



Appeal Decision

Site visit made on 18 June 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH JULY 2024

Appeal Ref: APP/A5270/C/23/3318774

183 Princes Gardens, Acton, London W3 0LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tak Hing Wong against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 6 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of replacement windows in the front elevation.
- The requirements of the notice are to:
 1. Remove the unauthorised windows in the front elevation;
 2. Reinstate windows to match the appearance, proportions, size, colour and design of the previous windows; and
 3. Remove the resultant debris.
- The period for compliance with the requirements is: three (3) months.
- The appeal is proceeding on the ground set out in section 174(2) (a) 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 variations.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the Enforcement Notice (Notice) in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) includes to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. In paragraph 5, step 1, for consistency with the allegation, the word '*unauthorised*' should be deleted and substituted with the word '*replacement*.' In paragraph 5, step 2, the word '*, material*' should be inserted after the word colour. To vary the requirements to include the word '*material*' to match the previous windows provides clarity on what works are necessary to remedy the breach of planning control.
3. I acknowledge that requiring the replacement windows to be the same material as the previous windows would make step 2 a more onerous requirement. However, having regard to the appellant's case, I am of the view that they have clearly understood that the loss of the original windows in a timber material was an issue and have set out their case accordingly. As such, I do not believe this variation would cause any injustice to the appellant in this instance.

4. The variations, set out above, do not alter the nature of the allegation and do not, therefore, cause any injustice to the Council or appellant.

Preliminary Matters

5. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was also published. However, there are no substantive changes relevant to the appeal, and no prejudice would be caused by me having regard to it.

The Ground (a) Appeal and the Deemed Planning Application

6. The main issue in this appeal is the effect of the development on the character and appearance of the area, including the preservation or enhancement of the Hanger Hill (Garden) Estate Conservation Area (Conservation Area).

Reasons

7. The Hanger Hill (Garden) Estate Conservation Area Character Appraisal 2009 (Appraisal) indicates that the Conservation Area is characterised by mock Tudor properties. Also, mature trees along with green hedges complement the architecture and frame views within the Conservation Area. The Hanger Hill Garden Estate Conservation Area Management Plan 2009 (Management Plan) outlines that 'windows are a fundamental element of the character of each house and form a distinctive architectural feature of the estate¹.' 'The original windows should be retained wherever possible, and their life will be extended by regular maintenance and repair².'
8. The properties on Princes Gardens are a mix of terrace and semi-detached residential properties with a consistent building line and plot layout finished in red facing brick, black timber and render detailed elevations with reddish brown clay tile roofs. Although several sets of front windows along Princes Gardens have been replaced with modern equivalents, a good proportion of the properties, including those adjoining the appeal site, have retained the original timber windows to the front. Consequently, despite the changes made, the properties largely retain their traditional form, character and appearance as well as finishing materials, which has a collective consistency that adds value to the special interest of the Conservation Area.
9. On the front elevation of 183 Princes Gardens there is a large, angled window with leaded lights at ground floor and two windows at first floor. Prior to the works alleged it is understood that there were original timber windows to the front. The appeal site has a mock Tudor design, with a two storey half-timbered and render gable forming a centre V shape with the attached end of terrace. The gable spreads down each side over the half-timbered first floor, forming an overhang to the brick ground floor bay window and porch. The development seeks to retain three replacement UPVC windows to the front, two at first floor and an angled bay window at ground floor.
10. The appellant has retained the same number of openings and has looked to replicate the design and appearance of the previous windows with faux leaded detail behind the double glazing at ground floor. However, the frames are clearly finished in white UPVC with white casement windows, cills and external air vents,

¹ P. 17, Paragraph 5.5- Design Guidelines- windows

² P. 18, Paragraph 5.5- Design Guidelines- windows

which contrasts with the painted white timber window frames and black cills on the neighbouring properties. The UPVC frames are also bulkier in appearance, with wider transoms and mullions as well as the casement windows externally sitting proud of the UPVC frame. The development, therefore, results in the loss of a distinctive architectural feature, which adversely impacts on the character and appearance of the host property. This adverse change is also exacerbated by being visible from the road as well as contrasting with the adjoining neighbour's traditional timber frames and windows.

11. Accordingly, the replacement windows detract from the character and appearance of the host property as well as the collective consistency that adds value to the special interest of the Conservation Area. Due to the small scale and nature of the development, the adverse change results in 'less than substantial harm' to the Conservation Area. Paragraph 208 of the Framework outlines that where a development leads to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
12. In terms of benefits, none are set out by the appellant within their statement. Nonetheless, it is acknowledged that double glazed windows are more secure and energy efficient than single pane timber windows. However, I have no substantive evidence to suggest that it is not possible to install double glazed timber windows to current energy efficiency and security standards. As such, these benefits are limited and are not sufficient to outweigh the less than substantial harm that I have identified. In coming to this conclusion, I am giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
13. In support of the appeal, it is highlighted that several neighbouring properties have UPVC or aluminium windows, which demonstrates that the replacement windows are not out of keeping with the prevailing character of the area. Although I have had regard to the appellant's position, from what I saw, there is still a healthy proportion of properties with timber frames in the vicinity. Also, the UPVC windows that I saw during my visit only served to confirm that the loss of the original timber windows detracts from the character of the house and the collective consistency that adds value to the Conservation Area.
14. Accordingly, the development adversely impacts on the character and appearance of the host property and fails to preserve or enhance the special qualities of the Conservation Area. As such, the development fails to comply with Policies 7B, 7C and 7.4 of the Ealing Development Management Development Plan Document 2013 and Policies D4 and HC1 of the London Plan 2021 as well as the advice and guidance contained within the Conservation Area Appraisal and Management Plan. These policies, and guidance, require development to complement the local character, have a positive visual impact with complementary fittings and materials as well as conserving or enhancing the significance of heritage assets. These policies are generally consistent with the Framework.

Other Matters

15. My attention has been drawn to an appeal decision at 51 Tudor Gardens³, and a planning application approved at 22 Tudor Gardens by the Council⁴. The appellant

³ Appeal Decision APP/A5270/D/19/3227749

⁴ Council reference 183489HH

indicates that these are relevant to the determination of the appeal. Although there are similarities between the two cases, in the highlighted appeal and the approved planning application the original timber windows had already been removed. The windows were replacements for aluminium frames and UPVC frames respectively. As such, the circumstances in the cases highlighted are not directly comparable to this appeal, and I have given them limited weight in my decision. I have reached my own conclusions on this appeal based on the evidence before me.

16. I have also had regard to the letter of support from an interested party, which sets out that the house has been improved with the replacement windows. It is also claimed that the cost of replacing the windows in wood is too high and the UPVC frames improve the neighbourhood by enhancing security and insulation.
17. I accept that wooden frames can be more expensive and require more maintenance, but this is not a good reason to allow a development that adversely impacts on the character and appearance of a property and the special qualities of the wider Conservation Area. Further to this, as already outlined above, there is no substantive evidence before me to show that timber windows with the same energy efficiency and security standards as the replacement UPVC windows could not be fitted.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with variations 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

19. It is directed that the Notice is varied by:

In paragraph 5, step 1, the deletion of the word 'unauthorised' and its substitution with the word 'replacement.'

In paragraph 5, step 2, insert the word ', material' after the word 'colour.'

20. Subject to the variations, the appeal is dismissed, the 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.

M. P. Howell

INSPECTOR