



Appeal Decision

Site visit made on 1 December 2015

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 4 January 2016

Appeal Ref: APP/X5210/C/15/3033649 148 Agar Grove, London NW1 9TY

- The appeal is made by Barrie Kevin-Sharpe under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: EN15/0170) issued by the Council of the London Borough of Camden on 7 April 2015.
 - The breach of planning control alleged in the notice is "Failure to comply with condition A3 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 Part 1 by installation of metal framed casement windows to the front elevation at ground, first and second floors in place of timber-framed sash windows".
 - The requirements of the notice are "The metal framed windows installed to the front elevation at ground, first and second floors shall be completely removed and replaced with timber sash windows to match the originals."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g).
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The enforcement notice

1. As the appellant has pointed out, the alleged breach of planning control should refer to the 1995 Order, which was amended by the 2008 Amendment No.2 Order. The 1995 Order has since been superseded by the 2015 Order, but it was the applicable Order when the alleged breach occurred. The condition in question is Condition A.3(a) in Schedule 2, Part 1, Class A. I have made appropriate corrections to the allegation.
2. The notice cannot be used to bring about improvement works in addition to works required to remedy any breach that may have occurred. It cannot therefore require works to be carried out to the building which would enhance the appearance it had before the installation of the windows. By looking at the Council's 'Before' photograph and at other buildings in the terrace, I have concluded that the windows that were replaced on the ground and first floors were not original windows. The notice cannot be upheld with a requirement to replace these windows by "windows to match the originals".

Decision

3. It is directed that paragraph 3 of the enforcement notice be corrected by replacing "Failure to comply with condition A3 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order
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2008 Part 1" by "Failure to comply with Condition A.3(a) of the Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 1, Class A".

4. It is directed that paragraph 5 of the enforcement notice be varied (a) by replacing "**three months**" by "**nine months**" and (b) by replacing "and replaced with timber sash windows to match the originals" by "and replaced with windows that have a similar appearance to the windows which existed on those floors immediately before the metal-framed windows were installed".
5. The appeal is dismissed, the enforcement notice is upheld as corrected and varied by the directions and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Ground (b)

6. The appellant maintains under ground (b) that the installation of the windows is not development as defined by section 55 of the 1990 Act and does not, therefore, require planning permission.
7. Section 55(2)(a) excludes from the definition of 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. It is not disputed that the installation of the windows constituted works of maintenance, improvement or alteration; the issue is whether or not the works materially affected the external appearance of the building.
8. The appellant relies on the High Court's decision in the case of *Burroughs Day v Bristol City* [1996] 1 PLR 78; [1996] 1 EGLR 167. My understanding of this decision is that it establishes that whether or not works have materially affected the external appearance of a building is a question that raises subjective and aesthetic issues. These involve considerations relating to the particular nature of the building and the works, the change to the external appearance of the building as a whole (rather than a part taken in isolation) and the extent to which the works can be seen by an observer outside the building. A comparison between the appearance of the building before and after the works is relevant, including consideration of the type, colour and finish of the materials used.
9. I am not aware of any appeal decisions relating to section 55(2)(a) that have involved the replacement of timber-framed sash windows by metal-framed casement windows, but there have been many involving their replacement by uPVC windows. These windows have often been found to have had a material effect on the external appearance of the building, through changes in the appearance of the materials used and in the arrangement of glazing bars and meeting rails, and sometimes in the opening methods, when compared to the timber-framed vertical-sliding sash windows they replaced. The conclusion I draw from these decisions is that a conspicuous change in materials and design can lead to a finding, applying the Burroughs tests, that the replacement of windows has had a material effect on the external appearance of a building.

10. The Council's 'Before' photograph shows that at the front the ground-floor window and the two windows on the first floor used to be timber-framed vertical-sliding sash windows with single vertical glazing bars in the centre of each window. The two windows on the second floor were timber-framed vertical-sliding sash windows with two evenly-spaced vertical glazing bars in each window. The appellant states that the windows at the back of the building were replaced in 2006 with the same type of metal-framed casement windows that now exist at the front.
11. The building now has, as a result, matching windows at the front and the back. These elevations cannot however be viewed together, and there are limited views of the back from beyond the boundary of the property, whereas the front faces a main thoroughfare and is seen as part of a terrace of properties. The other buildings in the terrace have, at the front, retained their original architectural detailing and, in most cases, what appear to be their original windows. No 148 is the obvious exception; it lost its architectural detailing at some time in the past, along with the original windows on the ground and first floors, with what appear to be the original windows on the second floor (now replaced) and the original window in the basement (still in place) being retained after these earlier changes.
12. The earlier replacement windows on the ground and first floors nevertheless matched the original windows remaining at the front of the building and those remaining in the rest of the terrace, except that they had fewer glazing bars. The metal-framed casement windows that have now been installed, however, consist of single panes of glass surrounded by slim-profile steel frames that are without glazing bars and have a different colour. They contrast sharply with the windows they replaced and with those in the rest of the terrace, and this contrast is obvious to passers-by along a substantial length of the street.
13. For the above reasons, the installation of these windows has in my opinion affected the external appearance of the building as a whole, in a way that is material within the meaning of section 55(2)(a). Development requiring planning permission has been carried out and the appeal on ground (b) has therefore failed.

