



Appeal Decision

Site visit made on 16 October 2023

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/W2465/C/23/3316522

Hydes Herbal Clinic, 68 London Road, Leicester, LE2 0QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Sheldon, Hydes Herbal Clinic against an enforcement notice issued by Leicester City Council.
- The notice was issued on 10 January 2023.
- The breach of planning control as alleged in the notice is A site visit carried out on 11th November 2021 found that without planning permission, the six wooden sliding sash windows compromising the two bay windows at the front of the property had been changed to uPVC casement windows.
Planning permission is required to change the windows to the front of the property because they materially affect the external appearance of the building. There are no permitted development rights for commercial premises to alter windows. The replacement uPVC windows materially affect the external appearance of the building as the windows are a key part of the building's design and character. Therefore, a breach of planning control - operational development - has been established.
- The requirements of the notice are:
 1. Remove the uPVC bay windows, frames and apron panels from the front elevation of 68 London Road, ensuring minimal damage to historic fabric, and make good in appropriate materials to match. For the avoidance of doubt, this is the ground floor and first floor bay windows.
 2. Install a wooden framed splayed/canted (ground floor) bay window with inlay details on the vertical foremost jambs and three wooden sliding sash windows and the wooden framed first floor bay window above with inlay details on the vertical foremost jambs and three wooden sliding sash windows, to match that which was removed. All windows should be functioning sash units with moulded horns and integrated (puttied in) glazing bars.
 3. If the decorative features from the tops of both sets of bay windows have been retained, reinstall them as they were before they were removed and make good.
 4. If the decorative features from the tops of both sets of bay windows have not been retained, install with custom-made wooden sections to match those which were removed, including moulded detail, ensuring that the sections align correctly with the windows above/below, and make good.
 5. If the apron panels with inlay detailing below the first-floor window have been retained, reinstall them as they were before they were removed and make good.
 6. If the apron panels with the inlay detailing below the first-floor window have not been retained, install a custom-made wooden section to match that which was removed, including inlaid panelling, ensuring that the section aligns correctly with the windows above/below, and make good.
 7. Paint the window frames white and paint the inlays on the jambs and apron to match the front door.
 8. Remove and dispose of all associated waste materials.
 9. For the avoidance of doubt, the wooden working sliding sash bay windows, decorative moulded tops and apron panels are to match those as marked in red on the Google image below.
- The period for compliance with the requirements is 6 months.

- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The Notice

1. Whilst it is not a matter that has been raised by the parties, I have a duty to consider any defects within the enforcement notice, and where possible, make any necessary variations or corrections to put the notice in order. The Planning Practice Guidance advises that Enforcement Notices 'are not improved by over-elaborate wording or legalistic terms; plain English is always preferable'.
2. The enforcement notice sets out that it has been issued by the Council because it appears to them there has been a breach of planning control under section 171A(1)(a) of the 1990 Act. A breach of planning control under section 171A(1)(a) is the carrying out of development without the required planning permission. In Part 3 'The Breach of Planning Control Alleged', the description of the breach is unnecessarily long. The breach of planning control alleged in this instance is "without planning permission, the six wooden sliding sash windows comprising the two bay windows at the front of the property had been changed with uPVC casement windows."
3. The second paragraph of Part 3 is superfluous, and I will delete this paragraph in its entirety. There would be no injustice or prejudice to either party in making these corrections as the allegation remains.

The appeal on ground (f)

4. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary.
5. The appellant suggests that the enforcement notice is suspended or removed in order to negotiate with the Council and obtain window specifications from an identified supplier.
6. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control s173(4)(a) or to remedy injury to amenity (s173(4)(b)). In this case the purpose is to remedy the breach of planning control. The requirements are not excessive to achieve that purpose.
7. The appellant has put forward a number of arguments regarding the Council's reasons for issuing the enforcement notice including, location, design, character and appearance, the effect on the Conservation Area, and other windows in the area. These matters are not relevant under a ground (f) appeal and could only be considered in the context of a planning application for the windows. No appeal has been brought on ground (a). An appeal on ground (f) cannot be used to consider the planning merits.
8. Moreover, whilst the appellant submits that they wish to explore with the Council a revised scheme for cost effective, secure and thermally efficient replacement windows, no such details are before me. In any event, whilst I acknowledge there is a financial cost in the removal of the windows, an appeal on ground (f) cannot be used to bring about a deemed application for an alternative development. In these circumstances, the only point at issue under

the ground (f) appeal is whether the requirements of the enforcement notice exceed those necessary to achieve the purpose which in this case is to remedy the breach of planning control. Leaving the windows would not remedy the breach of planning control that has occurred.

9. Comments regarding grant assistance, the lack of objections to the windows, the communication with the Council and the appellant's personal circumstances are not matters for a ground (f) appeal.
10. In order to remedy the breach of planning control, it is not excessive to require the removal of the windows and the reinstatement of six wooden sliding sash windows comprising the two bay windows. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Formal Decision

11. It is directed that the enforcement notice is corrected by the deletion of the allegation as phrased in Part 3 'The Breach of Planning Control as Alleged' of the notice and its replacement with "Without planning permission, the replacement of six wooden sliding sash windows comprising the two bay windows at the front of the property with uPVC casement windows." It is also directed that the notice is corrected by the deletion in its entirety of the second paragraph in Part 3 of the notice.
12. Subject to these corrections the appeal is dismissed, and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR