



Appeal Decision

Site visit made on 18 March 2025

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2025

Appeal Ref: APP/C5690/C/23/3334726

20 Thornsbeach Road, London, SE6 1DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Aron David Lew (Dewton Limited) against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 1 December 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised installation of UPVC windows.
 - The requirements of the notice are to:
 - (1) Remove the unauthorised UPVC windows from all elevations of the property
AND
 - (2) Reinstate the pre-existing timber windows, or a like-for-like equivalent, to all elevations of the property
AND
 - (3) Make good all damage resulting from the compliance with the requirements of steps (1) and (2) of this Notice
AND
 - (4) Remove all materials, debris, waste and equipment resulting from the compliance with the requirements of steps (1), (2) and (3) of this Notice from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. For grounds (b) and (c), the onus lies with the appellant to make his case on the balance of probabilities.
3. I note the representation submitted in support of the Council's enforcement notice, but for the reasons explained below, I am allowing the appeal on ground (c), so matters relating to planning merits do not fall to be considered.

The Appeal on Ground (b)

4. A ground (b) appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
5. The appellant seeks to highlight that, in 2009, several of the windows at the appeal property were changed to uPVC¹. On that basis it is submitted that there has not

¹ I have considered whether that would trigger a hidden ground (d) appeal (that at the time the enforcement notice was issued, it was too late to take enforcement action), however, those windows are referred to as being pre-existing, so they too have likely been replaced.

been a change from timber windows to uPVC windows, because some of the pre-existing windows were also uPVC.

6. However, the alleged breach is the installation of uPVC windows, which has occurred, not that there has been a change from timber windows to uPVC windows.
7. The ground (b) appeal must fail.

The Appeal on Ground (c)

8. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control.
9. S55(1) of the 1990 Act provides a broad definition of development and includes building operations in, on, over or under land. S55(2)(a)(ii) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which do not materially affect its external appearance.
10. It was held in *Burroughs Day*² that, for works to 'materially affect' external appearance, the changes must be visible from a number of normal vantage points and material to the appearance of the building as a whole and not a part in isolation. It was also stated that visibility from the air or a single building would not suffice. Part of the materiality test must therefore include the degree of visibility, as well as the nature of the building and the nature of the alterations/works.
11. The building in this case, is an attractive semi-detached, suburban type villa with two storey rear outrigger and single storey side extension, situated within the Culverley Green Conservation Area.
12. The main features of the principal, red brick front elevation comprise a two storey bay window, positioned below a gable expressed to the road, along with the well-preserved contrasting stucco architectural detailing, including the pilasters and pediment to a recessed main entrance, carved leaf capitals, cornice banding and moulded sill brackets.
13. There are four windows in each floor of the bay and a further window in a recessed plane above the door pediment. The photographs show that all of the pre-existing windows were timber sash, and relatively recessive in the context of the main architectural composition and detailing. The replacement uPVC windows are also sash, intended to mimic, as closely as possible, those which have been replaced.
14. Whilst I agree with the Council that they are not like for like, that does not necessarily mean that they materially affect the external appearance of the building. In that regard, the larger sections and trickle vents are apparent when seen in closer views from the front garden and path. Because of those differences, they are not as visually lightweight and recessive as the pre-existing windows. However, the building is set back from the road such that when viewed from the public realm, the windows appear broadly similar to those previously in place. In overall terms, the effect on the composition of the building is not significant and its main architectural features remain predominant and unchanged.

² *Burroughs Day v Bristol CC* [1996] EGCS 126

15. Consequently, the replacement windows do not materially affect the appearance of the front elevation, which is seen in isolation and is not read in combination with any other elevation.
16. The similar design and appearance of the windows on the front elevation differentiates the effect on the external appearance of the building from that arising from conventional uPVC casement windows, which, as can be seen in a number of neighbouring properties, result in a much more obvious and imposing change when viewed from the public realm.
17. The side elevation and the two storey rear outrigger are finished in stock brick with contrasting red brick window surrounds. The rear elevation of the outrigger is dominated by a two-storey bay and the windows contained therein. The pre-existing photographs show centrally positioned French doors at ground level with two leaded windows above, set within a frame corresponding to the width of the doors. The two, narrow, flanking windows also incorporate the same size and design leaded windows above, as well as upper and lower transoms. At first floor level, the windows were previously traditional sash, with widths corresponding with the ground floor openings. The main central sash window also incorporated slender upper and lower mullions. Combined, the windows would have significantly contributed to the overall architectural composition and appearance of that rear elevation.
18. In contrast, the replacement uPVC windows (and French doors) have a noticeably brighter texture and bulkier sections. The leaded windows have also been replaced by larger, single pane clear glazing. The flanking lower windows are also evidently outward opening casements, as are the upper floor windows. The main central window is also devoid of mullions so has larger expanses of glazing.
19. Combined, those changes have clearly affected the external appearance of the rear elevation. However, that elevation is seen in isolation and therefore does not affect the appearance of the side or the front elevations, or the building as a whole.
20. Moreover, the rear of the building is well enclosed so the elevation is only seen in full from the rear garden. The upper floor windows and the tops of the ground floor windows are likely only seen from the neighbouring properties. Very little of the rear elevation can be seen from Bargery Road.
21. I have little detail of the pre-existing, single, ground floor window in the main side elevation of the building. In any case, the existing uPVC casement window is largely seen in oblique views along the side path and is not seen in combination with any other part of the building, nor is it visible from the public realm. Consequently, it does not affect the appearance of the building as a whole.
22. Based on the photographs, the pre-existing ground floor window in the main rear elevation of the building was evidently uPVC casement style with the same, or at least similar, appearance as the existing. The window above it, was previously timber sash with upper and lower mullions. The replacement uPVC window is clearly different in its appearance, with an outward opening casement design, a brighter texture and bulkier sections, as well as having larger window panes, devoid of mullions.
23. There is no discernible change to the nearest small, single pane window in the side elevation of the outrigger. The pre-existing window alongside it, does not

appear to have been a sash window. Nevertheless, the replacement is very clearly a casement style uPVC window with larger sections and trickle vent. The next window along the side elevation of the outrigger was previously a large, timber sash with upper and lower mullions, creating four individual panes. The replacement outward opening uPVC casement window has a brighter texture, bulkier sections, a trickle vent and no mullion detail, creating larger, unbroken expanses of glazing.

24. Cumulatively, the changes to the upper floor windows in the side of the outrigger and at the rear of the main building materially affect the appearance of those elevations which are seen and read together. Those windows will also be visible from the side of the neighbouring property. However, those elevations are not seen in combination with the front elevation or the rear elevation of the outrigger, nor are they read as part of the composition of the building as a whole, or visible from the public realm.
25. Therefore, applying the principles established in *Burroughs Day*, I conclude that in the specific circumstances of this case, the replacement windows do not materially affect the appearance of the building as a whole and thus are not development under s55(2)(a)(ii) of the 1990 Act. It follows that the matters alleged in the notice do not constitute a breach of planning control, on the balance of probabilities.

Conclusion

26. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
27. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Richard S Jones

INSPECTOR