Ground (c)

14. The appellant's standpoint on ground (c) is that, if development as defined by section 55 has been carried out, the installation of the windows is permitted by the 1995 Order and Condition A.3(a) has been complied with.
15. Article 3(1) and Schedule 2, Part 1, Class A of the Order granted planning permission for the enlargement, improvement or other alteration of a house. The Department for Communities and Local Government publication *Permitted development for householders - Technical Guidance*, states on page 5 that this covered new windows. Condition A.3(a) required the materials used in any exterior work to be of a similar appearance to those used in the construction of the exterior of the existing house.
16. Article 1(2) of the Order states: "'existing", in relation to any building ..., means ... existing immediately before the carrying out, in relation to that building ..., of development described in this Order'. Condition A.3(a) therefore required the materials used in the exterior work carried out to install the windows to be of a

similar appearance to those used in the construction of the exterior of the house as it existed immediately before they were installed.

17. The *Technical Guidance* indicates on page 28 that Condition A.3(a) was intended to ensure that the work resulted in an appearance that minimised visual impact and was sympathetic to existing development. It states that this means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials. The term "existing" here has the meaning given to it by Article 1(2).
18. Applying the *Technical Guidance*, it may not have been necessary for the materials used in the replacement windows to have been the same, but it is clear from the findings I made under ground (b) that the materials used do not have a similar visual appearance. The works have not resulted in an appearance that has minimised their visual impact or is sympathetic to existing development.
19. As a result, I have concluded that Condition A.3(a) has not been complied with. The appeal on ground (c) has failed.

Ground (a)

20. The planning application deemed to be made by section 177(5) of the 1990 Act is an application to install the metal-framed casement windows referred to in the notice without complying with Condition A.3(a). The main issue in deciding whether planning permission should be given is the effect the windows have on the character and appearance of the building and its surroundings, paying special attention to the desirability of preserving or enhancing the character or appearance of the Camden Square Conservation Area.
21. The appellant maintains that the building and its surroundings are not of significant historic or architectural interest and that timber-framed windows in other properties have been replaced by window frames of a different material. He accepts that the lack of glazing bars, the colour of the window frames and the painted cills make the new windows more noticeable and suggests that permission could be granted subject to conditions requiring the repainting of the frames and cills and the installation of false glazing bars in order to match the appearance of the sash windows.
22. The terrace as a whole appears to me to make a significant contribution to the character and appearance of the Conservation Area, because it has for the most part retained its pleasing architectural detailing and its original windows. As stated above, No 148 is the obvious exception, since its architectural detailing at the front has been removed and replaced by render - works that significantly damaged its character and appearance. The retention of some of the original windows and the replacement of others with windows that had similarities to the originals did at least help to preserve some of the character and appearance of the front of the building. This too has now been lost, except in the basement, with the new windows giving the building a stark appearance when it is viewed from the street and making it look even more out of keeping with its surroundings and the Conservation Area generally.
23. Policy CS14 of the Camden Core Strategy and Camden Development Policy DP24 seek to ensure that alterations to buildings have a high standard of

design which respects the character of the buildings and their local context and character, and preserves Camden's conservation areas. Relaxing Condition A.3(a) to permit the installation of the metal-framed casement windows as they exist would be in conflict with these policies.

24. I have considered whether the conditions suggested by the appellant would overcome the concerns that have arisen. I have concluded that they would not, since the alterations would not look authentic and would not therefore result in windows that have a similar appearance to the ones that have been replaced.
25. For the above reasons I have concluded that Condition A.3(a) should not be relaxed. Planning permission has therefore been refused and the appeal on ground (a) has failed.

Ground (f)

26. I have dealt under ground (a) with the proposals the appellant has made under ground (f), but I have also considered under ground (f) whether the requirements of the notice are excessive. For the reasons given in paragraphs 21 and 24 above, it is not feasible to make the existing windows comply with the terms of Condition A.3(a). It follows from what I stated in paragraph 2 above and the findings I reached on grounds (a), (b) and (c), that the appropriate requirements are the removal of the windows and their replacement with windows that comply with the terms of Condition A.3(a).
27. I have therefore directed that the requirements be varied as set out in paragraph 4 above. The appeal has succeeded on ground (f) to this extent.

Ground (g)

28. Under ground (g) the appellant seeks a compliance period of twelve months, to allow more time for finance to be raised and the windows to be manufactured and installed. The Council have concerns about the breach lasting so long.
29. On balance, I consider that nine months would be a reasonable compliance period to allow. I have varied the notice accordingly and the appeal has succeeded on ground (g) to this extent.

D.A.Hainsworth

INSPECTOR