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# Appeal Decision

Site visit made on 31 August 2022

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

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**Appeal Ref: APP/U5360/C/22/3294732**

**4 Chevet Street, Hackney, London E9 5RE**

- 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 Anshel Babad of Rivan Estates Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 2 February 2022.
- The breach of planning control as alleged in the notice is replacement of the existing single glazed timber windows with double glazed uPVC units on the front and rear elevation.
- The requirements of the notice are:
  1. Remove the UPVC windows from the front and rear elevation of the property;
  2. Replace the windows to the front and rear of the property with 2 over two timber sash windows. The windows should be single glazed with a maximum width of 4mm. The glazing bars should be structural and no wider than 20mm and putty finish on the outside to replicate the pattern of design previously present; and
  3. Remove all materials, debris, waste and equipment from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed and the enforcement notice is quashed.**

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## Preliminary Matter

1. I have noted that paragraph 4 of section 4 of the Notice (Reasons for Issuing this Notice) refers to harm to the significance of the listed building. However, there is no evidence whatsoever that the building in question is listed and therefore I take it that such reference is an error. I will determine this appeal accordingly.

## The appeal on ground (c)

2. The ground of appeal is that the matter alleged does not constitute a breach of planning control. Certain operations are excluded from the meaning of "development" according to s55 of the Act, including at s55(2)(a)(ii) "*the carrying out of maintenance, improvement or other alterations of any building of works which do not materially affect the external appearance of the building*". The Council's case is that the works have materially altered the external appearance of the building and so are "development" within s55(2)(a)(ii) of the Act. In addition, it is contended that they do not benefit from planning permission through Article 3(1) and Class A, Part 1, Schedule 2

of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

3. The windows on the rear elevation of the property are not visible from public vantage points and therefore, as a matter of planning judgement, would not materially affect the external appearance of the building as a whole. As such they would fall within the exclusion of s55(2)(a)(ii) and do not constitute "development".
4. The windows on the front elevation of the property face onto the public highway in close proximity and are relatively significant features on the frontage of the property. It is my understanding that the previous windows were traditional timber sash windows and the replacement ones are a different material, demonstrate a different frame size and design. The frames are thicker and shinier and the double glazing creates a "double register" in angled views. The colour of the frames is similar to those they replaced and attempts have been made to replicate the design by including horizontal and vertical glazing bars, for example.
5. Therefore, the windows would be relatively similar in appearance to those they replaced, but the change in appearance does, in my judgement, materially affect the external appearance of the building as a whole and thereby constitutes "development". The next question is whether the windows on the front elevation would be permitted development according to the provisions of the GPDO.
6. Class A of the GPDO permits alterations to a dwellinghouse, subject to a number of limitations and conditions. The Council argues in this case that the works carried out to the dwellinghouse would fail to comply with the requirements set in A.3(a) of Class A, Part 1 Schedule 2 which states that '*The materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*'.
7. Permitted Development Rights for Householders Technical Guidance states that this condition is intended to ensure that works to alter a dwellinghouse result in an appearance that minimises visual impact and is sympathetic to the existing development. This does not mean that materials need to be the same as those used on the original dwellinghouse, but they should be of a similar appearance including in terms of colour, shape and size. Technical Guidance goes on to give a specific example relating to replacement windows; stating that '*it may be appropriate to replace existing windows with new UPVC double-glazed windows....What is important is that they have a similar visual appearance as those in the existing house, for example in terms of their overall shape, colour and size of frames*'.
8. The Council has drawn my attention to Hackney's Windows and Doors Design and Conservation Guide March 2019' which states that '*where there are material changes, such as an alteration to the design, materials, size, method of opening, or proportions of the window/door including an increase in the size/thickness of the frames and removal of glazing bars or horns (in the case of windows for example), planning permission is required*'. However, in this particular case and in the light of the specific Technical Guidance on this matter, I am satisfied that although the replacement windows do not have the same materials or are exactly the same as the ones they replaced, they have a

similar visual appearance in terms of their overall shape, colour and size of frames. That is the overriding consideration given in the GPDO.

9. I now turn to the matter regarding whether permitted development rights may be exercised on the appeal property. The Council argues that due to breaches which it found with respect to the construction of a dormer extension and a shed which was attached to the property, no other potential permitted development rights could be exercised as set out in Article 3(5) of the GPDO. The Council contends that this approach was upheld in the *Evans* case<sup>1</sup>.
10. In this context it is my understanding that the windows were fitted before any works on the rear shed/outbuilding started and before the rectification of the roof extension, but rather with the roof extension mid-work but not completed. The effect of Article 3(5) of the GPDO is that:
11. *The permission granted by Schedule 2 of the GPDO does not apply if –*
  - a) *in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;*
  - b) *in the case of permission granted in connection with an existing use, that use is unlawful.”*
12. As the courts have held in the *Evans* case, if the building operations involved in the construction of any part of the building are unlawful, then permitted development rights granted in connection with the existing building do not apply. In *Evans*, the High Court clearly held that once unauthorised works are removed or regularised then Article 3(5) is no longer engaged and permitted development rights are capable of being applied to the building.
13. Although in its statement the Council has referred to the roof and rear extension, as a matter of fact, it is my understanding that the window alterations took place prior to any works carried out in relation to the erection of the outbuilding (shed). Therefore, only the works associated with the erection of the roof extension are relevant to the matter of whether or not Article 3(5) of the GPDO is engaged. I understand that there were deviations from the permitted development limitations during the construction of the various works at the property, but the evidence before me is that such deviations (other than the alterations to the windows) were rectified.
14. On that basis it appears to me that at the time the enforcement notice was served all the different parts of the works complied with the respective classes of permitted development rights as set out in the GPDO. For the avoidance of any doubt, that includes taking account of certain aspects of the works that, had they actually been completed, would have been outside GPDO limitations for permitted development. It is my understanding from the evidence presented in this appeal process that any departures were rectified during the period of construction works as part of the overall development process that ultimately resulted in the development being completed within the permitted development limitations as set out in the GPDO.
15. I have taken account of all the detailed evidence before me and conclude that at the time the enforcement notice was served the property would have

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<sup>1</sup> *Evans v SoS* [2014] EWHC 4111

benefitted from permitted development rights and, specifically in this case, those granted by Class A, Part 1 Schedule 2. I therefore conclude that the replacement of the existing single glazed timber windows with double glazed UPVC units on the front and rear elevation is permitted development and therefore does not constitute a breach of planning control. The appeal on ground (c) succeeds.

### **Conclusion**

16. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended and other grounds of appeal do not need to be considered.

### **Formal Decision**

17. The appeal is allowed and the enforcement notice is quashed.

*A A Phillips*

INSPECTOR