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## Appeal Decision

Site visit made on 4 February 2026

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

an Inspector appointed by the Secretary of State

Decision date: 26 FEBRUARY 2026

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**Appeal Ref: APP/A5270/C/24/3353446**

**13 North View, Ealing W5 1QL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Sarah Mercan against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 9 September 2024.
- The breach of planning control as alleged in the notice is without planning permission, the replacement of windows in the front elevation.
- The requirements of the notice are to:
  1. Remove the replacement windows in the front elevation and
  2. Reinstate with windows that match exactly the proportions, size, materials, appearance, colour and design of the original windows before the breach of planning control occurred; and
  3. Remove all resultant debris from the premises.
- The period for compliance with the requirements is: three months.
- The appeal was made on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

**Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation.**

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### Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. I have had regard to my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the Council.
2. In paragraph 5, step 2, the word 'original' can be deleted. Although not expressed as an issue by the appellant, it is necessary to clarify that the property would only need to be restored to its previous condition before the breach took place. Although the windows removed from the property before the breach took place could have been the original windows, they could also be different. As such, deleting the word 'original' would help to provide certainty to the recipient that they are required to reinstate windows that match exactly the proportions, size, materials, appearance, colour and design of the previous windows removed from the property.
3. To clarify, in paragraph 5, step 2, I will delete the word 'original.' This variation does not make the requirements any more onerous on the appellant, and it will still remedy the breach of planning control without causing injustice to the Council.

### Preliminary Matters

4. No ground (a) appeal has been pleaded against the operational development alleged in the Notice. As such, issues such as the impact of the development on the

character and appearance of the host property, and the Brentham Garden Estate Conservation Area are not matters before me for consideration.

5. No ground (c) is ticked on the Appeal Form, but there is a hidden ground (c) appeal set out in the appellant's final comments. The appeal on ground (c) is that the original windows were in disrepair; as such, necessary repairs had to be made to make the window safe and are not in breach of planning regulations. The Council noted that the appellant claims that the windows are like-for-like and has addressed the hidden ground (c) matter in its Statement of Case. As such, I will have regard to the hidden ground (c) appeal when making my decision.

### **The Appeal on Hidden Ground (c)**

6. To succeed on ground (c), the appellants must demonstrate that the matters alleged in the Notice do not constitute a breach of planning control. The test of the evidence is on the balance of probability, and the burden of proof is on the appellants.
7. The issues highlighted largely centre around whether the operations undertaken are development as defined in section 55 of the 1990 Act. For clarity, the meaning of 'development' is set out in section 55(1) of the 1990 Act and includes the carrying out of building, engineering, mining, or other operations in, on, over or under land. Section 55 (2) of the 1990 Act indicates that the following operations shall not be taken to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
8. Despite the appellant stating that the windows were 'repaired', there is no evidence in the appeal to indicate that any of the existing windows were retained in some manner and updated by maintenance and repairs. Rather the existing windows were replaced with new ones. Nonetheless, the works to replace the windows are operations that could fall within the definition of maintenance, improvement or other alteration of the building, probably falling within all three. The decisive issue to determine if the replacement windows are development, therefore, is whether the works materially affect the external appearance of the building.
9. There is no statutory definition of 'materially affect' in the 1990 Act. When giving the term its normal meaning, a material effect would be of significance or importance. The term does not mean that there should be no change at all, but it also does not need to be a major change for it to be important. As such, the considerations of whether it materially affects the external appearance of the building are a matter of fact and degree. To determine this, I considered the degree of visibility by an observer outside the building; the nature of the building; the nature of the works; and the change to the external appearance of the building as a whole.

### *Visibility*

10. It is not disputed that the replacement windows comprise the three front windows on the property: one at ground level and two on the first floor. The three windows on the front elevation are clearly visible from the public realm. The dwelling is modest in scale and height, and the small setback behind an open front garden area renders the windows prominent to passers-by, whether on foot or in a vehicle. Furthermore, the windows are also visible from properties across the road. From my observations,

there are no trees, tall hedges, or foliage that obstruct views of the windows from directly outside the site.

11. North View features a bend in the road at one end. This feature, together with street trees and those in nearby gardens, limits wider views of the front of the site from the south. During certain times of the year, when the trees are not in bloom, the windows would become visible from a greater distance. Additionally, the neighbouring gable projection restricts wider views of the front from the north.

