



Appeal Decisions

Site visit made on 18 September 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7TH NOVEMBER 2023

Appeal A Ref: APP/X5210/C/22/3305743

Land at 306 Kilburn High Road, London NW6 2DB

- 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 Hong Li Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 9 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission: Replacement of 22 x timber sash windows on all elevations at first, second and third floor levels with new uPVC double glazed casement windows.
- The requirements of the notice are: 1. Completely remove all 22 x the uPVC windows on all elevations at first, second and third floor levels and reinstate the one over one timber sliding sash windows to match those previously in place; 2. Remove from the site all constituent materials resulting from the above works; and 3. Make good any resulting damage.
- The period for compliance with the requirements is Three (3) 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 is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

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.

Appeal B Ref: APP/X5210/W/22/3302064

306 Kilburn High Road, London NW6 2DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hong Li Limited against the decision of the Council of the London Borough of Camden.
- The application Ref 2021/6303/P, dated 30 December 2021, was refused by notice dated 1 June 2022.
- The development proposed is 'Retrospective application to replace 22 x timber sash windows with new uPVC double glazed windows'.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The appellant did not provide with its written representations a copy of an appeal decision¹ referred to. A copy was later provided and the Council was

¹ APP/T5150/C/06/2017354 ('the Brent Decision')

given an opportunity to comment on this, with a final comment offered to the appellant also. Representations made have been taken into consideration.

2. I have taken the description of the development for Appeal B from the decision notice since this is the wording that the appellant adopts on the appeal form. Appeals A and B relate to a very similar form of development and I deal with these together in my assessment below, distinguishing between them where necessary.

Appeal A: The Notice

3. The allegation in the notice refers to the replacement of timber sash windows with uPVC casement windows and the requirements stipulate removal of the uPVC windows and reinstatement of timber sliding sash windows to 'match' those previously removed. The use of the term 'match' makes it clear that the notice is not requiring reinsertion of the actual windows previously removed. It would therefore be clearer to substitute the word 'reinstate' (which has connotations of reinserting something previously there) with the term 'insert'. I do not consider that any injustice would result from this correction which is made for clarity.

Appeal A: appeal on ground (a) and the deemed planning application (DPA); and Appeal B

Main Issues

4. The main issues are the effect of the windows on the character and appearance of the appeal building and area; and whether these are an environmentally sustainable form of development.

Character and appearance

5. The appeal property is an end of terrace building in a prominent corner position and, although not in a conservation area, is an attractive historic building with visual interest derived particularly from the elaborate detailing surrounding upper floor windows. It sits at the junction of Kilburn High Road with Palmerston Road and on the opposite side of the corner is the locally listed building at 308 Kilburn High Road.
6. There is a mixture of building designs in the area but there remains a strong degree of cohesion through distinctive architectural embellishments above ground floor level. Whilst some buildings close to the appeal site have uPVC windows at upper floor levels, equally many have retained timber sash windows which, through their design detailing and traditional timber material, complement the architectural detailing of the buildings. Thus, uPVC windows in this area are not so prevalent as to have become the characterising form of fenestration and the area evidently retains a sense of its original character.
7. By reason of their contemporary uPVC materials and overtly modern and undetailed design including the incongruous air vents on the existing windows, the appeal windows significantly undermine the intricate historic detailing of the building. When in open position, it is especially apparent that the windows enforced against are modern replacements since the opening mechanism is very obviously different from the sliding of the original sash windows. The highly visible corner position of the building means that the incongruous fenestration results in material harm to the character of the surrounding area.

8. I acknowledge that the Council notes that only a few properties within the same terrace have retained timber sash windows. However, given the highly prominent position of the appeal property and that numerous timber sash windows remain in the surrounding area, the limited number of original windows in the terrace does not justify the appeal development. As regards comments that a number of uPVC windows in the area have been replaced without planning permission and are immune from enforcement action, this does not correlate to implicit acceptance of these by the Council.
9. The appellant draws my attention to a number of planning permissions granted for uPVC windows in the area. I do not have full details of the planning circumstances leading to those developments and each case must be determined on its own merits. Indeed, whilst those referenced are fairly close to the appeal site, they illustrate why planning decisions necessarily turn on their own particular circumstances. For example, the building at 50 Palmerston Road is an entirely different building design as compared to the appeal property lacking its intricate detailing, and the Council also comments that the windows replaced in that building were not original sash windows.
10. Most other decisions cited are from some time ago and as such potentially subject to different policy considerations. The appellant also references some PVC windows on the upper floors of the locally listed building at No 308 but I do not have detailed evidence to indicate that these were granted permission by the Council. As outlined above, a failure to enforce against these does not amount to an acceptance that they are appropriate in design terms.
11. I conclude then on the first main issue that the appeal windows have a harmful effect on the character and appearance of the appeal building and area. This is contrary to Policy D1 of the Camden Local Plan 2017 ('LP') which requires that new development respects local context and comprises details and materials that complement local character. It would also conflict with Policy D2 of the LP which indicates that the Council will seek to protect non-designated heritage assets including those on and off the local list.

