



Appeal Decision

Site visit made on 22 April 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 28th May 2024

Appeal Ref: APP/A5270/C/23/3322026

66 Twyford Avenue, Acton, London W3 9QB

- 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 Mr Lukas Tines against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 21EN0664(1), was issued on 29 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the laying of hardstanding in the front garden and the replacement of windows in the front elevation at ground and first floor.
 - The requirements of the notice are to:
 1. Remove the hardstanding in the front garden; and
 2. Restore the front garden to its condition before the breach occurred; and
 3. Remove the windows in the front elevation at ground and first floor levels; and
 4. Reinstall the windows to match the proportions, size, colour and design of the previous windows; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.
Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (b)

2. For an appeal to succeed under this ground, the burden of proof is upon the appellant to satisfy me on the balance of probabilities that matters stated in the notice (said to constitute the breach of planning control) have not in fact occurred.
3. The appellant's case is that "*it may be*" that "*some*" lawful windows in the front elevation have not been replaced, but that "*it is unclear of the extent*"¹. It is a well-established legal principle as regards legal grounds of appeal that the appellant's evidence be sufficiently precise and unambiguous. Plainly, the appellant's case does not meet that test. Notwithstanding historic street view images provided, the unprecise case put forward by the appellant does not even go as far as to identify which lawful windows are said to have been retained. Accordingly, I am not satisfied to the required standard of proof that the matters stated in the notice have not in fact occurred. Ground (b) does not succeed.

¹ Paragraph 10, Ground of Appeal.

Ground (c)

4. For success on this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
5. It is common ground that white painted timber sash windows on the front elevation were replaced with uPVC windows from 2014. At the time the notice was issued, any such windows substantially completed before 29 March 2019 would be lawful through the passage of time by reason of section 171B(1) of the Act. The appellant says that the development subject of the notice was completed by the developer in 2021, and that the new windows associated with that development would not have materially changed the external appearance of the building on account of the earlier windows being also uPVC. I do not accept that argument as the new windows have thick panels (with thick horizontal and vertical plastic elements) which sit proud of their frames giving a bulky appearance. That is in material contrast to the thinner features of the pre-existing lawful windows². Consequently, the works constitute operational development requiring planning permission for the purposes of s55 of the Act.
6. The appellant further argues that the new windows have planning permission afforded by application 193933/FUL³ for the conversion of the property into 5 flats. However, I have seen nothing in the associated plans before me to demonstrate that the thicker design of uPVC windows installed were proposed and authorised by way of that application.
7. No ground (c) argument is made in relation to the hardstanding.
8. For the above reasons, I am not satisfied on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. Accordingly, ground (c) does not succeed.

Ground (a) and the deemed planning application (DPA)

Main Issue

9. The main issue in the DPA is the effect of the development on the character and appearance of the host dwelling, streetscene and Creffield Conservation Area (CA).

Reasons

10. The appeal property lies within the CA. I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA by attaching considerable importance and weight to that desirability.
11. The CA Appraisal summarises the special interest of the CA as being its architecturally superior houses which have fine detailing. The appraisal further notes that Twyford Avenue retains a superior suburban appeal and that the view along it is one of the key views which make an important contribution to the character of the CA. The appeal property is an important element of that contribution – as reflected in a photograph of it in the Appraisal document.

² Photographs in Appendix 5 of the Council's Statement of Case.

³ Permission granted by way of notice dated 4 November 2020.

Windows

12. The CA Appraisal notes that original windows are all constructed of timber and that, where uPVC has crept in, it is to the detriment of the area.
13. Notwithstanding the lawful uPVC windows in place before the appeal development, the thicker design and chunky profile of the current plastic windows draws the eye to their obvious and harmful incongruity with the architectural character of the property and with nearby properties which have retained original timber windows. Being in such a key view within the CA, this causes significant harm to the designated heritage asset. This harm is not mitigated by the fact that there are other examples of properties with uPVC windows in the CA, as the appeal development simply adds to the cumulative detriment of the area referred to in the Appraisal.
14. The appellant says that there are local examples of where non-timber windows have been granted consent for replacement with uPVC, mainly on the basis of limited change to the building. However, for the reasons I have given above in considering the particular merits of this case, I do not find that there is limited change in respect of the appeal development. Neither do I agree, for the same reasons, that the windows are of a better appearance than the earlier ones.

