal site. Moreover, the examples cited are all located away from the appeal site and do not therefore
20. The garage door, although similar in style, sits proud of the brickwork and appears 'stuck on', rather than an integral part of the design of the building. Instead of a series of wooden planks, the doors comprise two substantial panels, which appear to be fixed with a single ledge below the windows, which appears poorly fitted. The use of clear glass within the garage door has necessitated the placing of what appears to be cardboard, presumably to afford users of the inside space privacy. The replacement door fails to replicate the detailing and quality of the previous garage door, which diminishes the appearance of the building.
21. The appellant has drawn my attention to an application which was approved by the Council at Mill House, Sunset View. However, the property in question is not, in my view, comparable to the appeal property, given its location further along Sunset View. Furthermore, the garage door which has been replaced at Mill House was unlikely to be an original feature, given its design, which is not

typical of the Arts and Craft style. It is therefore not comparable to the appeal scheme before me.

22. Given the prominent location of the dwelling, the works are harmful to the character and appearance of the area and fails to conserve or enhance the character or appearance of the MHCA, contrary to policy CS5 of the London Borough of Barnet Core Strategy DPD (2012) which seeks to protect and enhance conservation areas and policies DM01 and DM06 of the London Borough of Barnet Local Plan (Development Management Policies) DPD (2012), which seek to preserve or enhance local character. It would also be contrary to the Residential Design Guidance (RDG)(2016), which advises that materials should contribute to the quality of the appearance of development and the character of its wider setting.
23. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 202 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 202 of the Framework.
24. The appellant states that the windows which have been replaced were single glazed with rusted metal finish causing condensation and mildew and improve air quality, noise pollution, security and heating bills. While such matters are of benefit to the occupants of the building, the windows and garage doors inserted are not the only means of securing such benefits. I see no reason why it would not be possible to use materials which replicate the delicate architectural features of the previous windows and garage door. I therefore afford such benefits limited weight.
25. The benefits of the appeal scheme are outweighed by the harm I have identified to the MHCA, the conservation of which I attribute great weight to.

Conclusion

26. Therefore, for all of the reasons given above I conclude that the appeal under ground (a) should be dismissed.

Ground (f)

27. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken... exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Given the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control.
28. The appellant states that there are no timber casement windows as originals to be replaced by. However, the enforcement notice does not make reference to timber casements. It is asserted that the garage door is already in place. However, the notice requires that the garage door is reinstated to match the original. As set out above, the garage door which has been inserted does not match the original.

29. The appellant has raised concern about the financial difficulties they would face in complying with the requirements. The enforcement procedure is intended to be remedial rather than punitive. Whilst I recognise the financial difficulties many have faced as a consequence of the Covid-19 pandemic, I can see no obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal. Consequently, the requirements are not excessive and the appeal under ground (f) fails.

Ground (g)

30. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant states that the compliance period is too short in light of the Covid-19 pandemic and suggests a period of 12 months.
31. Since the appeal was lodged, the situation around the pandemic has fluctuated and restrictions have been changed. I see no reason why the pandemic would impact on the appellant's ability to comply with the requirements of the notice.
32. Nevertheless, the works will require the appellant to secure the appropriate materials and a suitably qualified company to carry out the works. This is likely to take time. I consider a more reasonable compliance period would be 6 months and shall vary the notice accordingly.

Conclusion

33. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR