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# Appeal Decision

Site visit made on 16 November 2015

**by D Whipps LLB Solicitor LARTPI**

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

**Decision date: 21 December 2015**

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**Appeal ref: APP/X5210/C/15/3028041**

**Ground and Garden Flat, 18 Fairhazel Gardens, London NW6 3SJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Camden.
- The appeal is made by Mr Peter Maurice Lee.
- The notice was issued on 19 February 2015.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised replacement of timber sash windows with uPVC windows to front elevation at upper ground floor and lower ground floor.
- The requirements of the notice are:
  - i) The uPVC windows shall be removed and replaced with timber sash windows to match the original windows; and
  - ii) Make good any damage to the building as a result of the works.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the ground set out in section 174(2)(e) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: The appeal is dismissed.**

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## Preliminary matter

1. The appellant has submitted evidence on the planning merits of the unauthorised development, namely the installation of the uPVC windows. However, as no valid appeal under ground (a) has been made, it is not open to me to consider the planning merits. I have no discretion in the matter and can only therefore consider appeals under grounds (e) and (f). The appellant confirmed these as the grounds on which he wished the appeal to proceed by email to the Planning Inspectorate dated 14 May 2015.

## The appeal on ground (e)

2. This ground of appeal is that copies of the enforcement notice were not served as required by Section 172 of the Act. This section provides, amongst other things, that a copy of an enforcement notice should be served on the owner and occupier of the land to which the enforcement notice relates and any other person having interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice.
3. The Council undertook searches at HM Land Registry before seeking to serve the enforcement notice. These showed the owner of the building as Walter Philip Lee and gave the property as his address for correspondence. On 19

February 2015 a copy of the notice was sent to him at the property. It is unclear to me on the evidence whether by this date he had passed away.

4. In any event, 4 days later, the appellant advised the Council that his father had passed away and that, as a consequence, the names of his brother and himself were to be added or presumably substituted for their father's name at HM Land Registry. This prompted the Council to send copies of the enforcement notice to the appellant and his brother. It is not clear exactly when this occurred, but it clearly occurred within sufficient time for the appellant to lodge an appeal.
5. The appellant has not explained why he alleges that the correct people have not been served with the enforcement notice. It would appear from the Council's evidence that the correct people have been served.
6. The appellant has not, therefore, proven on the balance of probabilities that the notice has not been served correctly. In any event, where it would otherwise be a ground for determining an appeal under this ground in the appellant's favour, I may disregard that fact if neither the appellant or anyone else have been substantially prejudiced by the failure to serve the notice on them. As mentioned, the appellant has been able to lodge his appeal and has clearly suffered no prejudice. There is then no evidence that anybody else has been substantially prejudiced by the failure to serve them with a copy of the notice. This, therefore, would give a further reason for not allowing an appeal under this ground.
7. The appeal under ground (e) fails.

#### **The appeal on ground (f)**

8. S173 of the Act indicates that there are 2 purposes which the requirements of an enforcement notice can seek to achieve. The first (S173(4)(a)) is to remedy the breach of planning control which has occurred. The second (S173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. It is for the Council to determine which purpose or purposes they seek to achieve.
9. In this instance, it is clear from the enforcement notice itself and the Council's evidence that it seeks first of these, that is to remedy the breach of planning control, since the requirements of the notice require the uPVC windows to be removed and replaced with timber sash windows.
10. I reiterate that it is not open to me under this ground to have regard to the planning merits. I can only determine whether the steps required by the Council exceed what is necessary to remedy the breach of planning control. In this regard, clearly the removal of the uPVC windows and their replacement with timber sash windows cannot be excessive as it is achieving no more than remedying the breach of planning control. Similarly, the requirement to make good any damage to the building likewise is not excessive. The appeal on ground (f) fails.

#### **Formal decision**

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

*D Whipps*

INSPECTOR