Hardstanding

15. The Appraisal says that the suburban character of the CA is created by a building line set substantially back from the highway behind generous front gardens. It notes as a key issue the harm caused by the introduction of hardstanding to provide further parking areas.
16. Essentially the whole of the front garden has been replaced with grey brick paving and the front boundary wall has been removed. A vehicle crossover has been created. Bins are stored on the front hardstanding and on my site visit there were 2 vehicles parked upon it.
17. The loss of the front garden to provide this hard yard for parking is directly contrary (and harmful) to the character of the CA as described in the Appraisal, creating a striking degree of visual starkness aggravated by the greyness of the materials in contrast to the colour palette of the building.
18. I also place significant weight on the findings of the Inspector in the 2021 dismissed appeal⁴ as regards the same property ('the dismissed appeal'), which found harm in respect to the CA, and whose misgivings about that proposal included loss of the front garden to hardstanding. In arriving at his assessment of harm, the Inspector noted that the unacceptable proposal under his consideration had a markedly different and lesser extent of garden retained than the planning permission⁵ (now granted) for 5 flats. And, significantly, the dismissed appeal scheme had a greater amount of soft landscaping retained to the frontage than in the DPA before me.
19. The appellant says that there is a 'fall-back' position to be taken into consideration on the premise that cars could be parked on the frontage without the hardstanding in place. However, I give that argument very limited weight

⁴ APP/A5720/W/20/3260908; Decision date 29 April 2021; Appeal against non-determination of application 200362FUL relating to the proposed conversion of the property into 7 self-contained flats.

⁵ 193933FUL

as I have seen no evidence of any highways consent for a crossover. Further, as I think is accepted by the appellant (notwithstanding the description of the development), the approved plans as regards 193933FUL (Revision B) showed retention of the front garden with no parking and no crossover. Therefore, vehicles cannot lawfully park on the frontage – with or without the hardstanding targeted by the notice.

20. My attention has been drawn to other local examples of frontages with hardstandings for vehicles⁶. However, they do not change my finding on harm in the case before me. Indeed, they draw even more into focus the cumulative harm to the CA through the dwindling of features within it (as identified in the Appraisal) which contribute to its significance.
21. There are also no conditions I could reasonably impose which would make the loss of the front garden or the visually harmful hardstanding acceptable (such as a landscaping scheme to be submitted to and approved by the Council).

Planning Conclusion

22. Having regard to paragraph 208 of the National Planning Policy Framework (the Framework), whilst the harm caused to the significance of the CA is less than substantial, it is a matter of considerable weight and importance. The appeal development arguably provides energy-efficient fenestration and reduces demand for parking on the highway, but these public benefits do not outweigh the harm.
23. I conclude that the development causes significant harm to the character and appearance of the host dwelling, streetscene and CA. It fails to preserve the character or appearance of the CA, causing less than substantial harm to its significance as a designated asset. The public benefits do not outweigh this harm and the proposal is therefore contrary to Policies D3 and HC1 of the London Plan (2021) and Policies 7.4, 7B and 7C of the Ealing Development Management Development Plan Document (2013) which together seek to ensure that developments are of good design and protect the character and appearance of places, including conservation areas. The development is also contrary to the heritage protection and design principles of the Framework.
24. The development does not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the ground (a) appeal does not succeed and I will not grant permission in respect of the DPA.

Ground (f)

25. For success under this ground of appeal, I must be satisfied that the requirements of the notice are excessive in achieving its purpose. From the way the notice is drafted, I find that its purpose is to remedy the breach of planning control by restoring the land to its condition before the breach took place. The requirements go no further than that, and are accordingly not excessive.
26. Even were the purpose of the notice to remedy injury to amenity caused by the breach, the 'alternative scheme' put forward by the appellant (indicated by the sketch plan in Appendix 6 of his Statement) would not achieve that.

⁶ Some examples very near the appeal property are also unauthorised and subject to enforcement action.

The modest amount of soft landscaping proposed relative to the degree of hardstanding would not be sufficient to make the loss of the front garden acceptable or to mitigate the harmful effect of the hardstanding's appearance within its context. Further, I also note that the level of soft landscaping proposed in the 'alternative scheme' amounts to less than in the 'dismissed appeal'.

27. Accordingly, ground (f) does not succeed.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed.

I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR