



Appeal Decision

Site visit made on 26 March 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2024

Appeal Ref: APP/X5210/C/23/3327893

Land at: Flat 3, 10 Hilltop Road, London NW6 2PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Mandy Seal against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 17 July 2023.
- The breach of planning control as alleged in the notice is Without planning permission: Replacement of 5 x timber windows on the front elevation at first floor level with UPVC windows.
- The requirements of the notice are: 1. Completely remove the 5 UPVC windows from the front elevation at first floor level; 2. Reinstate timber-framed one over one sliding sash windows on the windows on the front elevation and timber windows on the side of the projecting bay to match the design and proportions of those which previously existed; and 3. Make good any damages caused by the above operations.
- The period for compliance with the requirements is within 3 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended.

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

The appeal on Ground (c)

1. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control does not constitute a breach of planning control.
2. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 336 provides the relevant definition of 'land', which includes a building; it also provides the relevant definition of 'building', which includes any part of a building.
3. The meaning of 'development' is set out at Section 55 of the Act, which includes the carrying out of building operations on land, amongst other things. Section 55(1A) states that 'building operations' includes operations normally undertaken by a person carrying on business as a builder, amongst other things. Section 55(2)(a)(ii) clarifies 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 shall not be taken to involve 'development'.
4. Five timber framed windows have been replaced with uPVC¹ framed windows at first floor level on the front elevation of a terrace which is split into flats. Those

¹ Unplasticized Polyvinyl Chloride

works were carried out by a window company/glazier, who do not undertake general building works. However, the list provided at section 55(1A) is not exhaustive, and it does not confirm that operations undertaken by persons who are not builders do not comprise building operations.

5. The process of replacing the windows would have required detailed preparation and works normally undertaken by people with specific skills, tools and experience. Those works are said to have been carried out over a 3-day period, and they make a long-term or permanent alteration to the building. I am therefore satisfied that the removal of the timber framed windows and the installation of the uPVC framed windows comprised 'building operations' in the context of section 55(1) of the Act.
6. For the purposes of section 55(2)(a)(ii), 'the building' is 10 Hilltop Road, not the whole terrace. This is because the terrace is made up of different finishes and architectural detailing, with individual entrances leading to separately numbered buildings. Those different buildings within the terrace are easily identified by regular gaps between windows and doors, dividing walls at roof level, and slight changes in brickwork and mortar finishes.
7. The building comprises flats over lower-ground, upper-ground, first and second floor levels. A uPVC framed casement window and uPVC framed French doors have been installed at second floor level on the front elevation of the building. Other windows on the front elevation appear to be timber framed fixed and/or sliding sash windows. With the exception of the uPVC framed fenestration, it is an attractive, traditionally detailed building.
8. I have not been provided with photographs of the former timber framed windows. Front elevation and cross-section plans² show differences between the thickness of the timber and uPVC framing. I have also been referred to the different methods of opening, where the front-facing uPVC framed windows include casements, rather than sliding one-over-one sashes.
9. The plans lack detail and do not show all of the windows, but it is evident from everything I have read and seen that there are differences between the thickness of the former timber framing and that of the uPVC framing, and the method of opening the front-facing windows. The opening casements of the uPVC framed windows certainly emphasise their more modern design and the thickness of their frames, marking them out as very different to existing timber framed windows at No.10.
10. The building operations carried out are in a prominent position on the building, visible from the street. They stick out visually as recent alterations to the building, even in the context of uPVC framed windows and doors at second floor level. With regard to the building as a whole, the operations are minor in nature; however, the significant visual differences between the pre-existing and existing window framing thicknesses and methods of opening lead me to find that the building operations carried out materially affect the external appearance of the building.
11. The onus is on the appellant to demonstrate, on the balance of probabilities, that the replacement windows are not in breach of planning control. On the basis of the evidence provided, which does not include detailed photographs of

² Drawing numbers 10HR21/01 and 02, and plans titled 'Cross-Section through Old Timber Sash Window' and 'Cross-Section through Existing UPVC Window' which formed part of planning application reference 2021/5138/P

the former timber framed windows, I consider it is more likely than not that the replacement of the timber framed windows with uPVC framed windows constituted development requiring planning permission. In the absence of planning permission for those works, they are in breach of planning control.

12. The appeal under ground (c) must therefore fail.

The appeal on Ground (a) and the deemed application for planning permission

13. The main issues are the effect of the development on the character and appearance of the area; and whether the development is environmentally sustainable.

