

Enforcement Delegated Report

Receipt date:

14/12/2015

Officer

Hardev Singh

Enforcement Case

EN15/1247


Breach Address

16A Mackeson Road, London, NW3 2LT

Photos & Other material

See file

Authorised Officer Signature

 6th February 2017

Alleged Breach

The unauthorised replacement of timber windows and door with uPVC windows and door to the front, rear and side elevations at lower and upper ground floors and the unauthorised installation of railings to create a roof terrace at rear upper ground floor level.

Recommendation(s):

That the Borough Solicitor issue an Enforcement Notice under section 172 of the Town & Country Planning Act 1990 as amended, for the reinstatement of timber sliding sash windows on the front, rear and side elevations of the property at lower ground and upper ground floors and the removal of unauthorised roof terrace at rear, upper ground floor level and officers be authorised in the event of non-compliance to prosecute under section 179 or appropriate power and/or take direct action under section 178 in order to secure cessation of the breach of planning control.

Priority:

P3

Site Description

The site is located on the east side of Mackeson Road. The site refers to a mid-terraced property located in the Mansfield Conservation Area. It is three storeys to the front and four storeys to the rear, owing to their being a lower ground floor level. The property subject to this Enforcement Notice is a ground floor flat with a mezzanine level.

The existing property had white painted timber sliding sash windows on the front ground floor, side and rear elevations. However, the upper floor windows on the front elevation have retained these timber windows.

The property is not listed.

The properties located on Mackeson Road consist of multi storey terraced properties with a mix of both single houses and those sub-divided into flats. The majority of properties retain their timber sash windows which are significant in their positive contribution to the appearance and character of both the property and the Conservation Area.

Investigation History

14/12/2016

EN15/1247- Complaint received regarding unauthorised changes to fenestration and roof terrace created.

Site visit carried out by Planning Site Inspector and pictures of the changes occurring taken.

08/02/2016

Owner of the property called and informed that the works carried out would require permission and it was unlikely to be granted due to the property being located within a conservation area. A change of timber to uPVC windows would likely be resisted as per Camden's planning policies.

17/02/2016

Owner of the property formally written to regarding the breach of planning control. An application (**2016/0906/P**) was submitted as an attempt to regularise the unauthorised changes.

13/05/2016

Planning application **2016/0906/P** refused.

1/9/2016

Application 2016/0906/P was appealed.

7/11/2016

Appeal was dismissed and the decision upheld.

12/12/2016

No remedial works carried out Enforcement Notice to be issued.

Relevant policies / GPDO Category

National Planning Policy Framework 2012

The London Plan 2016

LDF Core Strategy and Development Policies 2010

Core Strategy

CS5 Managing the impact of growth and development

CS14 Promoting high quality places and conserving our heritage

Development Policies

DP24 Securing high quality design

DP25 Conserving Camden's Heritage

DP26 Managing the impact of development on occupiers and neighbours

Camden Planning Guidance

CPG1 Design (updated 2015) – Chapter 4

CPG3 Sustainability (updated 2015) – Chapter 8

CPG6 Amenity (updated 2011) – Chapters 2 and 7

Mansfield Conservation Area Appraisal and Management Strategy (adopted December 2008)

Assessment

Planning history:

26322 - *Change of use and works of conversion, including the erection of a timber staircase enclosed by a timber screen to rear first floor level, to provide 2 self-contained maisonettes.*

Conditional pp granted 29/09/1978

2016/0906/P – *Creation of a rear roof terrace at first floor level with associated balustrade and replacement of window with door; replacement of all timber windows and door with the uPVC windows and door to front and rear elevations at lower and upper ground floor levels (retrospective).*

Refused with warning of Enforcement Action – 13/05/2016

The reasons of refusal are as follows:

1. *The replacement windows and doors, by reason of their material and detailed design, harm the appearance of the host building and the character and appearance of the Mansfield Conservation Area, contrary to policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Core Strategy; and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*

2. *The rear roof terrace, by reason of loss of privacy, has a detrimental impact on the amenity of neighbouring occupiers including nos.14 and 16 Mackeson Road and 21 Lisburne Road, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*

