



Appeal Decision

Site visit made on 31 May 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/P4605/C/21/3279476

23 Second Avenue, Selly Park, Birmingham, B29 7HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Joanna Travis against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 23 June 2021.
 - The breach of planning control as alleged in the notice is the removal of the original late 19th century timber sash windows (with sash frame and single glazing) from the ground and first floors at the front elevation of the Premises and their replacement with UPVC plastic top-hung windows.
 - The requirements of the notice are: Reinstatement of timber or upvc sliding sash windows. (i) requirement to submit details to the Council of new replacement windows to be (the windows should match the dimensions and detailing of the windows that have been removed and measurements taken from original surviving windows in nearby properties on Second Avenue); (ii) Requirement to remove all double glazed upvc windows from the first and ground floor at the front elevation and replace these with new windows in accordance with the details approved by the LPA as per requirement (i).
 - The periods for compliance with the requirements are: (i) 3 months and (ii) 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) & (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 have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by replacing requirement (i) with "(i) Requirement to submit details to the Council of new replacement windows to be approved by the LPA (the windows should match the dimensions and detailing of the windows that have been removed and measurements taken from original surviving windows on nearby properties in Second Avenue)." Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. My reading of the second requirement of the notice indicates that the first requirement was intended to include a prerequisite for the details of the replacement windows to be approved by the LPA. This seems to have been a small and unintended omission which I feel able to correct without injustice to the parties.

The appeal on ground (c)

3. The appeal property is a 2-storey, mid-terrace house within the Selly Park Avenues Conservation Area. Section 55 of The Act, as amended, indicates that

the definition of development includes a building or other operation which would materially affect the external appearance of the building. Therefore, the installation of windows on the front elevation, which are significantly different in appearance from those previously in place, would require planning permission unless otherwise provided for. Such provision is found in Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO] and replacement windows would not normally require planning permission. However, this conservation area is subject to a Direction under Article 4(2) of the GPDO as it existed in 2009, and as amended. The effect of this is that the permission granted by Article 3 of the GPDO does not apply to Class A of Part 1 of Schedule 2.

4. The consequence of the Direction under Article 4(2) is that planning permission was required for the development carried out in this case and was not obtained. Accordingly, there has been a breach of planning control and the appeal on ground (c) must fail.

The appeal on ground (d)

5. This ground is that, at the time the notice was issued, it was too late to take enforcement action. The onus is on the appellant to demonstrate, on the balance of probability, that the works were substantially complete by 23 June 2017. However, the appellant states in her representations that: "The windows were installed on 27/7/2017." Accordingly, the notice was issued within the required 4 year period, as set out in The Act and the appeal on ground (d) must fail.

The appeal on ground (f)

6. This ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. However, as the appellant has not paid a fee and has withdrawn the initial appeal on ground (a), I am unable to take into consideration the planning merits of the development¹, including the number of other upvc replacement windows in the street.
7. The purpose of the notice is clearly to remedy the breach of planning control. However, the appellant has not suggested any lesser steps that might be taken to address the breach. The only suggestion appears to be to do nothing, albeit that would not address the breach of planning control at all.
8. The appellant is in an unfortunate situation in that she did not live at the property when the unauthorised development was carried out and now faces considerable expenditure to install suitable windows. The Council became aware of the breach as far back as July 2017 and visited the site on 23 August 2017. The appellant bought the property in February 2021 and the notice was issued on 23 June 2021. It does appear to me that, despite spending time attempting to secure a negotiated solution with the previous owner, had the Council acted with greater urgency, this issue might have been more fairly resolved. Furthermore, the appellant appears to have been advised by the vendor that there were no planning breaches.
9. Whilst I have considerable sympathy with the appellant's position, there are other avenues that she could pursue if she feels financially disadvantaged by

¹ Wyatt Brothers (Oxford) Ltd v SSETR & Oxfordshire CC [2001] PLCR 161

either the Council or the vendor. As to whether it is unreasonable to require her to measure other people's original windows in the street, this appears to me to be a matter in which the Council might reasonably be expected to assist, if there is an impasse.

10. In conclusion, I find that the appeal on ground (f) fails and, having regard to my conclusions on grounds (c) and (d), I shall uphold the enforcement notice.

B S Rogers

INSPECTOR