Character and Appearance

14. The area is characterised by a mix of large terraced and semi-detached properties, varying in age and design, and mainly Victorian in character. These create a pleasant residential setting, with attractive building frontages along Hilltop Road. A broad range of fenestration styles are visible in the local area. I noticed several examples of uPVC framed windows nearby, many of which make a negative contribution to the character and appearance of the area. They do not, however, define the character or appearance of Hilltop Road.
15. The buildings which comprise the terrace of 8 to 22 Hilltop Road share many similarities, such as facing red brickwork, white painted/rendered cills, cornices, pediments, ornaments and plaques. Overall, there is an aesthetically pleasing consistency in the architecture and appearance of the terrace, including its fenestration.
16. White timber framed sliding sash windows are prevalent across the front elevation of the terrace. White uPVC framed casement windows and doors are the exception, rather than the rule. They are limited to the second floors of Nos. 8 to 12. Even in the context of other uPVC framed casement windows in the wider surrounding area, those present at Nos. 8 to 12 are an unappealing deviation from the pleasant consistency of the terrace and the general attractiveness of buildings on Hilltop Road.
17. The uPVC framed windows at second floor level erode the traditional character of the terrace, and those at first floor level exacerbate that effect. The first floor windows are far more prominent than those at second floor level and have a greater harmful effect on the character and appearance of the building and terrace. Their thick white framing and method of opening are unattractive and uncharacteristic additions to the terrace below second floor level. They do not complement the positive elements of the building or terrace, or their overall character, which rely to some extent on consistency in the use of slim profiled, timber framed, fixed and sliding sash windows.
18. The Council has granted planning permission for uPVC windows at 24 Hilltop Road. That building is of a different design to the appeal building and terrace, but it is prominent, with similar historic characteristics. There are windows of various designs and materials with different methods of opening on both elevations of that building facing the street, to the detriment of its appearance. Although it influences the character and appearance of the area, its uPVC framed windows, and the Council's decision to authorise them, do not justify further harm to the character and appearance of the area.

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19. I have been referred to Government guidance³ and an appeal decision⁴ which relates to the use of uPVC window frames in a dormer within a conservation area. Neither are of direct relevance to this case, where the uPVC framed windows mark a prominent change to the visual appearance and coherence of the building and terrace. The circumstances in the appeal decision referred to are quite different, where the thickness and method of opening of the window was found to be very similar to the former window, and located some distance from the pavement, at third floor level.
20. The development harms the character and appearance of the area, contrary to Policy D1 of the Camden Local Plan (2017) (CLP) and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan (2015) (NP). These require, amongst other things, development to comprise high quality design, details and materials which respect and complement local context and character, amongst other things.

Environmental Sustainability

21. The Council has referred to environmental benefits claimed to be associated with timber window frames in comparison to uPVC frames. Much of this is disputed, with reference to the various methods of measuring sustainability.
22. Policy CC1 of the CLP requires development to minimise the effects of climate change, amongst other things. It also states that the Council will encourage all development to meet the highest feasible environmental standards that are financially viable and promote zero carbon development. The policy does not prohibit the use of uPVC for window frames as an alternative to timber.
23. I have been provided with very little substantiated evidence to show whether timber or uPVC framed windows are better at minimising the effects of climate change. As such, it has not been demonstrated, and it remains unclear, whether the development fails to minimise the effects of climate change in accordance with Policy CC1.
24. The appeal decision⁵ I have been referred to offers little assistance, as I have not been provided with all the evidence the other Inspector had to rely on. Furthermore, the appellant's arguments in this case lead me to doubt the Council's generalised evidence, which lacks detail and is not specific to the development. For these reasons, I do not find any conflict with Policy CC1.

Conclusion on Ground (a) and the deemed application for planning permission

25. The development causes harm to the character and appearance of the area, contrary to Policy D1 of the CLP and Policy 2 of the NP. For the reasons given, the development fails to accord with the development plan as a whole and there are no material considerations, including the existence of uPVC framed windows elsewhere, which indicate planning permission should be granted.
26. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

³ Technical Guidance: Permitted development rights for householders (2019)

⁴ Appeal ref: APP/X5210/C/18/3210081

⁵ Appeal ref: APP/X5210/C/22/3305743

The appeal on Ground (f)

27. To succeed under this ground of appeal the appellant would need to show that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity which has been caused.
28. The steps require the removal of the uPVC framed windows and their replacement with timber framed windows to match those which previously existed, and the making good of any damage. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity. There are no obvious alternatives which would achieve this purpose with less cost or disruption. I have not been provided with evidence which shows the uPVC framed windows could be altered to incorporate sliding sash opening mechanisms, but this would not remedy the breach of planning control.
29. The appeal under ground (f) therefore fails.

The appeal on Ground (g)

30. To succeed under this ground of appeal the appellant would need to show that the period specified for compliance with the notice falls short of what should reasonably be allowed. It is claimed that 6 months should be allowed to obtain suitable replacement windows and a certificate of lawfulness or planning permission to confirm they would comply with the notice before installation.
31. Works carried out in compliance with the notice would be lawful. There would be no need to obtain any further approval from the Council and I fail to see how a certificate of lawfulness or planning permission for replacement windows would provide the appellant with any further certainty.
32. However, I consider 6 months to be a more reasonable period than 3 months in this particular case for the production and installation of 5 bespoke replacement windows to match the materials, design and proportions of the former windows. I shall therefore vary the notice to ensure it allows 6 months for its steps to be complied with.
33. The appeal under ground (g) succeeds.

Conclusion

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

35. It is directed that the enforcement notice is varied by the deletion of the text 'THREE (3) month' at section 5 of the enforcement notice and its substitution with the text '6 months'. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR