
Appeal Decision

Site visit made on 4 August 2015

by **D H Brier BA MA MRTPI**

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

Decision date: 17 August 2015

Appeal Ref: APP/X5210/C/14/3000257

2A Agar Grove, London NW1 9TD

- 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 Token Investments Corporation Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 29 September 2014.
- The breach of planning control as alleged in the notice is the installation of UPVC windows.
- The requirements of the notice are:
 - (i) Remove all the upvc windows from on the property's front and rear elevation.
 - (ii) Reinstate the original design of timber framed windows and method of opening.
- The period for compliance with the requirements is 3 months.
- 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 notice is upheld with variations.

Preliminary Matter

1. I note that the case file contains correspondence about a costs application, seemingly prompted by paragraph 9 of the appeal statement. As this only gives notice of a *possible* application, and as it has been confirmed that no costs application has been made by the Council, I do not propose to take any action in this respect.

The Notice: Validity/Nullity

2. One of the stated reasons for issuing the notice is that the appeal property lies within the Camden Square Conservation Area. As the Council now accept that this is incorrect, the appellant submits that this mistake of fact vitiates the decision to issue the notice and renders the notice invalid.
3. In the initial grounds of appeal it is also noted that the appellant reserves the right to argue that the notice is a nullity. Although this 'right' does not appear to have been exercised, I shall consider this matter along with the invalidity claim.
4. To be a nullity, a notice must be defective on its face. No claim is made that any of the vital elements of the notice in question are absent from it. Rather, it is the basis for issuing the notice, as opposed to the content of the notice itself, that is the source of the concern in this respect. To my mind the question of

whether it was expedient to issue the notice in the first instance, and whether the appeal should have been conceded subsequently, goes more to the merits of the case. I am not satisfied therefore that the notice is a nullity.

5. The same view applies to the invalidity claim. The acknowledged error has clearly made one of the reasons why it was deemed expedient to issue the notice untenable. Likewise, not all the policies cited remain relevant. But, the the conservation area point is not the sole reason for issuing the notice; the reasons also refer to the harm to the host building and the neighbouring property, and to the street scene. As I see it, these are valid reasons that underpin the Council's action despite what seems to have been a very fundamental error in the manner in which the reasons as a whole are framed.
6. In the light of the foregoing, I reject the claim that the notice is either invalid or is a nullity.
7. The Council refer to my power to amend the notice and suggest that the references to the conservation area and the related policy be removed. As the reasons and the related policy references have effectively served their purpose by the appeal stage, I am not satisfied that the notice needs to be corrected in the manner indicated.

Appeal on Ground (c)

8. Citing *Burroughs Day v Bristol City Council* [1996] 1 P.L.R.78 [1996] 1 E.G.L.R. 167, it is submitted that the installation of the UPVC windows did not materially affect the exterior of the appeal building. The works therefore fall within section 55(2)(a)(ii) of the 1990 Act. Alternatively, if the works did constitute development, it is contended they were permitted development by virtue of the provisions of Schedule 2, Part 1 Class A of The Town and Country Planning (General Permitted Development) Order 1995 (GPDO).
9. As the appellant notes, in the light of *Burroughs Day* in considering whether the disputed works amount to development, the external appearance of the building as a whole must be changed, it is not sufficient merely for the exterior surface to be affected. And, the change must be visible from a number of normal vantage points.
10. The appeal building is one of an almost matching pair of 3 storey residential properties that probably date from around the turn of the nineteenth and twentieth centuries. The front elevations of No.2A and its neighbour, No.2B, are rich in architectural embellishments. These include prominent bay windows and ornate decorative door surrounds, elements of which are reflected in the form of the window bays. I noted that the windows in question on the front elevation of No.2A are clearly visible from Agar Grove, from a number of the flats opposite, looking south-west from the junction of Stratford Villas and Agar Grove, and in a south-easterly direction from the northern side of the junction of St Pancras Way and Agar Grove. The rear windows cannot be seen from Agar Grove, but are visible from Wrotham Road.
11. I accept that other features of the appeal property such as the bay windows and the architraves are the ones that tend to catch the eye initially. However, as I perceived it, there is a marked and readily apparent difference between the UPVC windows in question and the timber sash windows at the neighbouring property, No.2B. While the windows in question are less strident

- than their decorative surrounds, like this ornamentation they are characteristic design feature of a property such as this. As such, the windows constitute a key integral element of the overall appearance of the appeal property.
12. The horizontal elements of the timber sash windows which remain in evidence at No.2B appear slender and elegant and tend to blend with and complement the window surrounds. However, the equivalent frames of the top hung opening UPVC windows at No.2A are appreciably thicker and make the windows appear distinctly heavy by comparison. In addition, the essentially flat profile of the UPVC windows contrasts sharply with the more markedly 3-dimensional profile of the traditional sash windows. Furthermore, the form of the central window at second floor level, the lights of which are much narrower than the other windows, and are separated from each other by panelling, is very different from that of the sash windows.
 13. The foregoing factors lead me to conclude that in this instance the UPVC windows that have been installed at the appeal property are materially different from the sash windows in terms of their form and appearance. And, despite the presence of the other features described above, I consider that, as a matter of fact and degree, the works have altered the external appearance of the building as a whole to such an extent that they have materially affected the external appearance of No.2A. Accordingly, therefore, I am not satisfied that the works fall within the ambit of section 55 (2)(a)(ii), but rather constitute development.
 14. My attention has been drawn to an appeal decision where the installation of UPVC windows was held not to amount to development. I acknowledge that, on the face of it, there appear to be certain similarities between this appeal and the current one. In addition, I am mindful that, unlike this case, the decision referred to concerns a property in a conservation area. However, as each case falls to be considered on its own merits, I am not inclined to attach a great deal of weight to this matter. I prefer to focus upon the particular circumstances appertaining to the case before me.
 15. Turning to the claim that the works are permitted development, I do not find this argument to be well-founded. Part 1 Class A of Schedule 2 of the GPDO is directed at works to a dwellinghouse. Under the appeal on ground (g) the appellant expressly refers to flats, and the Council's assertion that the appeal property is not a single dwelling house has not been challenged. Judging by the multiple door bells by the front door and the part of the premises I passed through in order to gain access to the rear of the building, my impression was that the property is probably in use as flats and is not a dwellinghouse.
 16. Article 1(2) of the GPDO expressly excludes flats from the definition of "dwellinghouse" for the purposes of the Order. In these circumstances, the provisions of the GPDO relied upon by the appellant do not apply and so the works do not constitute permitted development as is claimed.
 17. In the apparent absence of any relevant planning permission, I conclude that there has been a breach of planning control. The appeal on ground (c) therefore fails.

