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# Appeal Decision

Site visit made on 5 October 2023

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 October 2023**

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**Appeal Ref: APP/X5990/C/22/3312705**

**The buildings and associated land at 104 Ilbert Street, London W10 4QE**

- 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 D Baird against an enforcement notice issued by City of Westminster Council.
- The enforcement notice was issued on 3 November 2022.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last four years, the installation of four uPVC windows on the front and side elevations of the Property at ground and first floor level ("the Unauthorised Works").
- The requirements of the notice are:
  - 1) Remove the four uPVC windows on the front and side elevations of the Property at ground and first floor level as shown outlined in red in Photograph A attached.
  - 2) Upon completion of Step 1), install four timber, single glazed, double hung, sliding sash windows to match the thickness, profile, placing and design of the previous timber windows at the Property, as shown in Photograph B attached.
  - 3) Remove all waste, materials, equipment, and debris from the Property resulting from compliance with requirements with Steps 1) and 2) of this Notice.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 Decision:** The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

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## Preliminary Matter

1. I am correcting a drafting error in requirement 3 of the notice, drawing on my powers under section 176(1) of the 1990 Act. By doing so, I am satisfied that no injustice is caused to the appellant or the Council.

## Reasons

2. An appeal on ground (a) is that planning permission ought to be granted for the breach of planning control stated in the notice.
3. The appeal building is within the Queen's Park Estate Conservation Area. So it constitutes part of a designated heritage asset and there is a statutory duty upon me under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

4. Taking into account the above statutory duty, the main issue in this appeal is the effect of the appeal development on the character and appearance of the area, including the Queen's Park Estate Conservation Area.
5. In 2005 the Council adopted the Queen's Park Estate Conservation Area Audit as Supplementary Planning Guidance. This is a material consideration in deciding whether planning permission ought to be granted for the appeal development. It states that window and door openings establish the character of any building's elevation and that original doors and windows, including their detailing, materials and method of opening therefore make a significant contribution to the historic and architectural character of conservation areas.
6. The Audit further states that throughout the Queen's Park Estate, windows are double hung, single glazed, timber sliding sashes, set back from the brickwork in reveals, with a glazing pattern that is distinctive, with margin lights. Based on my site visit observations, I have no reason to disagree with the above assessment and I consider that windows in the conservation area constitute a fundamental part of the heritage asset's significance.
7. The windows which have been installed are constructed with thick, chunky frames, meeting rails and glazing bars, in uPVC, which has a shiny plastic appearance. As such, the appeal development is significantly at odds with the prevalent, noticeably finer, elegant timber windows seen on other properties in the area and in particular on those properties in the street built to match the appeal building, ie Nos 106, 120 and 122. In addition, the margin lights on the first floor turret window of the appeal building are much too wide. In light of the above, the appeal development is harmful to the character and appearance of the area, including the Queen's Park Estate Conservation Area.
8. I accept that removal and replacement of the windows will cause disruption and may negatively impact occupants of the appeal building. But this is not a good enough reason for granting planning permission for the appeal development in light of the harm identified above.
9. My attention has been drawn to other properties in the area with uPVC windows. But no details have been provided for me to consider the relevance of these to this case.
10. Given the scale of the appeal development within the context of the conservation area as a whole, I consider it causes less than substantial harm to the designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 202 of the National Planning Policy Framework, I must weigh the harm against the public benefits of the appeal development.
11. The appellant has indicated that the new windows are more energy efficient. But based on the information provided, timber windows can be made to meet current thermal performance requirements, economically and with minimal harm to significance. I have no reason not to think the same applies in respect of noise insulation.
12. The appellant considers the new windows are more fire safe. But no evidence has been provided to demonstrate this is the case.

13. Taking the above into account, I am not satisfied there are any public benefits of the appeal development of sufficient weight to justify a grant of planning permission in light of the harm identified above.
14. I conclude the appeal development harms the character and appearance of the area, including the Queen's Park Estate Conservation Area. As such, in this regard, it does not comply with Policy HC1 of the London Plan (2021), Policies 38, 39 or 40 of the Westminster City Plan 2019-2040 (2021), Policy 5 of the Queen's Park Neighbourhood Plan (2021), the historic environment policies of the Framework or guidance set out in the Development and Demolition in Conservation Areas Supplementary Planning Guidance (1996) or The Queen's Park Estate Conservation Area Audit Supplementary Planning Guidance (2005).

### **Other Matters**

15. The appellant states that these windows have been in for many years. But there is no ground (d) appeal before me. Nor is there any evidence which satisfies me that, at the date when the notice was issued, it was too late for the Council to take enforcement action. Bearing in mind that the burden of proof in respect of such legal grounds is on the appellant, I have no reason to believe that the appeal development is immune from enforcement action because of the time limits set out in section 171B of the 1990 Act.

### **Conclusion**

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Formal Decision**

17. It is directed that the enforcement notice is corrected by:
- deletion of the phrase "with Steps" from requirement 3 in paragraph 5 of the notice.
18. Subject to this correction, 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.

*L Perkins*

INSPECTOR