



Appeal Decision

Site visit made on 24 April 2024

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th April 2024

Appeal Ref: APP/T5150/C/23/3327117

First Floor Flats, 111B and C Dartmouth Road, London NW2 4ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Philip Haynes, Steptrack Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 20 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the replacement of the wooden sash frames windows with uPVC windows on the first floor at the front elevation of the premises.
- The requirements of the notice are: STEP 1 Remove the frames and glazing of the uPVC windows to the front elevations of the premises. STEP 2 Re-install back original sash timber windows to the front elevations so that they replicate the previous ones as per Google Image 2020 attached to the notice. STEP 3 Remove all debris and items, arising from compliance with Step 1 and Step 2, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), and (g) of the Act. 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 of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

The Notice

1. It is incumbent on me to get the notice in order. The alleged breach of planning control contains a basic typing error in that it refers to 'wooden sash frames windows', rather than 'wooden framed sash windows'. I can correct this minor error without causing injustice to any parties using my powers under section 176 of the Act.
2. The second step required to be taken by the notice specifies that 'original sash timber windows' are to be re-installed. This is impossible, as the original windows no longer exist. I shall therefore vary this requirement, using my powers under section 176 of the Act, to ensure it refers to the need to install wooden framed sash windows. This does not cause injustice to any parties, as it removes an obvious minor error and would be consistent with the description of the alleged breach of planning control.

Ground (b)

3. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred.

4. The evidence very clearly shows that uPVC¹ framed windows have been installed at first floor level on the front elevation of the appeal building in place of timber framed sash windows. That is what is alleged in the notice and it is of no consequence whether the timber framed windows were original features of the building, or whether uPVC framed windows exist on the rear elevation.
5. The appeal under ground (b) therefore fails.

Ground (c)

6. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control does not constitute a breach of planning control.
7. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 55 provides the meaning of 'development', which includes the carrying out of building operations. Section 55(2)(a)(ii) clarifies that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building shall not be taken to involve 'development'.
8. Replacing the windows is likely to have been carried out by at least one skilled tradesperson using tools. It is also likely to have required a reasonable amount of preparation and time. The uPVC framed windows have a significantly different effect on the external appearance of the building compared to the former timber framed windows, which matched the thickness, design and appearance of the other windows at ground and second floor levels of the front elevation of the building. The thick frames and top-hung casements of the uPVC framed windows are obviously at odds with the other windows on the front elevation. They are in a prominent position on the building, resulting in them being appreciable from the street.
9. I am therefore satisfied that the extent of works involved replacing the timber framed windows with uPVC framed windows comprised 'building operations' in the context of section 55(1) of the Act. Those works have materially affected the external appearance of the building and comprise development requiring planning permission. No evidence has been provided to convince me otherwise, including the unsubstantiated suggestion that the timber framed windows were not original to the building.
10. Various development benefits from planning permission granted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I have not been referred to any specific Classes of the GPDO which may have granted planning permission for the uPVC framed windows in this instance. The appeal site is a building split into flats, and it does not therefore benefit from the permitted development rights set out at Class A of Part 1, Schedule 2 of the GPDO.
11. There is no evidence that the replacement of wooden framed sash windows with uPVC framed windows on the front elevation of the appeal building benefits from any form of planning permission. Even if the replacement windows were an unintentional error undertaken by a contractor acting without the appellant's permission, the works comprised development requiring

¹ Unplasticized polyvinyl chloride

planning permission. As no planning permission exists for that development it is in breach of planning control.

