

IN THE MATTER OF SECTION 38 PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

APPELLANT: DAEJAN PROPERTIES LIMITED, FRESHWATER HOUSE, 158 – 162 SHAFTSBURY AVENUE, LONDON, WC2H 8HR

SITE: FLAT 2, REGENCY LODGE, ADELAIDE ROAD, LONDON NW3 5EE

LISTED BUILDING ENFORCEMENT NOTICE: EN23/0980

LPA: LONDON BOROUGH OF CAMDEN

**LISTED BUILDING ENFORCEMENT NOTICE
GROUNDS OF APPEAL**

Introduction

1. This is an appeal brought under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”), by Daejan Properties Ltd (“Daejan”).
2. Daejan is the head lessor of the building in which the flat to which the Enforcement Notice (“EN”) above relates (Regency Lodge). Regency Lodge contains 109 flats, of which 25 flats are retained by Daejan and let on short term tenancies or subject to regulated tenancies. The remaining 84 are let and demised on long term leases to third parties. Attached are official copy entries of Daejan’s interests, head-lease and deed of variation, as well as the lease granted to the current leaseholder of the flat in question.
3. Daejan appeals against the Enforcement Notice on the following grounds, as set out in section 39 of the Act:
4. However, as an initial point, Daejan does not consider that the approach taken by the Council (whereby it appears to consider it expedient to issue multiple notices) is appropriate or lawful. A single EN should have been issued covering all the works to the “building”, not an EN issued in respect of individual flats. Daejan reserves its rights to pursue this point further pending discussions with the Council, and this appeal is brought without prejudice to that position.

Ground 1: that listed building consent ought to be granted for the work (section 39(1)(e))

5. Although Daejan was not the entity that installed the windows in question (they were installed as far as Daejan is aware at some point between 2008 – 2011 by the individual leaseholder of the flat), Daejan believes that the windows may have been installed in order to protect the amenity of the residential occupiers from external road and underground car park noise and also to make their homes more energy efficient by retaining heat.
6. This is likely to be a matter most appropriately pursued on appeal by the individual leaseholders whose flats are affected and Daejan reserves its right to support any such appeal if brought. However, it is clearly a material consideration that the uPVC windows' purpose is to protect residential amenity and the environment which outweighs any harm to the special interest or character of the building.
7. Any heritage harm arising from the windows has to be seen in the context of at least 13 years of delay on the part of the Council in enforcing this alleged breach, on a very prominent site and conspicuous building, which indicates that any harm is minimal. The Appellant reserves its right to adduce expert evidence on the degree of harm (if any) the uPVC windows are causing.

Ground 2: that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.

8. Paragraph 5 of the EN specifies a period of six months of the Notice taking effect.
9. 6 months is shorter than what should reasonably be allowed, for at least two inter-related reasons.
10. First, the process to replace the windows is not a simple operation. Taken in isolation, the removal of one window and replacement with a steel window might seem a simple task. However, Daejan is aware that the Council has already issued a considerable number of further ENs, alleging the same contraventions in respect of a number of different flats (8 so far). On Daejan's own estimates, across the whole building there are approximately 85 flats which either have or might well be subject to the same notices.

11. Therefore, replacing all the windows in issue is a major operation, involving scaffolding the building, entailing significant cost and time for individual leaseholders. To avoid constant disruption to residents, and increased and disproportionate costs, which would result from a multiplicity of individual works in respect of each flat with increased scaffolding costs, it is reasonable that sufficient time should be afforded to allow the relevant parties, in particular the leaseholders of the individual flats:
 - a. To agree a common scheme (to include scaffolding the whole building) and to allow individual leaseholders sufficient time to make arrangements to cover the significant costs of these works including the scaffolding costs as well as the cost of the individual windows;
 - b. Identify a supplier of the replacement windows and a common design;
 - c. Arrange for scaffolding to be installed by one company; and
 - d. Identify a contractor to carry out the works as one composite project.
12. It is reasonably anticipated that this will take more than 6 months for the leaseholders, via the Right to Manage Company, (“RTM”), to arrange the works, collect the funds and carry out the works in question.
13. Second, the property is subject to the Right to Manage (“RTM”) regime and is “owned” (in the sense of that term as used in section 93 of the Act) by several different parties.
14. This means that the management of the building is under the control of the RTM. That company is Regency Lodge RTM Company Limited, whose registered office is 6 Cochrane House, Admirals Way, London, E14 9UD (attached is a copy of the extract from Companies House).
15. Therefore, Daejan is no longer responsible (or permitted) to manage the building. Moreover, the flat windows subject to the ENs are demised to individual leaseholders (and not retained by Daejan).
16. The responsibility to comply with the ENs falls to the individual leaseholders and the RTM. Daejan is not aware of what the position of the RTM and all the leaseholders who will receive ENs is likely to be in terms of compliance with them.

17. It is unreasonable (certainly from Daejan's perspective, in relation to the flats retained by them) to only give it (and the other parties/leaseholders who have been served the ENs) 6 months to arrange, fund and complete the works given the large scale of the project including substantial scaffolding costs.
18. Therefore, given the way in which the building is managed, and the fact that the flat windows are demised to the individual leaseholders and their responsibility to replace, it is reasonable to allow for more than 6 months to complete the work.

Mode of hearing

19. Having regard to the PINS "Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals" dated 21 April 2022, Daejan does not consider that this is a matter appropriate for written representations.
20. The issue of the ownership and management arrangements of the building is complex. Coupled with the likelihood of multiple appeals by multiple parties, the Inspector is likely to wish to test the evidence by questions or have the opportunity to clarify the steps necessary to complete the works in question.
21. Daejan therefore considers that the most appropriate way for this appeal to be determined is via a hearing rather than written representations. This way the case can be managed efficiently and allow all representations to be considered at the same time.