Appeal on Ground (a) and the Deemed Application

18. I consider the main issue is whether the local street scene and the appearance of the host building have been adversely affected.
19. Planning policies for the area are contained in the Council's Core Strategy (CS) and the Development Policies (DP). CS Policy CS5 identifies protecting and enhancing the environment as a relevant consideration. CS Policy CS14 requires development to be of the highest standard of design that respects local context and character. This approach is reiterated in DP Policy DP24 and is reflected in the Supplementary Planning Document 'Design' (SPD). Having read that the latter was adopted following statutory consultation, I attach weight to it accordingly.
20. As the appellant's assessment indicates, a mixture of forms of development, the appearance of much of which is very different from that of the appeal property and No.2B, is in evidence in the part of Agar Grove in the vicinity of the appeal site. Likewise, a variety of window types can be seen, including a good number that are made of UPVC. However, at a more local level the appeal property forms part of a small enclave bounded by Agar Grove to the east, Wrotham Road to the south and part of St Pancras Way to the west. While this area contains some modern development and instances of UPVC windows can be seen, the majority of the older residential properties here, including No.2B Agar Grove next door, have wooden sash windows.
21. As noted in paragraph 2 above, No.2A is not within a conservation area. Nor is it listed, either statutorily or at a local level. Nevertheless, along with the neighbouring property, No.2B, it has an attractive and distinctive appearance. And, being alongside a local thoroughfare that also acts as a bus route, its front elevation is readily apparent to passers-by. Moreover, the presence of residential properties with wooden sash windows, referred to in the preceding paragraph, is a characteristic that provides a more local context for the appeal property than the various forms of development elsewhere in Agar Grove identified by the appellant.
22. The ornateness of the window and door surrounds at No.2A is perhaps its most striking feature. Nevertheless, the overall richness of detailing on display here, including the window details, all of which reflect the period of the building, is important to both the visual integrity of the appeal property and the surrounds in which it appears. To my mind, these qualities play an important role in helping to making a positive contribution to the local street scene. By contrast to the sash windows at No.2B, the UPVC ones in question look flat and heavy. And, the middle second floor window, with its distinctly narrower openings and accompanying expanse of panelling, is a particularly crude and insensitive feature that is very much out of keeping with the form and proportions of both the appeal building's and No.2B's fenestration.
23. The overall effect of this is that the windows in question do not accord with the high standard of design advocated in the relevant development plan policies. To my mind, their presence has a detrimental and harmful effect on both the appeal property and the local street scene. I have had regard to the reason why the windows were installed. But, while the benefits likely to accrue in terms of noise and heat insulation are not matters I set aside lightly, this does not outweigh my concern.

24. In the light of the foregoing, the appeal on ground (a) fails and planning permission will not be granted.

Appeal on Ground (f)

25. My concern about the effect of the works on the front elevation of the appeal property is such that I do not consider the harm could be remedied solely by requiring the central second floor window to be altered, as is suggested. Insofar as this part of the building is concerned, I do not find the requirements of the notice excessive – to my mind they represent a reasonable response to the breach of planning control alleged therein.

26. The above view does not, however, extend to the windows at the rear of the property. Although I have noted that they can be seen from Wrotham Road, their impact and incongruity is not so apparent from this viewpoint as the rear of the building is far less prominent than its frontage onto Agar Grove. In these circumstances, and notwithstanding my comments about the enclave that includes Wrotham Road, I find that requiring the removal of the rear windows exceeds what is reasonably necessary in order to remedy the breach. To this extent therefore, the appeal on ground (f) succeeds and the notice will be varied accordingly.

Appeal on Ground (g)

27. While the appellant refers to practical difficulties in ensuring the works are done, this point is not elaborated upon. I accept that certain arrangements will need to be made in this respect, but it seems to me that the 3 month period stated gives a reasonable opportunity for this.

28. I am concerned, however, that there could be implications and a degree of disruption for the tenants of the flats who may also need to make arrangements of their own in order to help facilitate the works. On this basis, I find the compliance period is unreasonably short and that 6 months would be a more reasonable period in order to assist in this respect. The notice will be varied accordingly, and so to this extent, the appeal on ground (g) succeeds.

Other Matters

29. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decision

30. I direct that the notice be varied in section 5 by:

(i) The deletion of the words "and rear" from both requirements.

(ii) The deletion of "3 months" as the period for compliance and its substitution by "6 months".

31. Subject to these variations, I dismiss the appeal and uphold the enforcement notice as varied. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

D H Brier

Inspector