



Appeal Decisions

Site visit made on 10 September 2024

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 November 2024

Appeal Ref: APP/T5150/C/23/3318793 (Appeal A) & 3318794 (Appeal B) 4 Goldsmith Lane, London NW9 9AH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Shimon Fhima MBE (Appeal A) and Dr Ilanah Fhima (Appeal B) against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 15 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of new windows to the front of the premises.
- The requirements of the notice are to:
 - Step 1 Remove the windows to the front of the premises.
 - Step 2 Remove all debris and items, arising from the removal, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is: 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. Appeal A: The appeal under ground (a) is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of new windows to the front of the premises at 4 Goldsmith Lane, London, MW9 9AH as shown on the plan attached to the notice.
2. Appeal B: The appeal is dismissed and the enforcement notice is not upheld.

Grounds (b) and (c)

3. An appeals under ground (b) are made on the basis that the matters alleged in the notice as constituting a breach of planning control have not occurred, as a matter of fact and the appeals under ground (c) are made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
4. Although the appellants have appealed under grounds (b) and (c), they do not dispute that new windows have been installed in the property, nor do they suggest that planning permission is not required. Since windows have been installed to the front of the premises, the appeals under ground (b) must fail.

5. Section 55 of the Town and Country Planning Act 1990 (as amended)(the Act) sets out the meaning of “development”, which includes the carrying out of building engineering, mining or other operations in, on, over or under land. Building operations includes structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. The installation of windows are operations which are normally undertaken by persons carrying on business as a builder.
6. Section 55(2)(a) of the Act sets out 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 does not involve development of the land. The appellants have provided me with photographs of the windows which were previously installed in the front of the premises, which are significantly different to the windows which are the subject of the notice and which have materially affected the external appearance of the building. The works therefore constitute development for the purposes of the Act.
7. The appeal premises is located within the Roe Green Village Conservation Area (the CA) which is subject to an Article 4(1) Direction. The Direction removes permitted development rights under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), including the enlargement, improvement or other alteration of a dwellinghouse.
8. Although the Article 4 Direction came into force on 18 December 2021, it replaced directions made under in 1976 and 2009. The Roe Green Village Conservation Area Design Guide (the DG) was adopted in February 2018 and advises planning permission is required to replace, alter or install a new window opening into an existing wall that faces the street.
9. As set out above, the windows are development for the purposes of the Act. The windows are not permitted by the GPDO by virtue of the Article 4 Direction and there is no evidence to show that express planning permission has been granted. Consequently, the appeals under ground (c) must fail.

Ground (a)

Main Issue

10. The main issue of the appeal is whether the windows preserve or enhance the character or appearance of the Roe Green Village Conservation Area (the CA).

Reasons

11. The appeal property comprises a mid-terrace property, finished with hanging clay tiles at first floor level and white render at the ground floor. The appeal site is located within the Roe Green Village Conservation Area (the CA). The Roe Green Village Conservation Area Design Guide (2018)(the DG) advises that the estate was designed by the architect, Sir Frank Baines, who was heavily influenced by the arts and crafts movement and designed the cottages in Roe Green Village in a traditional English rural style.
12. The layout of development and high quality architectural detailing, influenced by the arts and craft movement, which is mixed and matched between streets and groups of buildings gives the estate its distinct village feel. There are a

limited variety of designs within the CA, which provide visual interest, while ensuring they complement each other through the use of similar building materials and architectural details. Windows within the CA generally comprise cottage style casement windows which are four panes deep and two panes wide.

13. From the evidence before me and from my site visit, I consider the significance of the CA is derived from the layout of development, fine architectural detailing, and the use of traditional building materials.
14. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 205 of the National Planning Policy Framework (December 2023)(the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
15. Policies D3 and HC1 of the London Plan (2021)(the LP) both seek to protect heritage assets. Policy BHC1 of the Brent Local Plan (2022)(the BLP) states that proposals affecting heritage assets should contribute to local distinctiveness and policy DMP1 seeks materials, detailing and design that complements the locality. Although not identified within the enforcement notice, the Council has suggested there is also conflict with policy BD1 of the BLP, which seeks development of the highest architectural and urban design quality.
16. The DG states that the original windows within the Roe Green Village were in a distinct 'cottage' style side hung timber casement with small panes. The windows which have been installed ('the appeal windows') in the appeal property are PVCu windows. Each casement is four panes deep and two panes wide, except for the dormer window which has casements which are three panes deep and two panes wide.
17. The DG advises that PVCu replacement windows have been agreed as alternative materials to timber subject to the replacement windows replicating the design of the original window (even if the windows have already been replaced previously). Indeed, I saw a significant number of properties within the CA have windows which comprise PVCu. There is no harm to the CA arising from the use of PVCu in this case and the section arrangements are likely to replicate the design of the originals, in accordance with the DG.
18. The DG also advises that windows should be set back into their original position within the depth of the reveal, with frames between 60-70mm and that the use of internal glazing bars and external trickle vents are not permitted. Trickle vents are located above the opening windows and glazing bars are internal, rather than being glued on to the pane. The frames also appear slightly thicker than the frames used in neighbouring properties and are unlikely to accord with the guidance in this regard.
19. Nevertheless, despite the use of trickle vents, internal glazing bars and slightly thicker frames, the windows appear generally in keeping with the windows used either side of the terrace, which gives it a unified appearance. The photographs of the property prior to the works show that the windows which have been replaced comprised wooden frames, with a substantial single panel

and a smaller opening panel. The windows which were previously *in situ* are unlikely to have been original given the substantial size of the panes used, which is uncharacteristic of the CA. Those windows, due to the size of the panes used, would have appeared an incongruous feature which harmed the character and appearance of the CA.

20. Although the appeal windows do not fully accord with the requirements set out in the DG, the use of smaller panes is far more in keeping with the character and appearance of the CA. As a result, they harmonise with the windows used in the other properties along this terrace, contributing to the sense of place. This, in my view, has enhanced the character and appearance of the CA.
21. Moreover, it cannot be assumed that the appellant will secure planning permission for alternative replacement windows, particularly since the appellant does not appear to understand exactly what the Council's objections to the existing windows are. Were I to uphold the notice, the appeal building would be left without windows, leaving it open to the elements, which would most likely harm the fabric of the building. This would not, in my view, preserve or enhance the character or appearance of the conservation area.
22. I note the Council is concerned that allowing the appeal would create a precedent which would make it more difficult for it to resist similar developments. However, future applications would be considered on their own merits. Furthermore, I have considered the appeal on its own merits.
23. While the appeal windows do not fully accord with the guidance set out in the DG, for the reasons set out above, I find they have enhanced the character and appearance of the CA and so there is no conflict with policies D3 or HC1 of the LP, policies DMP1, BHC1 and BD1 of the BLP, or the Framework, the requirements of which are set out above.

Other Matters

24. The Council raises the effect of the appeal scheme on the quality of life of occupants and neighbouring occupants in its statement of case. However, the windows do not introduce any overlooking and so I see no reason why the windows would harm the living conditions of occupants or neighbouring occupants.

Conclusion

25. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice and the enforcement notice will be quashed.

M Savage

INSPECTOR