



Appeal Decision

Site visit made on 15 June 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/W2465/C/22/3305303

2a, 2b & 2c Lincoln Street, Leicester, LE2 0JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Niaz Ussen of Sau Estates Ltd against an enforcement notice issued by Leicester City Council.
 - The notice was issued on 16 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the installation of UPVC windows at the Property which is in a conservation area.
 - The requirements of the notice are:
 - Remove the UPVC windows shown in the photographs (appendix 1) and reinstate the windows in timber frame as shown in photographs in appendix 2.
 - Remove all material resulting in compliance from the above step from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "in timber frame" from paragraph 5.1 and the substitution of the words "using timber frames";
 - the deletion of all wording at paragraph 5.2 and its replacement with the wording "Remove all material arising from compliance with the above step from the site".
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

3. I wrote to the Council in order to clarify its case relating to the date it received a complaint about the windows. The Council responded to this and the appellant's views on the response were requested and received.
4. The appellant has asked that the Planning Inspectorate 'subpoena' the Council to provide a recording of a call made by the complainant. However, it is for the Council to decide what evidence to provide in support of its case, and it will no doubt have taken account of the need to protect the privacy of individuals in doing so. I have considered the evidence provided by both parties on its merits.
5. There are minor quirks in the wording of the requirements as set out at section 5 of the notice. Since the meaning of the requirements is quite clear, I have

been able to correct the wording without changing the substance of the notice or causing injustice to either party.

Reasons

6. To succeed on ground (d) the appellant must demonstrate, on the balance of probability, that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control stated in the notice.
7. The timeframes for taking enforcement action are set out at s171B of the Act. In accordance with s171B(1), the time limit relating to building operations is 4 years from the substantial completion of the operations. Since the notice was issued on 16 August 2022, I must consider whether the windows were installed by 16 August 2018.
8. The appellant says that the top floor windows in Flat C were installed prior to the purchase of the property in 2018. There is no plan or photograph to identify specifically which windows are referred to. The enforcement notice identifies 6 windows, but does not target all the windows on the top floor, which may be the windows the appellant has in mind. In any event, I have no substantive evidence to show that any of the windows targeted by the notice had already been replaced by the time the appellant acquired the property.
9. The appellant agrees that some windows were replaced since purchasing the property in May 2018, but states that these were installed in July of that year, more than 4 years before the enforcement notice was issued. In support of this a WhatsApp message from a window installer has been provided. The response to the question 'what's the progress on the windows' is 'Asap' and then '10 days meyby'. This could be taken as a suggestion that the windows were to be installed not later than 10 days from 16 July – ie by 26 July.
10. However, this brief exchange does not show what actually happened, only when the writer thought something might happen in the future. Moreover, it is not clear what, precisely, it was hoped would be achieved within 10 days; 'progress on the windows' might have meant installation, but could equally have been some other matter – delivery or providing an estimate, for example. Indeed, there is nothing to show that this exchange even relates to the appeal property. Accordingly, the message does not assist in determining the date the windows were installed.
11. The appellant has also provided an email exchange concerning the installation/removal of screens at the property. An email from the appellant dated 5 June 2018 states: 'I need the three doors for another two weeks, the rest of the screens can come out. I'm replacing the windows'.
12. However, this only shows an intention to replace windows and does not show specifically which windows at the property were being discussed or when they were actually replaced. While it may have been desirable to replace the windows as soon as possible after acquiring the house for security reasons, there may have been delays or other factors to take into account before the job was finalised and I must consider the evidence available about when the actual replacement took place as opposed to the appellant's intentions.
13. The Council states that it first received a complaint on Friday 31 August 2018, advising that the windows were being replaced at that time. The Council states

that it undertook a site visit on Monday 3 September 2018, by which time the windows had been installed. The Council has provided screenshots of its computer record of the complaint, although there is no written record of the complaint itself. Photographs provided by the Council shows the windows already installed and are not evidence of the date of installation. The photographs are date-stamped 4 September 2018, but the Council states that they were actually taken on 3 September. I have no reason to doubt that they were taken on one of those dates, and so it seems the windows were installed by 4 September 2018 at the very latest.

14. The Council has provided a copy of a sales invoice for the installation of windows which, it states, was provided to it by the appellant. The invoice is dated 18 September 2018. Even if it relates to the windows at the appeal property (which is not stated), the document does not give any indication of when the windows were installed, and thus does not provide evidence to support either party's case.
15. The appellant suggests that the windows could not have been fitted within the timeframe suggested by the Council, but it does not strike me as unfeasible for them to have been fitted within the 2 or 3 days the Council's case suggests.
16. Drawing these threads together, while the evidence before me is limited, the clearest indication of an actual date of the installation of the windows is the Council's evidence of a complaint on 31 August 2018 when, it is said, installation was actually being carried out. The Council did not see or photograph the installation of the windows. However, the burden of proof falls on the appellant and there is no firm evidence to show that the Council's claim is wrong. Accordingly, I conclude, on the balance of probability, that the windows were still in the process of being installed on 31 August 2018. Consequently, it was not too late for the Council to take enforcement action when it issued the notice on 16 August 2022, less than 4 years later.

Other matters

17. The appellant raises a number of matters concerning the benefits of the uPVC windows and the need for them. However, there is no appeal on ground (a) and no deemed planning application for me to consider, and it is therefore not open to me to consider whether planning permission ought to be granted.
18. I have been provided with a copy of an appeal decision relating to another property in Leicester, but it does not appear relevant to the appeal before me.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Peter Willows

INSPECTOR