



Appeal Decision

Site visit made on 23 March 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/C5690/C/22/3299341

Land at 74-78 Deptford High Street SE8 4RT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Manish Patel against an enforcement notice issued by London Borough of Lewisham.
- The notice was issued on 26 April 2022.
- The breach of planning control as alleged in the notice is the replacement of timber sash windows with uPVC.
- The requirements of the notice are to:
 1. Remove any and all uPVC windows affixed to the front or rear elevation of the property, and replace all windows with timber sash windows in the same design and appearance as the previously-installed windows.
 2. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of this notice from the Land and its premises.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Summary of Decision: 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.

Preliminary Matter

1. Paragraph 3 of the enforcement notice (the notice) sets out the alleged breach of planning control as 'Replacement of timber sash windows with uPVC.' Paragraph 5 of the notice sets out the requirements of the notice, with requirement 1 stating 'Remove any and all uPVC windows affixed to the front or rear elevation of the property...'
2. During my site visit, I observed that in addition to the replacement windows in the front and rear elevations, there were also what appeared to be replacement uPVC windows in the side elevation. If the replacement windows in the side elevation were installed at the time the notice was served they would effectively be underenforced. Moreover, the reasons for issuing the notice, as set out in paragraph 4 of the notice, are that the uPVC windows harm the character and appearance of the host building and the Deptford High Street and St Pauls Conservation Area (CA). If the side windows were underenforced, the requirements of the notice would conflict with these reasons, ie, how could the uPVC windows in the front and rear elevations be harmful and be required to be removed and yet those in the side elevation not.
3. Consequently, if the side windows were installed at the time the notice was served then the conflict between the reasons for issuing the notice and its

requirements would invalidate the notice. Such an invalidity could not be corrected without causing injustice to the appellant as the requirements of the notice could not be corrected to include the side windows to be removed as this would make the requirements more onerous on the appellant.

4. The parties were given the opportunity to comment on this matter and clarify when the windows in the side elevation were installed.
5. The appellant contends that all but one of the side windows were installed at the time the notice was served.
6. The Council disputes this and provide a photograph which is confirmed to be taken at the time the notice was served, which shows what is stated to be copies of the enforcement notice about to be posted through the letterbox in the side elevation of the appeal property, which has a timber window directly above it. This clearly indicates that at the time the notice was served, at the very least, the window above the letterbox in the side elevation had not yet been replaced.
7. The appellant confirms that the erection of scaffolding around the property commenced on 8 April 2022 and all windows that required scaffolding to be installed were replaced by 22 April 2022. It is argued that the ground floor window in the Council's photograph taken at the time the copies of the notice were served had yet to be replaced, because it did not need scaffolding to do so, and was done so on 7 May 2022.
8. However, the Council also provide photographs of the property that clearly show scaffolding to the front and rear of the property, but none to the side. They also show that not all the timber windows in the front and rear elevations had been replaced at that time. The Council confirm the photographs were taken on 26 April 2022, 4 days after the appellant claims all of the uPVC windows that required scaffolding had been replaced. These photographs therefore raise significant doubt over the veracity of the appellant's recollection of when the side windows were replaced.
9. Based on the evidence before me, I am satisfied that, on the balance of probabilities, the windows in the side elevation of the appeal property were not installed at the time the notice was served.

The ground (a) appeal and the deemed planning application

Main Issues

10. The main issue is the effect of the development on the character and appearance of the host property and whether it would preserve or enhance the character or appearance of the CA.

Reasons

11. The appeal property is situated within the CA. Accordingly, I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. The CA encompasses the historic settlement of Upper Deptford, largely focusing on Deptford High Street and properties and side roads leading off it. The CA comprises a mix of property styles ranging from pre-1800's to post-war

developments. The High Street comprises terrace period properties with commercial units at ground floor and residential on the upper floors. Building frontages vary considerably from simple, plain brick to more ornate finishes with fine architectural detailing. Fenestration is largely composed of timber sash windows and, in contrast to the eclectic mix of building styles, the general uniformity of the window detailing provides architectural cohesion along the High Street. Although there are examples of uPVC windows and casement windows, these are few and far between and generally create unwelcome disruptions to the otherwise uniformity of the traditional timber sash windows. Whilst the rears of properties are typically simpler in their design, timber sash windows have largely been retained.

