
Appeal Decision

Site visit made on 12 January 2015

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2015

Appeal Ref: APP/X5210/C/14/2215577

Ground Floor Flat, 48 Arkwright Road, London NW3 6BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ajit Paramesh against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN13/1179.
 - The notice was issued on 21 February 2014.
 - The breach of planning control as alleged in the notice is without planning permission the installation of PVC casement windows to the ground floor front and rear following removal of timber sash windows.
 - The requirement of the notice is the existing PVC windows to the front and rear ground floor elevations shall be completely removed and replaced with timber sash windows to match the originals.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed the enforcement notice be corrected by the deletion of '*Basement Flat*' in paragraph 2, the land affected, and the substitution therefor of the words: '*Ground Floor Flat*'. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Matters concerning the notice

2. It is apparent the '*basement*' flat is best described as '*the ground floor flat*'. The error in the site's address has not caused injustice to any party. This is because the site is clearly identified and the allegation refers to the installation of PVC casement windows to the ground floor front and rear. In accordance with the powers available to me under Section 176 (1) of the Town and Country Planning Act as amended ('*the Act*'), I have corrected the issued notice.

Grounds (b) and (c)

3. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The date of the notice's issue is the relevant date for the purposes of this appeal. The onus is squarely upon the appellant to make his own case on the balance of probabilities.

4. When the notice was issued, the previous timber sash windows had been removed and the new white unplasticized polyvinyl chloride double-glazed units ('PVC') were installed at ground floor level as a matter of fact. So, ground (b) fails.
5. Section 55 (1) of the Act includes in the definition of the word '*development*' the carrying out of building or other operations in, on, over or under land. There is no disagreement between the appeal parties that the work involved in the installation of the PVC windows amounts to a building operation.
6. The appellant relies upon the operation of S55 (2) (a) (ii) of the Act. It states that the following operations shall not be taken to involve development: 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. In deciding whether works materially affect the external appearance of a building, a measure of subjective judgement is involved; the test raises aesthetic issues.
7. In *Burroughs Day*¹ the issue before Mr Richard Southwell QC, sitting as a deputy Judge of the Queen's Bench Division, was whether certain works to a listed building constituted development requiring planning permission. In that case all of the alterations to the roof of the building were between the inner surfaces of the two ridges and below the ridge levels. The works included the installation of a lift shaft housing, which involved alterations to the roof and replacement of windows to the front elevation of the building. The Court held that the works did not constitute development and it was not sufficient merely that works should affect the exterior of the building. The test is that they should materially affect the external appearance and this implied that the change must be visible from a number of vantage points, and be material to the appearance of the building as a whole and not by reference to a part of the building taken in isolation. Visibility from the air or from a single building would not be sufficient.
8. The nub of the appellant's main argument is that the PVC frames are not visible to the public due to the location of the windows. On the front elevation, a person standing at the bottom of the entrance steps would only see the upper part of the westernmost window. The frontage boundary treatments obstruct direct views of the window from the adjacent highway. The ground floor flat's rear elevation PVC window is set looking out halfway down a steep bank leading up to the private rear garden. It is contended that the casements have been designed to resemble sliding sash windows. However, it does not necessarily follow that the replacement PVC windows do not affect the external appearance of host building. In any event, the front and rear elevations are directly visible from within the property. No. 48's rear elevation is clearly visible from within its garden and the building is likely to be visible from neighbouring properties given its height and location.
9. No. 48 is a four storey semi-detached property which is part of a group of six buildings from the late Victorian era. No. 48 includes timber sash windows in the front and rear elevation above ground floor level. The timber sash windows include horizontal and vertical glazing bars that divide the panes within whereas the PVC replacements on the ground floor do not include these features.

¹ See the case of *Burroughs Day v Bristol CC* [1996] EGCS 126.

10. The PVC windows are much heavier with bulky profiles. Their colour, opening style and black seals are significantly different to the design of the traditional timber sash windows. The PVC windows are seen as different in appearance and style from the timber sash windows they replaced due to their smooth finish, and the casements lack the natural look of timber frames. I find that the PVC windows have significantly modified the external appearance of the building, because of the design, layout and nature of the PVC casements.
11. As a matter of fact and degree, the PVC windows have materially affected the external appearance of the whole building. This is because of the positioning and size of the windows in the front and rear elevation and the incompatibility of the PVC frames with the building's architectural style. An objective observer is likely to arrive at the same conclusion.
12. Pulling all of the above points together, the exemption under S55 (2) (a) (ii) of the Act does not apply in this case. The matters stated in the allegation constitute a breach of planning control because express planning permission has not been granted for the installation of the PVC casement windows to the ground floor front and rear following removal of timber sash windows. The appeal on ground (c) fails.

