



Appeal Decision

Site visit made on 28 January 2025

by **R Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/W0734/C/24/3348040

Land at 132 Oxford Road, Middlesbrough TS5 5EL

- 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 Mrs Jean Swales against an enforcement notice issued by Middlesbrough Borough Council.
- The enforcement notice was issued on 19 June 2024.
- The breach of planning control as alleged in the notice is Without planning permission, UPVC top hung casement windows have been installed to the front elevation and a UPVC door has been installed to the front elevation (first floor).
- The requirements of the notice are (i) Remove the UPVC windows to the front elevation and replace with timber sliding sash windows (To precisely match the design, proportions, style and sectional timber thicknesses of the removed windows); (ii) Remove the UPVC door to the front elevation (first floor) and replace with a timber door that matches the style and appearance of the removed timber door, or a timber door of a style and appearance to be agreed in writing with the Local Planning Authority.
- The period for compliance with the requirements is 24 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections, in the terms set out below in the Formal Decision.

Procedural Matter

1. In support of the appeal, the appellant's representative has explained the reason the works were undertaken was in the interests of the upkeep of the property and to secure a more effective remedy to prevent heat loss from the dwelling at manageable cost. Reference is also made to numerous properties elsewhere on Oxford Road, within the Linthorpe Conservation Area (CA), that have undertaken similar works, but which have not been the subject of enforcement action by the Council.
2. However, these points relate to the planning merits of the alleged development. In the absence of an appeal on ground (a), namely that planning permission ought to be granted, the planning merits of the development are not before me for consideration. I am therefore unable to have regard to and evaluate these points within my decision.

The appeal on ground (e)

3. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the 1990 Act. S172(2) requires that the notice be served on

owners and occupiers of, and anyone with an interest in, the land subject to the notice.

4. The appellant's case, through their representative, is that the service of the notice was erroneous. They imply that the notice should have been served on the appellant's daughter instead, who has been granted power of attorney status, in relation to her mother, the appellant. They also say, the notice should not have been served on the appellant's late husband, now deceased.
5. From the evidence, it appears the Council consulted property ownership records through a land registry search. There is no dispute that Mrs Swales, as the owner of the property, was duly served with a copy of the notice. The fact that power of attorney status has been granted does not mean it was incorrect to serve notice on the property owner.
6. I am sympathetic to any distress or feelings of insensitivity that may have been caused to the appellant or her family, because of the reference to her late husband in the service of the notice. However, this appears to have been an unfortunate oversight and to have happened because, despite other records held by the Council, the land registry record had not been updated.
7. I am satisfied that the service of the notice on the appellant has not, in itself, resulted in injustice being caused to them. However, even if the notice had not been correctly served, section 176(5) of the 1990 Act provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced by the failure to serve them.
8. The appellant's daughter, having power of attorney status, has been made aware of the enforcement notice. She has been able to submit, on behalf of her mother, an appeal against the notice and argue it fully in the course of these appeal proceedings. I am firmly of the view that neither the appellant, nor her daughter, has been prejudiced by the service of the notice.
9. Consequently, the appeal on ground (e) fails.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and include remedying the breach of planning control. The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission 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.
11. With regard to the unauthorised development, insofar as the objectives of the notice are to secure the removal of the UPVC windows and door and to replace them with ones that match those previously removed, the objective is to restore the land to its condition before the breach took place. It follows that the purpose of the notice, in this regard, is to remedy the breach of planning control. To require that much does not, therefore, exceed what is necessary.
12. The appellant's ground (f) appeal is that the requirements are excessive because the changes were made to tackle heat loss from the property; also because the planning controls are not being enforced by the Council consistently throughout the

CA. However, as set out above, these points relate to the planning merits of the case, and, in the absence of an appeal on ground (a), are beyond the remit of my decision.

13. Whilst not specifically part of the ground (f) appeal, the requirement to remove and replace the UPVC door includes the option of replacing it with a design to be specifically agreed with the Council. The requirement for agreement to be reached is 'open-ended' and therefore not sufficiently certain. However, I consider that the notice may be corrected, in order to eliminate this optional element of the requirement, without resulting in injustice to the parties. The appellant would be entitled to make a planning application for an alternative design of door should they wish to.

14. With the exception of this correction, the ground (f) appeal must fail.

Other Matters

15. The appellant's representative has set out that they believe the Council's action amounts to 'over enforcement' and is in breach of the Equality Act 2010, because it results in discrimination when taking into account the appellant's age and disability.

16. However, human rights and the public sector equality duty¹ are not engaged in a ground (e) appeal, where the question is whether or not, as a matter of fact and law, the notice was properly served. Similarly, such considerations do not arise in a ground (f) appeal where the consideration is limited to whether the requirements are excessive to remedy the breach or harm, as the case may be. These grounds do not allow for consideration of the effect of the decision on individuals and their rights.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

18. It is directed the enforcement notice is corrected by the deletion of the following wording within Paragraph 4, part (ii):

“, or a timber door of a style and appearance to be agreed in writing with the Local Planning Authority”; and

That it is corrected at Paragraph 5 by the deletion of the words “paragraph 5” and their substitution with the words “paragraph 4”.

19. Subject to the corrections the appeal is dismissed and the enforcement notice is upheld.

R Merrett

INSPECTOR

¹ Set out under s149 of the Equality Act 2010.