Planning Inspectorate

Appeal Decisions

Site visit made on 13 January 2026

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2026

Appeal A Ref: APP/Q3060/C/24/3354901
4 Fishpond Drive, Nottingham NG7 1DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Warjinder Khamba (Cross Country Partners 8 Ltd) against an enforcement notice issued by Nottingham City Council.
- The notice was issued on 11 September 2024.
- The breach of planning control as alleged in the notice is the replacement of timber sash windows with grey UPVC windows.
- The requirements of the notice are to: Remove the:
    - 15 front (south west) elevation uPVC windows (excluding the basement windows)
    - side (south east) first and second floor uPVC windows; and
    - side (south east) ground floor uPVC clad blocked up window.
- The period for compliance with the requirements is: Three months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/Q3060/W/24/3353616
4 Fishpond Drive, Nottingham NG7 1DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Warjinder Khamba (Cross Country Partners 8 Ltd) against the decision of Nottingham City Council.
- The application Ref is 24/00544/PFUL3.
- The development proposed is the retention of new and replacement windows.

Decisions

<u>Appeal A</u>

1. The appeal is dismissed and the enforcement notice is upheld.

<u>Appeal B</u>

2. The appeal is dismissed.

Appeal A

Ground (d)

3. For the appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late to take enforcement action. The burden of proof is on the appellant, and the relevant test is the balance of probability. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

4. It is not disputed that the operational development attacked by the enforcement notice was substantially completed prior to 25 April 2024, before the legislative changes to time limits came into effect. Therefore, no enforcement action can be taken after a period of four years beginning with the date on which the operations were substantially completed. As the notice was issued on 11 September 2024, the appellant needs to demonstrate, on the balance of probabilities, that the development had been substantially completed on or before 11 September 2020.

5. The appellant contends that the uPVC windows were all installed by no later than 9 September 2020, with the works carried out by 8Ball Contractors Ltd. In support of that position the appellant has provided the following documentary evidence:

   - An invoice dated 2 October 2020 from 8Ball Contractors Ltd.
   - Statutory declaration (SD) provided by Rizwan Mohammed (RM), director of 8Ball Contractors Ltd.
   - SD provided by Sharyaar Zaman (SZ), delivery driver for 8Ball Contractors Ltd.
   - A handwritten letter by Paulo Jorge P Favas (PF), a builder who has worked for Specialist Windows and Doors Ltd.

6. I shall turn firstly to the invoice from 8Ball Contractors Ltd. The SD of RM sets out that it is standard company practice that invoices are only issued once all works have been completed and checked. Nevertheless, whilst I have no reason to doubt that it may be usual practice for the company to issue invoices after the completion of works, there is nothing to stop an invoice being generated before, during, or after the works taking place.

7. The invoice itself is rather lacking in detail and does not assist in demonstrating when the uPVC windows were installed at the appeal property. It includes a brief description of the works, namely the "*Supply and fitting of 15 front windows*", "*Supply and fitting of 2 east facing windows*", and "*Removal and blocking up of 1 east facing windows*", along with the individual unit price, VAT, and total price. The invoice does not provide any further breakdown on the specific costs being invoiced, for example the physical cost of the windows and the cost of labour (fitting). Crucially, the invoice does not confirm whether the windows had been installed by the date of the invoice (2 October 2020).

8. The SD of RM sets out that the works were sub-contracted to Specialist Window and Doors Ltd, although no documentary evidence such as contract, invoices, or bank statements is provided in relation to this arrangement. RM states that he was contacted on 9 September 2020 and informed that the window installation had been completed. The SD does not detail who contacted him, or by what means, though it does demonstrate that RM had no first-hand knowledge of when the windows were installed at the appeal site. Instead, RM is relying on second-hand evidence being relayed by a third party.

9. Further ambiguity arises when RM states in paragraph 7 of his SD that the completion of the works were not confirmed from the project supervisor until 30 September 2020. This opens the distinct possibility that the works may not have been completed, or potentially even started, until some point after 11 September 2020.

10. The SD of SZ sets out that he delivered the windows to the appeal site on 28 August 2020. Upon arrival the windows were placed in the rear ground floor rooms, and SZ was asked to take away windows which had already been replaced at the rear side and basement of the property. It is clear from the SD though that SZ did not witness the windows being installed at the appeal property. Whilst I acknowledge that in paragraphs 5 and 6 SZ sets out that windows are usually delivered in close proximity to their installation date, and that "*based on my understanding of our scheduling procedures and the instructions I received at the time of delivery was the windows were to be installed first week of September 2020*", SZ can offer no evidence that this was actually the case in this instance.

