



Appeal Decision

Site visit made on 2 August 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 7th August 2023

Appeal Ref: APP/V4630/C/23/3319469

36 Upper Lichfield Street, Willenhall, West Midlands, WV13 1PF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Palveer Singh Cheema against an enforcement notice issued by Walsall Metropolitan Borough Council.
- The notice was issued on 2 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the application of a render finish to the front elevation of a property which faces onto Upper Lichfield Street and associated fascia.
- The requirements of the notice are
 - 5.1. Submit to the Council for its consideration and approval in writing, a scheme of works for removal of the render finish and associated fascia ("**the Scheme of Works**"). The Scheme of Works shall include provisions for the careful removal of the render by hand to avoid damage to the facing bricks and lintels and existing mortar and the appointment of a competent person who shall supervise the removal of the render finish.
 - 5.2. Completely remove the render finish and associated fascia from the front elevation of the Property where it faces onto Upper Lichfield Street in accordance with the Scheme of Works (as approved in writing by the Council).
 - 5.3. Submit to the Council for its consideration and approval in writing, a scheme of restoration and repair for the reinstatement of the original features of the Property. ("**the Scheme of Restoration and Repair**"). The Scheme of Restoration and Repair shall include provisions for:
 - (a) the reinstatement of the corbelled brick dentil course underneath the eaves of the front elevation of the Property and exposure of the original lintel above the first floor windows; and
 - (b) the repair of any damage to the facing brick work arising from the removal of the render and reinstate the front elevation of the Property to the condition existing prior to the application of the render; and
 - (c) the repair of any damage to the mortar and the repointing of brickwork using NHL2 lime mortar at a ratio 1 part lime to 3 parts sand; and
 - (d) the appointment of a competent person who shall supervise the carrying out and completion of the restoration and repair.
 - 5.4. Carry out restoration and repairs to the facing brick and mortar finishes in order to return the front elevation of the Property to the condition and appearance existing prior to the application of the render finish.
- The periods for compliance with the requirements are
 - 1.Paragraph 5.1 3 months from the date on which the notice takes effect
 - 2.Paragraph 5.2 3 months from the date on which the Scheme of Works is approved.
 - 3.Paragraph 5.3 5 months from the date on which the Scheme of Works is approved
 - 4.Paragraph 5.3 (a)& (b) 3 months from the date on which the Scheme of Restoration and Repair is approved
 5. Paragraph 5.3 (c) the months of May to August (inclusive) immediately following the date of approval of the Scheme of Restoration and Repair.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In light of this finding the Local Planning Authority should consider reviewing the register kept under Section 188 of the Act as amended.

Matters relating to the notice

2. An enforcement notice is required to include the matters stated in Section 173 of the Act as amended or Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 2002. The case of *Payne v National Assembly for Wales [2007] JPL 117* addresses the specific issues that arise when a notice includes submissions of schemes for approval by the Council.
3. The requirements of the notice include submitting for approval to the Council a Scheme of Works to show how the render finish and associated fascia will be removed from the appeal building in the event of the notice being upheld. The requirements also provide for a second scheme namely a Scheme of Restoration and Repair to be submitted for approval to the Council following the removal of the render and associated fascia.
4. The appellant therefore does not know on receipt of the notice what the Council will approve, what he is required to do and when he needs to do it. There is also no mechanism through which he can challenge the Council's failure to approve either of the proposed schemes or the appointment of a competent person to supervise works. The appellant must be clear as to what is required to be done because failure to comply is a criminal offence. He also needs clarity in order to be able to decide what grounds of appeal are relevant and what response he can make to what is being required of him.
5. As well as ground (a), the appellant has appealed under ground (g) which relates to the period for compliance. However, the wording of the requirements means that the appellant does not know when he will be required to carry out the works which is itself dependent upon what is approved. A reference to some work being carried out between May and August without specifying a year is particularly unclear and is linked to the unknown date of when the second scheme is approved. There is no period for compliance with requirement 5.4 or a requirement to carry out works in accordance with the Scheme of Restoration and Repair.
6. The notice therefore fails to comply with the requirements of the 1990 Act as amended which includes specified periods being included and it is therefore defective on its face and is a nullity which cannot be corrected.

Conclusion

7. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2 (a) 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 does not fall to be considered.

E Griffin INSPECTOR