



Appeal Decision

Site visit made on 17 May 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/L5810/C/23/3336064

Land at 103 Sheen Road, Richmond TW9 1YJ

- 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 Dr Amit Kiran against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 16 November 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 double glazed casement windows at ground and first-floor levels on the front elevation of the Land ("the Windows").
- The requirements set out in paragraph 5 of the notice are:
 - (a) Permanently remove the Windows and reinstate windows which match in facsimile with those which existed before the breach of planning control as shown in the photo attached hereto; and
 - (b) Permanently remove from the Land any waste associated with complying with step 5(a) above.
- The period for compliance with the requirements is 3 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. 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Reasons

Ground (c)

1. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged complies with the terms and conditions of a planning permission or because what is alleged is not 'development' as defined by section 55 of the 1990 Act.
2. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
3. Section 55 of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
4. Section 55(1A) states that, for the purposes of the Act, "building operations" includes demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder.

5. Section 55(2)(a)(ii) provides 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 for the purposes of the Act to involve development of the land.
6. Taking the above into account, the windows which are the subject of this appeal are operational development for the purposes of section 55 and as a matter of my planning judgement they materially affect the external appearance of the building. As such, they constitute development and planning permission is required for them.
7. I have considered permitted development rights available under The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order'). Schedule 2, Part 1, Class A of the Order permits the enlargement, improvement or other alterations of a dwellinghouse.
8. But this is subject to conditions, including condition A.3.(a) which states that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
9. There is no evidence the materials used for the new windows are of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. As such, I am not satisfied that condition A.3.(a) is complied with and so the windows which are the subject of this appeal are not permitted development. Moreover, there is no evidence that any express grant of planning permission exists for these windows either.
10. I conclude that the appeal on ground (c) fails.

Ground (a)

11. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.
12. The appeal building is within the Sheen Road Conservation Area. So it constitutes part of a designated heritage asset and there is a statutory duty upon me under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, notwithstanding the appellant's concerns about the current 'problematic' state of this area.
13. Based on the reasons for issuing the notice and taking into account the statutory duty noted above, the main issue in the ground (a) appeal is the effect of the appeal development on the character and appearance of the area, including the Sheen Road Conservation Area.
14. The Council's published Sheen Road Conservation Area Statement acknowledges as a problem the loss of traditional architectural features and materials due to unsympathetic alterations. So, notwithstanding the appellant's concerns about the age of the associated conservation area study, it is clear that the character and appearance and significance of the conservation area is derived at least in part from the architectural features (such as windows) and materials of its buildings.

15. The appeal building forms part of a group of 14 similarly designed buildings at Nos 95a to 121 Sheen Road. The windows which are the subject of this appeal have thick, chunky frames. As I saw on my site visit, this is readily apparent when passing by on the street.
16. The effect is in stark contrast to the slender window frames seen at the same floor levels on the other houses in this group. From the information provided, the thickness of the window frames is also in contrast to those which previously existed on the front of the appeal building at ground and first floor level.
17. As such, the appeal development is an unsympathetic and incongruous alteration within the street scene. This is harmful to the character and appearance of the area, including the conservation area and its significance.
18. The appellant has made repeated references to the use of uPVC windows elsewhere in the street. But the reasons for issuing the notice are clear that it is the thickness of the frames that is the specific concern in this case, rather than the choice of material *per se*.
19. The appellant refers to dilapidated properties, rubbish on the street, traffic, unsympathetic shopfronts, poor quality paving and potential for improvements to surfacing. Moreover, the appellant describes Sheen Road as a noisy, dirty, busy main road. Be this as it may, these are not good enough reasons to grant planning permission for the appeal development, in light of the statutory duty, noted above and the harm identified.
20. My attention has been drawn to windows on other properties in the street, all of which I viewed at my site visit including at Nos 77, 83, 101, 105, 107, 108, 126, 134, 136, 138, 146, 148 and 156. But with the exception of Nos 101, 105 and 107, none of these are within the same group and so as a matter of my planning judgement, they are not seen within the same context of the appeal development before me. I therefore ascribe them limited weight in my decision.
21. In respect of the ground and first floor window frames at Nos 101, 105 and 107, these are considerably slenderer than those at these floor levels on the appeal building and so I do not find them comparable to the appeal development. The notice does not attack the dormer window at second floor level on the appeal building and so I do not find a comparison between the appeal development and other dormer windows in the street relevant in this case.
22. Given the scale of the appeal development within the context of the conservation area as a whole, I consider it causes less than substantial harm to the designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 208 of the National Planning Policy Framework (the Framework), I must weigh the harm against the public benefits of the appeal development.
23. The notice acknowledges that the windows may improve energy efficiency and with this I have no reason to disagree. However, I am not satisfied this is a public benefit of sufficient weight to outweigh the harm to the conservation area, particularly as a similar level of energy efficiency may be achieved by windows with more slender frames.