11. The final piece of documentary evidence provided is the handwritten letter by PF dated 10 March 2025. In the letter PF sets out that, after reviewing his work diary, he installed the windows to the front and side of the appeal property on 8 and 9 September 2020. PF further states that he was paid for this work on 9 September 2020.

12. Despite referring to the Statutory Declarations Act 1835, the letter falls short of fulfilling the requirements of a SD. In particular, the letter has not been witnessed and signed in the presence of a solicitor, commissioner for oaths, or a notary public, who should add their signature and details. Therefore, although the letter contains information relevant to the requisite period, it can only carry limited weight and cannot be afforded any greater weight than other letters or statements produced by either party.

13. The Council refer to a Building Control initial notice (IN) which was received from an approved inspector on 22 September 2020 in relation to "*Replacement windows and repairs to the roof*" at the appeal property. The IN was later cancelled on 23 November 2023 as the approved inspector had not been notified that the works had commenced on site. The appellant contends though that the windows referred to in the IN were located within the roof and are not the UPVC windows subject of the enforcement notice.

14. The appellant also states that the replacement of windows can be carried out under the Competent Persons Scheme (CPS) without requiring Building Regulations approval, with a screenshot from the Government website being provided. This states that those who work in the building trade as an installer can join a competent person scheme and self-certify certain types of building work. In such circumstances neither the Council nor an approved building inspector must check the work. No evidence has been provided though to demonstrate that the installer in this case was a member of the CPS.

15. The Council also point to an email dated 3 June 2024 from a planning agent who was previously acting on behalf of the appellant, who stated "*The applicant has provided 2 receipts confirming that the rear windows were installed on 15 July 2019 and the front windows on 2nd October 2020*". Whilst neither the IN nor the email referred to by the Council are conclusive evidence, they nevertheless cast further doubt on the appellant's claim that the uPVC windows concerned were all installed by the relevant date.

16. When taken together, the evidence on behalf of the appellant is limited and is not sufficiently precise and unambiguous to discharge the onus of proof. It is not clear when the uPVC windows were installed at the appeal property, thus it has not

been demonstrated that, on the balance of probability, the windows have been in situ for more than four years prior to the issue of the enforcement notice. Accordingly, the ground (d) appeal fails.

Other Matters

17. The appellant has raised concerns that the taking of enforcement action was procedurally improper and was not in the public interest. The power to serve an enforcement notice is discretionary and must be exercised with regard to any material considerations. Subsection 172(1) of the 1990 Act requires that it must appear expedient to the local planning authority to issue the notice. Section 1 of the notice clearly states this to be the case here.

18. The courts[1] have held that any challenge to whether it was "expedient" for the Council to issue the enforcement notice must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the local planning authority complied with section 172 in this regard. Therefore, the appellants contention that it was not expedient or in the public interest for the Council to issue the notice is not a matter before me in this appeal. The Council has the power to issue an enforcement notice before, during, or after the determination of a planning application (or appeal) for the same development, and there is no evidence before me to indicate that the notice was not issued in accordance with the 1990 Act.

Appeal B

Preliminary Matters

19. Since the appeal was lodged, a revised version of the National Planning Policy Framework ("the Framework") was published in December 2024. I have considered the changes and as they are not material to the appeal development, further comments were not sought. I have, however, determined the appeal having regard to the revised Framework.

20. The plans submitted with the planning application reflect what has been carried out on site. There is nothing in the submissions which indicates that planning permission is sought for anything other than the windows that have been installed on site. The Council considered the planning application on the basis that permission was being sought retrospectively, and I shall do the same.

Main Issue

21. The main issue is the effect of the development on the character and appearance of the building and surrounding area, with particular regard to whether the development preserves or enhances the character or appearance of the Park Conservation Area (PCA).

Reasons

22. 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 PCA.