#### *Nature of the Building*

12. The property is located within the Brentham Garden Estate Conservation Area (Conservation Area). In a historic building and a conservation area such as this, even small or subtle changes to the external appearance can be significant.
13. The appeal property is a two-storey, Arts and Crafts cottage-style building within a terrace block that includes numbers 5 to 15 North View. The property features roughcast rendered upper walls and red brick on the ground floor, with casement windows on both the ground and first floors. Although some front windows along North View have been altered, many properties in the terrace block have retained their original features, including casement windows. As a result, the properties largely maintain their traditional character and appearance, with consistent window designs and features that collectively add significance to the Conservation Area.

#### *Nature of the Alterations/Works*

14. The development involves the replacement of the three front windows. The door and side panel window remain unchanged.
15. The new windows are designed as white timber casements, mirroring the same transom and mullion bar pattern and windowpane configuration as the previous windows. However, the inclusion of double glazing introduces a distinction between the new and old. The replacement windows also feature bulkier frames and external hinges that project further out than those on the previous windows. Moreover, the frames are flush with the transom and mullion bars, whereas the original windows had a recess where the external hinges would have been located. The upper-floor windows also include external trickle air vents.
16. The modifications result in smaller windowpanes and frames that appear chunkier with modern features, such as the external trickle air vents, which distinguish them from the previous windows. While these differences may seem minor individually, their cumulative effect means that the replacement windows do not accurately replicate, and are materially different from, the original casement window design. In my judgement, the material difference is identifiable upon close inspection, as well as from mid-distance views from the road.

#### *Change to the External Appearance of the Building as a Whole*

17. When considering the property, I view the 'building as a whole' to include not only this property but also the neighbouring terrace homes between 5 and 15 North View.
18. The collective replacement of all the main windows at the front, which do not replicate the originals, leads to a noticeable change in the appearance of No 13. The proportions and design of the window frames at No 13 are different from those of its neighbours. Although the differences are not major, they are pronounced by the

proximity of neighbouring windows, particularly at No 15, where original casement windows remain and can be viewed together. In a Conservation Area such as this, where the consistency and uniformity of the window design is important, the change is considered to be significant.

### *Summary on Material Effect*

19. Having regard to the above matters, in my judgement, the replacement windows do not match the previous ones like-for-like. The differences materially affect the external appearance of No. 13 and the wider terrace. Even minor alterations can have a material impact on a historic building within a conservation area, and in this case, the changes are discernible and detectable from ground level at close inspection and from mid-distance views across the street.
20. The replacement windows, therefore, constitute development as defined in section 55 of the 1990 Act, as the operations have a material effect on the building's external appearance.
21. Accordingly, the appeal on hidden ground (c) fails.

### **The Appeal on Ground (f)**

22. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The appellant states it is unreasonable to require that the current timber windows be replaced with the deteriorating and unsafe previous windows. However, the appellant has not provided any details of any lesser steps for consideration.
23. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is section 173(4)(a) of the 1990 Act, which is to remedy the breach of planning control that has occurred. The second, section 173(4)(b) of the 1990 Act, is to remedy any injury to amenity which has been caused by the breach. The Notice does not require the recipient to remove the windows and reinstate the previous windows that needed repair. It clearly instructs the appellant to remove and replace the unauthorised windows with ones that closely resemble the previous ones.
24. Therefore, the purpose of the Notice is limited to the requirements set out in section 173(4)(a), and there is no appeal lodged on ground (a). In situations where there is no accompanying ground (a) and the Notice clearly seeks to address the breach; my only concern is whether the requirements go beyond what is necessary to rectify the breach. I do not consider the requirements to be excessive to remedy the breach, and the appellant has not put forward any lesser steps for consideration. I can see no obvious alternative to the requirements set out in the Notice.
25. Accordingly, the appeal on ground (f) fails.

### **Other Matters**

26. References have been made to the absence of objections from neighbours and the presence of alterations on other properties in the vicinity. These alterations include painted gates and steps, differently coloured windowsills, as well as dormers featuring smaller windowpanes. Furthermore, it is emphasised that the replacement

windows enhance safety and thermal efficiency for the elderly occupant, ensuring a more comfortable living environment.

27. I understand and have had regard to the matters raised by the appellant, and these matters could indeed be viewed as material concerns in a ground (a) appeal. However, it is important to note that no ground (a) appeal has been presented in this case. Consequently, these issues cannot influence my decision regarding whether the replacement windows qualify as development under the ground (c) appeal or whether the requirements are excessive under a ground (f) appeal.

### **Conclusion**

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

### **Formal Decision**

29. It is directed that the enforcement notice is varied by:

*In paragraph 5, step 2, delete the word 'original.'*

30. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

*M. P. Howell*

INSPECTOR