



Appeal Decision

Site visit made on 24 May 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/X5210/C/22/3303170

Land at: Flat 3, 10 Hilltop Road, London NW6 2PY

- 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 Mrs Mandy Seal against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 27 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission: Replacement of timber sash windows with 3 x white uPVC windows on the front elevation at first floor level.
 - The requirements of the notice are:
 1. Remove the 3 uPVC windows to the front elevation at first floor level;
 2. Reinstate timber-framed one over one sliding sash windows to match the design and proportions of those which previously existed; and
 3. Make good any damage to the building caused by the works.
 - The period for compliance with the requirements is 3 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. 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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Decision

1. The enforcement notice is quashed.

Reasons

2. At my site visit I saw that there are 5 uPVC windows on the appeal building at first floor level, including those windows on the flank elevations of the front bay window. However, the enforcement notice is clearly directed at just 3 windows.
3. As currently drafted, the enforcement notice is either unclear, in respect of which 3 windows it is directed at (bearing in mind relevant case law including *Miller Mead v MHLG* [1963] 2 WLR 255); or erroneous, if the Council intended to attack all 5 uPVC windows at first floor level.
4. In light of the above, I invited the comments of the Council and the appellant on whether I should correct the notice (drawing on my powers under section 176(1) of the 1990 Act) and if so, how the notice should be corrected; and if I should correct the notice, whether doing so would cause injustice to the appellant or the Council as local planning authority. I have taken into account the comments received from both main parties.
5. The Council has drawn my attention to a refused planning application for the appeal property, Ref: 2021/5138/P. The description of development was:

'Replacement of white painted timber sash windows with white UPVC windows to the front elevation and first floor level (retrospective).'

6. The Council is of the view that the proposed front elevation drawing includes the side sections of the front windows so that the appellant is aware of the full extent of the breach against which the Council have sought to enforce. The Council is also of the view that nothing in the appellant's submissions indicates that the breach has been misunderstood by them.
7. But the above does not explain why the scope of the breach in the enforcement notice, or what it targets via requirement 1, has been limited to just 3 windows and the recipient of an enforcement notice is entitled to find out from within the four corners of the document what they are required to do. Moreover, the flank elevations of the front bay window are not shown on the proposed drawing provided.
8. The Council's comments indicate that it is all the windows on the front elevation at first floor level which should have been targeted by the notice. So I have considered whether I may correct the notice by removing the reference to "3" windows from the allegation and requirement 1. But doing so would widen the scope of the breach and make requirement 1 more onerous. This would leave the appellant worse off than if they had not appealed the notice at all so injustice would be caused to the appellant.
9. Therefore, I will not correct the notice and I will quash it. However, the appellant should note that the Council may be able to issue a new enforcement notice, to correct its error, exercising its powers under section 171B(4)(b) of the 1990 Act.

Conclusion

10. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance.
11. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
12. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (c), (f) and (g) of 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 do not fall to be considered.

L Perkins

INSPECTOR