23. The Park Conservation Area Appraisal & Management Plan (March 2023) (PCAAMP) sets out that the Park Estate is a pioneering example of a "residential

[1] Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)

park" suburb, remarkable at a national level, for the quality of its urban design and architecture, its high historical integrity and its enthralling Arcadian aesthetic. The character of the PCA, notably its layout, landscaping, mature trees and architecture, reflect the highest standards of 19th century suburban planning, architectural design and craftsmanship in construction. The enclosed layout and private status of the estate detach it from its busy urban surroundings and the resulting tranquil atmosphere, combined with the high number of traditional buildings that display a high quality bespoke architectural design and quality materials, contribute to the significance of the PCA.

24. The appeal property is a three-storey, semi-detached red brick Edwardian building and is an original park estate house, displaying several traditional characteristics including bay windows and a recessed porch. It is also evident that the building originally had traditional sliding timber sash windows. The building occupies a prominent position on the corner of Hope Drive and Fishpond Drive and evidently has a pleasing traditional appearance which makes a positive contribution to the significance of the PCA.

25. The grey uPVC windows installed at the property have introduced a modern material which has a different appearance and visual texture to painted timber. In particular, the new windows have a "smooth" appearance and comprise "chunkier" frames which are in stark contrast to traditional timber sash windows. In addition, the tilt-and-turn opening style of the uPVC windows do not conform with the consistent rhythm and appearance of the sliding timber sash windows they replaced, which were in-keeping with the traditional appearance of the building. These differences all detract from the traditional façade of the Edwardian building and its contribution to the character and appearance of the PCA. Consequently, the windows do not preserve or enhance the character or appearance of the PCA.

26. I have had regard to the appellant's photographs and observed at my site visit other uPVC windows in the PCA. Some of those detract from the character and appearance of the PCA, however the Council advises that many have been installed some time ago without planning permission and therefore cannot be enforced against.

27. Nevertheless, precedent is rarely an argument that should carry great weight in planning decisions which should be made on their own merits and in the context of the development plan and other material considerations. Furthermore, the slow degradation of the special architectural and historic qualities of the area by uncontrolled uPVC windows does not justify granting planning permission in the context of the special attention that must be paid to the desirability of preserving or enhancing the character or appearance of the area as a whole. Put simply, the presence of modern windows elsewhere in the PCA does not justify further harm to its significance.

28. In terms of the Framework, the harm that the development causes to the significance of the PCA, which is a designated heritage asset, is less than substantial. Accordingly, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the development including, where appropriate, securing its optimum viable use.

29. I acknowledge that the property was unoccupied and in a poor condition prior to the appellant purchasing it. The appellant argues that the uPVC windows improve

the thermal efficiency of the building resulting in health benefits for occupants, whilst also helping to reduce maintenance costs. The appellant also refers to the positive benefits of the works which have given the building a facelift and assisted in securing the optimum viable use of the building. These matters can be regarded as public benefits in terms of aiding the continued contribution of the building to the PCA.

30. There is limited substantive information to support the arguments put forward by the appellant. Furthermore, it has not been shown that an alternative approach, such as the installation of alternative windows of a design and appearance which would be less harmful to the character and appearance of the PCA, would not deliver the same benefits. Thus, the public benefits in this case attract very limited weight and do not outweigh the harm to the heritage asset which has resulted from the uPVC windows as installed.

31. For the reasons set out above, I conclude that the uPVC windows have a harmful effect on the character and appearance of the host building and fail to preserve or enhance the character or appearance of the PCA. The development therefore fails to accord with Policies 10 and 11 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (adopted September 2014), Policies DE1, DE2, and HE1 of the Nottingham City Land and Planning Policies Local Plan Part 2 (adopted January 2020), and guidance contained within the PCAAMP. Together these seek to provide high quality design that protects and enhances local townscape and conserves heritage assets in a manner appropriate to their significance. The development also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Other Matters

32. The appellant has provided extensive comments regarding his frustration on the Council's handling of the planning application, including concerns regarding the conduct of Council officers. However, these matters are not within the scope of my assessment, which must focus on the planning merits of the appeal. Any concerns relating to its conduct are best addressed through direct engagement with the Council, which appear to have already taken place through the Council's complaints procedure, and if necessary, the Local Government Ombudsman.

Overall Conclusions

33. <u>Appeal A</u> - For the reasons given above I conclude that the appeal fails. I have therefore upheld the enforcement notice.

34. <u>Appeal B</u> - For the reasons given above, I conclude that the uPVC windows installed at the appeal property are contrary to the development plan when taken as a whole, and there are no material considerations to outweigh that finding. Consequently, the appeal is dismissed.

David Jones

INSPECTOR