12. The appeal under ground (c) therefore fails.

Ground (a) and the deemed application for planning permission

13. The appeal under ground (a) is that planning permission should be granted for the breach of planning control. The main issue is the effect of the uPVC framed windows on the character and appearance of the area, with particular regard to the Mapesbury Conservation Area (CA).
14. The appeal site is located within the CA. The significance of the CA, so far as is relevant to this appeal, relies on the historic appearance and consistency of large detached and semi-detached houses with decorative period features in verdant surroundings. Timber framed sliding sash windows are prevalent along Dartmouth Road and make a positive contribution to the architectural and historic character and appearance of the area, and the significance of the CA. There are some uPVC and/or metal framed casement windows in the CA, but these are very much in the minority and the examples I saw had a negative effect on the character and appearance of the CA.
15. Timber framed sliding sash windows remain at ground and second floor levels on the front elevation of the appeal building. Their traditional design and appearance are consistent with other fenestration in the street, primarily on account of their slim profiles and method of opening by way of sliding sashes. In contrast, the uPVC framed windows at first floor level have thick frames with top-hung upper casements which project outwards when open, setting them out as a marked deviation in the street scene.
16. The uPVC framed windows are in a prominent position and appear as an uncharacteristic and unsympathetic modern alteration, inconsistent with the historic appearance of the front elevation of the building and others in the CA. The uPVC framed windows undermine the visual coherence of the building and harm the character and appearance of the area and the significance of the CA.
17. There may well be variations in window materials and designs on the rear elevations of the building and others within the CA, but this is not obvious from the street. Any uPVC framed windows on the rear elevation of the building do not affect the context within which the uPVC windows on the front elevation are experienced.
18. The National Planning Policy Framework advises that where less than substantial harm is caused to the significance of a heritage asset, as is the case in this instance, that harm should be weighed against the public benefits of the development. I have been referred to vague claimed benefits in the form of compliance with 'new heat loss rules' and general improvements to tenants. Even if I were to take these as public benefits, they do not outweigh the great weight I assign to the harm which is caused to the significance of the CA.
19. The uPVC framed windows fail to accord with Policies DMP1, BD1 and BHC1 of the Brent Local Plan 2019-2041 (2022) and Policies D3 and HC1 of the London Plan (2021). These require, amongst other things, development to conserve the significance of heritage assets, complement the locality, and comprise high quality architectural and urban design. The uPVC framed windows therefore fail to accord with the development plan as a whole and there are no material

considerations which indicate planning permission should be granted in this instance.

20. The appeal under ground (a) fails and the deemed application for planning permission is refused.

Ground (f)

21. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused.
22. The notice requires the frames and glazing of the uPVC windows on the front elevations of the appeal building to be removed and for sash timber windows to be installed to replicate the previous windows, with all resulting debris and items to be removed. The purpose of the notice is therefore to remedy the breach of planning control, rather than injury to amenity.
23. No alternative measures have been put forward which may achieve the purpose of the notice, and I am not aware of any less costly or disruptive measures which would remedy the breach. The steps required to be taken are the minimum necessary to achieve the purpose of the notice.
24. The appeal under ground (f) therefore fails.

Ground (g)

25. To succeed under this ground of appeal the appellant would need to demonstrate that the period specified in the notice for its requirements to be completed falls short of what should reasonably be allowed. The notice provides 6 months for its requirements to be complied with.
26. The appellant may want to carry out remedial works to the first floor windows at the same time as works to other windows on the appeal building, but there is little information before me to suggest that there would be any significant benefits in doing so. There is also little evidence to support the claim that carrying out the required works would be so expensive as to require additional time to arrange financial loans.
27. Six months is sufficient to plan to avoid any undue disruption to tenants of the building and to obtain planning permission for windows of a more heat efficient design, if consent is needed. Taking all matters raised into account, I am satisfied that 6 months does not fall short of what should reasonably be allowed for the notice to be complied with.
28. The appeal under ground (g) therefore fails.

Conclusion

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

Formal Decision

30. It is directed that the enforcement notice is corrected and varied by:

- i) Deletion of the text 'wooden sash frames windows' at schedule 2 of the enforcement notice and its substitution with 'wooden framed sash windows'; and
- ii) Deletion of the text 'Re-install back original sash timber windows' at Schedule 4 of the enforcement notice and its substitution with 'Install wooden framed sash windows'.

31. Subject to the correction and variation, 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 Act.

L Douglas

INSPECTOR