



Appeal Decision

Hearing held on 12 December 2023

Site visit made on 12 December 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/Y5420/C/22/3299403

The land and building(s) known as 20 Topsfield Parade, London N8 8PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Ebrahim Abbassian of Inspec Services Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 19 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission the installation of PVCu windows to the front elevation of the property at upper floor levels.
 - The requirements of the notice are to:
 1. Remove the PVCu windows installed to the front elevation of the property at first, second and third floor levels.
 2. Remove from the land any debris resulting from carrying out step 1) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Ebrahim Abbassian. This application is the subject of a separate decision.

The Enforcement Notice

3. It is argued that because the Council have not specified what the Appellant should replace the PVCu windows with, the enforcement notice is a nullity. This is on the basis that the effect of the requirements would be to leave the Appellant with a building with no windows, open to all weathers, vandalism, damage, and crime, and this would not preserve or enhance the character or appearance of the Crouch End Conservation Area.
4. An enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach. An enforcement notice is a nullity only if it is defective on its face, which means that it lacks some essential constituent or is incapable of being understood.

5. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall include. S173(3) states that an enforcement notice shall specify the steps which the authority require to be taken.
6. The scope of an enforcement notice is limited by section 173(4)(a) and (b) of the Act, such that the recipient cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with a planning permission or restoration of the land to its previous condition, as confirmed in the case of *Bath CC v SSE and Grosvenor Hotel (Bath) Ltd*, which established the principle that an enforcement notice could not be properly used to achieve improvement works over and above remedial works.
7. In this case, the allegation is the installation of PVCu windows. The requirements flow logically from the allegation and seek to remedy the breach by the removal of the windows, they do not require improvement works. The notice clearly identifies the alleged breach of planning control and states what must be done to remedy it. A correction to the allegation is not necessary and in respect of the requirements, there is no uncertainty about what the appellant is required to do. Although the effect of compliance would be to leave the property without windows and uninhabitable, which may be undesirable given the effect on the character and appearance of the Conservation Area, this does not make the enforcement notice a nullity.
8. There is no dispute that the pre-existing windows were lawful, and that their removal and replacement was carried out as a single act. At the Hearing, the parties agreed that the requirements could be varied to require windows to match those pre-existing to be installed, thereby restoring the property to its former condition. Such a requirement would not be more onerous since the appellant would have a habitable building and consequently, there would be no injustice caused by varying the enforcement notice accordingly. However, since I intend to quash the enforcement notice, it is not necessary for me to consider this further.

The appeal on ground (c)

9. The appeal on this ground is that the matters alleged in the Notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the Notice do not constitute a breach of planning control.
10. There is no dispute that the installation of windows amounts to a building operation as defined by section 55(1) of the Act. Section 55(2), however, goes on to clarify at subsection (a)(ii) that the carrying out of operations which do not materially affect the external appearance of the building shall not be taken to involve development of the land. The issue in dispute is limited to whether the windows in this case materially affect the external appearance of the building. A judgement is to be made based on the facts of the case.
11. There is no dispute between the parties that the previously existing UPVC windows were lawful and therefore immune from enforcement action. As already stated, those windows were replaced with those subject of the appeal, as a single act of development.

12. There is also no dispute that for the purposes of considering whether the windows are exempted from development under section 55(2)(a)(ii) the 'building' is the whole of the building known as 20 Topsfield Parade.
13. It is an established principle that, for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole. Materially affecting the external appearance means an impact capable of having some effect in planning terms.
14. The property is a Victorian, three-storey, red brick building which occupies a mid-terrace position within the Conservation Area. Properties in the terrace, including the appeal site, are in use for commercial purposes at ground floor level, with many in residential use at upper floor levels.
15. The windows, subject of the appeal, have been installed at first, second and third floor levels on the front elevation of the property and are clearly seen from the public realm when looking up towards them; and from the facing properties on the opposite side of the road.
16. The windows are constructed from white UPVC, as were those pre-existing windows and the pattern of glazing remains the same. The Council confirmed that they consider the 'material' differences to be in respect of the thickness of the frames of the bottom (opening) portion of the first and second floor windows, and the addition of trickle vents.
17. On close examination of the photographs, it is evident that the bottom frames are slightly thicker however, this is barely discernible in views from ground level and does not distort the glazing proportions to any significant or detectable extent. The trickle vents are visible and were not included on the pre-existing windows however, whilst there is no statutory definition of 'materially affect,' the term does not mean that there should be no change at all.
18. In all significant respects the windows match those replaced. When considering the angles of views and that most people's attention will be on the shop frontages at street level, the changes are barely discernible and of insignificance. They do not have a material effect upon the external appearance of the property as a matter of fact and degree. I come to that view having considered that even small changes and/or those which have limited visibility could still be material on a historic building in a conservation area in other circumstances.
19. I find that the works do not materially affect the external appearance of the building as a matter of fact and degree. Thus, the works do not constitute development requiring planning permission. The appeal on ground (c) therefore succeeds.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
21. In these circumstances, the appeal on grounds (a) (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sebastian Charles	(Solicitor) Aardvark Planning Law
Mr Ebrahim Abbassian	
Alexandra Wright	Aardvark Planning Law

FOR THE LOCAL PLANNING AUTHORITY:

Russell Quick	(Planning Enforcement Officer) London Borough of Haringey
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