13. Given the above, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with its historic town centre architectural character and the design and styles of its buildings.
14. The appeal building comprises three, three-storey, terrace properties located on the corner of the High Street and Frankham Street. The ground floor frontages are commercial units with modern shopfronts. In marked contrast, the two upper floors have ornate detailing comprising London stock brick with red brick quoins and dividers. On each of the three frontages there are four pairs of windows with each pair framed by three stone pilasters with scroll caps. Sitting between each of the first and second-floor pairs of windows are stone friezes with arabesque detailing, with a similar, narrower frieze atop the second-floor windows.
15. The corner plot location of the appeal building and its ornate façade results in the building being prominent within the streetscene and makes a positive contribution to the character and appearance of the CA, despite it not being specifically referenced in the Deptford High Street & St Paul's Church Conservation Area Appraisal and Management Plan 2019 (CAA).
16. The windows themselves are white uPVC sash windows. It is clear the windows have been designed to replicate the previous timber sash windows by having them as sash openings with horns. However, the thickness of the uPVC frames and meeting rails appear heavy and inappropriately crude in comparison with the surrounding properties that have slender timber frames. From the photographic evidence provided in the appellant's grounds of appeal, the previous timber sash windows were more slender and subordinate to the fine, ornate window surround detailing. The thicker frames and meeting bars of the uPVC windows compete with, rather complement, the surround detailing resulting in an uncomfortable, incompatible relationship between them.
17. In marked contrast to the ornate detailing of the frontage, the rear of the appeal building is simpler in its design. Whilst there is no evidence before me of what the previous timber windows on the rear elevation looked like the Council's Officer Report states they were sash windows. I noted during my site visit a number of properties in the locality that had traditional timber sash windows in the rear elevation and therefore I was able to make a comparison with these. The previous sash windows have been replaced with uPVC casement windows. As with the frontage windows, the casement windows have thicker, cruder frames than the nearby timber sash windows and fail to reflect the largely unaltered architectural integrity of the building. Furthermore, the casement design relates more to the other modern windows in the locality,

which fail to respect the character and appearance of the area, rather than the traditional timber sash windows.

18. Whilst the rear elevation is not seen from the High Street, it nevertheless is within the CA and can be seen from a number of public vantage points, particularly on approach to the CA along Frankham Street. The appellant also argues there is a new, mixed-use development to be constructed to the rear of the property, which would change the character and appearance of the area. However, the details of this new development are not before me. In any event, it would unlikely alter the architectural integrity of the appeal building or the positive contribution it makes to the character and appearance of the CA.
19. I note the CAA does not specifically refer to window detailing as contributing to the townscape character of the Deptford High Street Character. Nevertheless, it does state 'Where historic or traditional style timber sash windows exist, these should be retained and the Council will expect to repair these, rather than replace them¹.' Whilst the use of the word 'should' does indeed provide flexibility, for the reasons set out above, in this instance I do not consider this flexibility should be exercised to allow the replacement windows.
20. I conclude that the windows have harmed the significance and special architectural and historic interest of the CA by being incongruous additions which incorporate unsuitable materials and fenestration detailing and represents 'less than substantial' harm in terms of the National Planning Policy Framework (the Framework).
21. In which case, under paragraph 202 of the Framework this harm should be weighed against any public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.
22. The manufacturing and installation of the windows would no doubt have made a positive contribution to the companies involved. That said, the same benefits would have applied if the windows had been replaced with timber sash windows or the original windows repaired. The uPVC windows would also improve the thermal efficiency and EPC rating of the flats they serve, thus reducing the energy bills for their occupants. However, there is no evidence before me that alternative methods of improving the thermal efficiency of the flats has been explored, eg secondary glazing. Accordingly, I attribute limited weight to these public benefits.
23. Against this background, I consider that the public benefits would not be sufficient to outweigh the less than substantial harm that I have identified, giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the CA. Accordingly, the development harms the character and appearance of the host property and fails to preserve or enhance the character or appearance of the CA. As such, it conflicts with Policies SD6, D4 and HC1 of the London Plan; Policies 15 and 16 of the London Borough of Lewisham Core Strategy Development Plan Document 2011; and, Policies DM30, DM31 and DM36 of the London Borough of Lewisham Development Management Local Plan 2014, which, amongst other things, seek to ensure development is of a high quality and preserves or enhances Conservation Areas. It would also fail to comply with the CAA and the heritage objectives of the Framework.

¹ Section 13.4.1

Conclusion on the ground (a) appeal and the deemed planning application

24. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed application. Therefore, the ground (a) appeal fails.

The ground (f) appeal

25. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
26. It is clear from the notice requirements that the Council is pursuing the purpose of remedying the breach of planning control resulting from the installation of the uPVC windows, rather than remedying injury to amenity. Therefore, for the appeal to be successful under this ground I must be satisfied that the steps required exceed what is necessary to achieve that purpose.
27. The appellant requests that the requirements of the notice are varied to omit the reference to the removal of the windows in the rear elevation. However, this would not achieve the purpose of the notice to remedy the breach of planning control. Moreover, the lesser steps of allowing the rear windows to remain would be unacceptable in planning terms given the visibility of those elevations within the CA and the harm caused by the uPVC windows, as I have identified in my consideration of the ground (a) appeal and the deemed planning application.
28. Therefore, no lesser steps than required by the notice would remedy the breach of planning control.
29. The ground (f) appeal must fail.

Formal Decision

30. 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.

Alexander Walker

INSPECTOR