Environmental sustainability

12. The appellant indicates that the appeal windows were installed to improve energy efficiency by means of enhanced thermal efficiency, reduced energy usage and carbon emissions. The appellant also emphasises the potential for reusing and recycling uPVC windows and risks of timber windows being disposed of through burning, with resultant damage to the environment. Durability and maintenance advantages are also cited.
13. The Council counters this by arguing that timber windows have better thermal performance than uPVC and also that uPVC windows cannot biodegrade, use non-renewable resources in their manufacturing process, and that timber itself is carbon sequestering since it traps and stores atmospheric carbon.
14. Policy CC1 of the LP relates to climate change mitigation and states that all development will be required to minimise the effects of climate change and will be encouraged to meet the highest environmental standards that are financially viable during construction and occupation. It then lists expectations for measures both on and off-site to reduce carbon emissions including through sensitive energy efficiency improvements to existing buildings.

15. Supporting text to Policy CC1 states an expectation that all development will optimise resource efficiency by using materials with low embodied carbon content. The explanatory text also references durability and lifespan of building components, which the appellant claims to be superior in uPVC frames.
16. The Council also relies upon the Home Improvements Camden Planning Guidance 2021 ('CPG') which at page 56 advises that uPVC windows are 'strongly discouraged' with reference made to timber frames having a lower embodied carbon content than uPVC frames, including as regards emissions from extraction, refinement, transport and process. The appellant comments as to the weight that should be afforded to the CPG on the basis that it does not 'align with contemporary knowledge regarding the sustainability of uPVC windows'. However, no detailed information is submitted evidencing this 'contemporary knowledge'. Equally, the appellant emphasises that uPVC window manufacturers are committed to global sustainability but again no detailed comparative evidence is submitted.
17. Whilst I have no detailed or substantive evidence in relation to the relative benefits of uPVC window frames as against timber frames in general terms, the CPG reinforces the Council's position as regards the embodied carbon content of timber frames. The wording of Policy CC1 itself contains no prohibition on the use of uPVC and indeed, guidance in the CPG 'strongly discourages' its use, rather than seeking to impose a ban on uPVC windows. The introduction of the CPG guidance against use of uPVC would though potentially explain the apparent inconsistency in the Council granting planning permission for uPVC windows over the period 2006 to 2017 as cited by the appellant in evidence.
18. Drawing all of this together, it appears on the limited available evidence that uPVC and timber window frames each likely have some degree of benefits and disadvantages as against each other. Development plan policy does not itself preclude use of uPVC. However, in this case, I have no detailed evidence in relation to the thermal efficiency or other sustainability credentials of the appeal windows such as to indicate that these minimise the effects of climate change in line with Policy CC1. In any event, Policy CC1 refers specifically to 'sensitive' energy efficiency improvements to existing buildings. Given my finding of the visual harm resulting from both the appeal windows, they do not represent a sensitive energy efficiency improvement.
19. The appellant has made reference to the Brent Decision where an Inspector found an outright ban on uPVC to be over-simplistic and noted the benefits of using uPVC. The appellant comments that the appeal windows are of a comparable quality and type to those in the Brent Decision but no details are submitted for comparative purposes. Further, since the Brent Decision dates from 2006, it is possible that evidence related to the sustainability credentials of uPVC may have moved on. That said, my determination is in any event not made upon the basis that the Council's development plan policy or indeed guidance in the CPG constitutes a ban on the use of uPVC. Indeed, I have acknowledged the stated benefits of using uPVC and have made an assessment based upon the evidence before me.
20. I conclude then on the second main issue that the appeal development is not a sustainable form of development and conflicts with Policy CC1 of the LP for the reasons outlined.

Other Matters

21. The appellant cites other claimed benefits of the windows including costs savings and benefits in terms of soundproofing. I have though no comparative information on these factors and so cannot accord these matters any material weight.

Conclusion on Appeal A ground (a) and the DPA and on Appeal B

22. The appeal development causes harm to the character and appearance of the appeal building and area and does not represent an environmentally sustainable form of development. Given the fundamental development plan conflict, I find the development to be contrary to the development plan, read as a whole, and no material considerations are advanced which indicate a decision other than in accordance with the development plan.

Appeal A: Overall Conclusion

23. 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.

Appeal B: Overall Conclusion

24. For the reasons stated, and taking into account all other matters raised, I conclude that the appeal should not succeed.

Appeal A: Formal Decision

- It is directed that the enforcement notice is corrected by in paragraph 5 deletion of the words 'reinstate the' and the substitution of the word 'insert'.

25. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B Formal Decision

26. The appeal is dismissed.

V Bond

INSPECTOR