Ground (a)

13. No. 48 is located within the Redington and Frognal Conservation Area (*'the CA'*). It is situated close to the Camden Arts Centre which is a grade II listed building. The council does not allege the development has a harmful effect upon the setting of this listed building given its location; I concur.
14. The **main issue** to consider is the effect of the development upon the host building and linked to that, whether the development preserves or enhances the character or appearance of the CA.
15. Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy 2010-2025 (*'the CS'*) sets out the approach to promoting high quality places and conserving the borough's heritage. Amongst other things, the council will ensure that Camden's places and buildings are attractive by preserving and enhancing the rich of diverse heritage assets including CA's. Policy DP24 of the council's Development Policies 2010-2025 (*'DP'*) seeks to secure high quality design, and Policy DP25 relates to development in CA's. The cited Policies are broadly consistent with advice found in paragraphs 17, 56, 126, 128 and 131 of the National Planning Policy Framework.
16. The appellant argues that no. 46 and 48 are not matched because of small scale interventions over the years. However, the appeal property is part of a group of six similarly designed buildings which largely retain their original late Victorian architectural features. The character of the buildings is emphasised by the architecture and quality of the fenestration detail which includes timber sash windows. I agree with the council's argument that no. 48 makes a positive contribution to the special architectural interest of the CA given its location within this group of similarly designed buildings.
17. In comparison to the timber sash windows above ground floor level, the PVC frames together with the glazing bars appear much bulkier because of their chunky profile. There is a marked difference between the PVC substantial frame and the slender lines of timber sash windows.

18. In contrast, the PVC casements appear to open outwards and are incompatible with the particular quality of double-hung timber sash casements. They do not look like traditional casements. The PVC windows form discordant features and are inconsistent with the late Victorian architecture. I find that the PVC windows are inconsistent with the external appearance of no. 48, because of their design and profile. Additionally the PVC windows harm the group value of the buildings because they form an incongruous addition to no. 48's front and rear elevation; they unbalance the symmetry of the existing buildings.
19. Arkwright Road varies in character and forms part of a busy east-west route. On the one hand, the appellant points to the existence of PVC frames elsewhere in the locality. On the other hand, the group of buildings in which no. 48 is located retain timber sash windows; they are an important fenestration detail. The external appearance of the buildings makes a positive group contribution to the CA's special interest. In contrast, I find that the alterations to the PVC frames are out-of-keeping with the architectural style of the no. 48 and the adjoining buildings. The development does not meet with advice found in paragraph 4.7 of the council's design planning guidance (CPG1) September 2013 due to the design and layout of the PVC casements.
20. For all of the above reasons, I conclude that the development causes substantial harm to the external appearance of the host building and fails to preserve or enhance the character or appearance of the CA. Accordingly, the development conflicts with CS Policy CS14, DP Policies DP24 and DP25. To these findings, I attach considerable importance and weight.
21. The appellant advances other considerations, underlined and evaluated, which he argues go in favour of the grant of planning permission.
22. The PVC windows have replaced insecure and aged sash windows which were draughty and it has benefited from improved thermal capacity because of the double-glazing: The presented evidence does not show that such objectives can only be achieved by the installed PVC units. It is unclear as to whether or not alternative materials have been evaluated. In my view, the harm caused by the replacement PVC windows to the host building and CA is not sufficiently outweighed by the need to improve energy efficiency.
23. A planning obligation securing the retention of the frontage landscaping to no. 48 could be agreed: There is no such planning obligation before me for my consideration. A landscaped frontage would restrict direct views of the ground floor PVC windows from the street. Nonetheless, the replacement of the timber sash windows causes harm to the external appearance of no. 48.
24. Planning permission could be granted for the rear window at ground floor level: I consider that the design and size of the rear PVC window is inconsistent with the external appearance of no. 48. If repeated elsewhere on the rear elevation, the architectural integrity of the whole building would be harmed. That, in turn, would harm the group value of the block.
25. I have considered all of these other considerations. On balance, individually or cumulatively, these do not overcome my finding that the development significantly harms the external appearance of the host building and fails to preserve or enhance the character or appearance of the CA.

Ground (f)

26. It is necessary to consider whether the requirements of the notice are excessive. The introduction of PVC windows to no. 48's front elevation fail to relate to the traditional design of the timber sash windows which form important features of this group of buildings. From the wording of the notice's requirement seeks to remedy the breach of planning control by restoring no. 48's front and rear elevations to their previous condition. Contrary to the appellant's arguments, it seems to me that the purpose of the notice is squarely derived from S173 (4) (a) of the Act.
27. The appellant considers that the rear PVC window should not be removed because it is not visible from public vantage points. I have reviewed the under-enforcement arguments advanced but the harm caused to the external appearance of the whole building, and the group of buildings in which no. 48 is located, would remain. The notice seeks to remedy the harm by restoring the timber sash windows on front and rear elevations. Nothing short of full compliance would achieve the notice's purpose. The requirement is not excessive. Ground (f) fails.

Overall conclusions

28. For the reasons given above and having considered all other matters, I conclude that the appeal should not succeed on grounds (b), (c), (a) and (f). Subject to a minor correction, I have upheld the enforcement notice and refuse to grant planning permission on the deemed application.

A U Ghafoor

Inspector