24. I conclude the appeal development harms the character and appearance of the area, including the Sheen Road Conservation Area and its significance. As such, in this regard, it does not comply with Policy LP1 or LP3 of the Local Plan (July 2018), the historic environment policies of the Framework or Policy 28 or 29 of the draft Local Plan (June 2023). Whilst these draft policies are not yet adopted, they are consistent with the Framework and the adopted development plan policies in respect of this main issue. So I ascribe them significant weight in this appeal.
25. My attention has also been drawn to Policy 30 of the draft Local Plan. But it has not been explained how this is relevant to this main issue so I consider it weighs neither in favour of nor against the appeal development in this case.

Ground (f)

26. An 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 to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach 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, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
28. Based on the requirements of the notice, the purpose of the notice is to remedy the breach. This is clear from paragraph 5.(a) of the notice which, in effect, requires restoration of the land to its condition before the breach took place.
29. According to the appellant, to reinstate windows that match the previous style would be in breach of Building Regulations. But for buildings of special architectural or historic interest (which includes buildings in conservation areas) some variation of the relevant provisions relating to Building Regulations may be appropriate. In other words, Building Regulations are not necessarily a reason for me to vary the requirements of the notice in this case.
30. The appellant has proposed to replace the ground floor and first floor windows with uPVC sash windows and some details to this effect have been provided. But these details are not sufficient to comply with the specificity required by section 173(3) of the 1990 Act. Moreover, there is no evidence that any planning permission exists for this alternative scheme (express or otherwise), for section 173(4)(a) of the 1990 Act to be satisfied in this regard.
31. I conclude that the appeal on ground (f) fails.

Ground (g)

32. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
33. The appellant has explained the length of time it took to commission and install the windows which are the subject of this appeal. Based on that experience, the appellant has indicated their view that the timeframe for compliance with the notice would be impossible to adhere to. Moreover, from the information provided, it would appear that both the appellant and the Council may want to agree an alternative scheme for windows from that specified in the notice.
34. Whilst the appellant has not specified what compliance period should reasonably be allowed, taking into account the above points, I shall extend the period for compliance to 6 months. This will provide an opportunity for the appellant and the Council to agree an alternative scheme as well as time for a planning application for that alternative scheme to be prepared and submitted by the appellant and considered by the Council, if (depending on the details) such a grant of planning permission is necessary. The appeal on ground (g) succeeds to this extent.
35. Should no agreement be reached within this extended time period the appellant may still comply with the notice by adhering to its existing requirements.

Other Matters

36. The appellant's submissions make repeated allegations about negligence by the Council. This is generally not a matter for me to address in an appeal under section 174 but I do so here in order to assist. From the information provided, the relevant communications were with Building Control. Such a department administers Building Regulations. This is an entirely separate regime from the management of development which is generally administered by the local planning authority. In other words, Building Control is not the right department to ask for advice on matters of development management and planning advice should be sought from the local planning authority in the first instance.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

38. It is directed that the enforcement notice is varied by the deletion of 3 months as the period for compliance and its substitution with 6 months. Subject to this 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 1990 Act as amended.

L Perkins

INSPECTOR