



Appeal Decisions

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

Appeal A Ref: APP/H5960/C/23/3320374

Appeal B Ref: APP/H5960/C/23/3320375

60A Yukon Road, London SW12 9PX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Lisa Henry (Appeal A) and Mr Mark Henry (Appeal B) against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 8 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years, the installation of uPVC framed windows on the first floor level at the front elevation of the property.
 - The requirements of the notice are: 1. Remove the unauthorised uPVC windows at first floor level on the front elevation of the property; 2. Install timber-framed sash windows to match in facsimile those previously in situ at first floor level on the front elevation of the property; and 3. Remove from the property all debris arising from the (*sic*) compliance with step 1 or (*sic*) step 2 above.
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(e), (f) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decisions

1. Appeals A & B-The appeals are dismissed and the enforcement notice upheld.

Preliminary Matter

2. I consider that these appeals can be determined without the need for a site visit. This is because I have been able to reach decisions on the appeals based on the information already available.

Ground (e) appeals

3. The ground of appeal is that copies of the enforcement notice were not served on the owner and the occupier of the land to which it relates and on any other person having an interest materially affected by it, as required by s172 (2) of the Act. The onus is on the appellants to show why their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains an end of terrace residential building. The notice attacks uPVC framed windows installed on the front elevation at first floor level. Copies of Land Registry searches show that the appellants have a leasehold interest in the first and second floors. Other parties listed as having an interest in the property include the Mayor and Burgesses of the London Borough of Wandsworth, who own the freehold. Unlike the appellants and other parties

listed however, the freehold owner was not served with a copy of the notice. The Local Planning Authority (LPA) offered no explanation regarding why the freehold owner, whose interest is materially affected by the notice, was not served with a copy. The Court judgements referred to do not greatly assist the LPA's case; there is no dispute that insofar as the copies of the notice that have been served are concerned, the requirements of s329 (1) of the Act were satisfied. Consequently, on the balance of probability I am not persuaded that copies of the notice have been served as required by s172 (2) of the Act.

5. Be that as it may, at s176 (5) the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. The appellants were able to make full arguments during the course of these proceedings as to why their appeals should be allowed. The appellants could not point to any prejudice to themselves or to the freehold owner arising from the failure to serve a copy of the notice on the latter. In any event, given the small scale of the unauthorised development the outcome of these appeals is unlikely to be of any great consequence in terms of the property freehold. For example, complying with the notice would probably have little significant physical or financial implications for the freehold owner.
6. Consequently, I am not persuaded that there would be any prejudice if the appeals were to proceed and the failure of service should be disregarded. It follows that the ground (e) appeals fail.

Ground (f) appeals

7. The ground of appeal is that the notice requirements are excessive.
8. An enforcement notice can have the purpose of remedying the breach, including by restoring the land to its condition before the breach took place. Alternatively, the notice can have the purpose of remedying any injury to amenity caused by the breach. Whilst the notice does not state as such, its purpose must be the former. Timber framed sliding sash windows were present prior to the unauthorised units being installed. By requiring removal of those units and their replacement with timber framed windows to match those which previously existed, the steps in the notice are clearly aimed at restoring the property to its condition prior to the breach.
9. The appellants argued that the notice should be varied to provide for the replacement window frames to be constructed in materials other than timber. However, as the replacement frames would then not be constructed of the same materials as the pre-existing frames, doing so would mean that the property would not be restored to its condition prior to the breach taking place and the purpose of the notice would not be achieved.
10. Since these appeals were made, planning permission has been granted at the property to replace the unauthorised units with facsimile uPVC framed windows¹. It is also possible to remedy a breach of planning control by making any development comply with the terms, including conditions and limitations, of any planning permission which has been granted in respect of the land. Even

¹ Council Ref: 2022/4542.

so, as full details of the permission including the drawings and other particulars have not been supplied, any variation to the notice made along those lines would be in uncertain terms. Besides, the appellants' ability to replace the unauthorised units with those in the permitted scheme is not affected by the notice. No other alternative to the notice requirements was suggested and to my mind, there is none that would also remedy the breach.

11. Therefore, the notice requirements are not excessive; they are a proportionate remedy involving the minimum works necessary to restore the property to its condition before the breach took place. The ground (f) appeals fail.

Ground (g) appeals

12. The ground of appeal is that the time allowed for complying for the notice falls short of what is reasonable.
13. It is likely that there are a considerable number of companies engaged in the supply and fitting of timber framed sash windows. There is no firm evidence of there being any significant delay in obtaining timber framed windows or of a shortage of suitably experienced tradespersons to fit them. My understanding is that detailed drawings and particulars for replacement windows, albeit with uPVC frames, accompanied the above permission. The Council estimated that it would take around four to six weeks to manufacture the replacement windows and less than a day to fit them following removal of the unauthorised units. There is little which would lead me to conclude otherwise.
14. Therefore, the four-month period specified in the notice strikes an appropriate balance between affording the appellants sufficient time in which to arrange for and have the unauthorised units removed and replacement windows fitted, whilst also remedying the planning harm identified above as soon as is practicable. Extending the time for compliance to six months on the other hand would perpetuate the breach and the planning harm identified in the notice. It follows that the time allowed for complying with the notice requirements is reasonable and not too short. The ground (g) appeals also fail.

Conclusions

15. For the reasons given above I consider that Appeals A & B should be dismissed.

Stephen Hawkins

INSPECTOR