1.0 Issues

- The Enforcement Notice is served as a result of unauthorised changes to the front, rear and side elevations of the property. Planning permission 2016/0906/P was submitted retrospectively and refused. This decision was appealed under APP/X5210/W/16/3155444. The Inspector agreed with the Council's decision to refuse the application. The Inspector considered the main issues to be: The character and appearance of the host property and the Mansfield Conservation Area and
- The living conditions of the occupants of the neighbouring residential properties with particular reference to privacy.
- The appeal was dismissed for these reasons:

The development would fail to preserve or enhance the character and appearance of the host property and the Mansfield Conservation Area and, as such, would conflict with Policies CS5 and CS14 of the CS, Policies DP24 and DP25 of the CDP and the Framework.

And:

The proposal would harm the living conditions of the occupants of neighbouring residential properties with particular reference to privacy. The proposal would therefore conflict with the amenity requirements of Policy CS5 of the CS, Policy DP26 of the CDP and Framework.

2.0 Assessment

The principal material considerations are:

- The impact of the design on the character and appearance of the host property and wider Conservation Area.
- The impact of the proposal on the amenity of neighbouring occupiers

3.0 Design

3.1 Policy CS14 aims to ensure the highest design standards for developments. Policy DP24 states that the Council will require all developments to be of the highest standard of design and respect the character, setting, form and scale of neighbouring properties and the character and proportions of the existing building.

3.1.2 The Mansfield Conservation Area Appraisal and Management Strategy refers to the use of inappropriate materials and the loss or original architectural features, such as sash windows, having a considerable negative impact on the appearance of the building and the area and expects proposals to preserve or enhance the character and appearance of the Mansfield Conservation Area.

3.1.3 To the front of the property, uPVC windows have been installed replacing previous timber sliding sash bay window at ground level. Although the windows have been replaced to match the pre-existing in terms of glazing style and colour to achieve an appearance similar to the previous timber frame windows, there are visual differences. These are the thickness of the replacement windows glazing bars, the surface texture and traditional detailing. Furthermore, the front elevation is particularly sensitive given its visibility from the street.

3.1.4 To the rear, 2 timber sash windows and a door at lower ground floor level have been replaced with uPVC casement windows and door. Although these changes are to the rear and only visible from private views, uPVC is still not an acceptable material in conservation areas. It is considered that the replacement windows are harmful to the character and appearance of the Mansfield Conservation Area, as a number of the surrounding properties have timber windows which are typical of the area, making this an incongruent feature.

3.1.5 There is some evidence of other properties that have changed their windows to uPVC on the rear of surrounding properties; however no planning history can be found for these alterations and this is not a typical characteristic of the street or the wider conservation area.

3.1.6 The changes to the side elevation windows at lower ground floor level from timber to UPVC is considered to be a material change that is inappropriate and not in line with CPG1 (Chapter 4) as the alterations do not take into consideration the character of the property or its surroundings. It is considered that these replacement windows are also harmful to the character and appearance of the Mansfield Conservation Area.

3.2 Window Changes - Materials

3.2.1 CPG1 Design guidance (Chapter 4) states that alterations should always take into account the character and design of the property and surroundings; windows, doors and materials should complement the existing building. Where it is not possible to restore the existing timber sashes, windows should be replaced in matching materials. The poor quality materials of the replacement windows are therefore considered harmful to the host building and the character and appearance of the wider streetscene, contrary to Camden Development Policies.

3.3 Terrace

3.3.1 In terms of its size, design and relationship to the host building the rear terrace at upper ground floor level is considered acceptable. The metal balustrade satisfies the minimum height of 1.1m.

3.3.2 The rear roof terrace is visible from surrounding properties and not the streetscene, but its small size and discreet design have a limited impact on the Conservation Area. The terrace has been created by removing a timber sliding sash window and inserting a uPVC door. There is an existing

terrace at roof level no.18 Mackeson Road next door (approved under ref no.PE9800464R1) so the terrace is not uncharacteristic for the area.

3.3.3 This timber sash window has been replaced with a uPVC door to enable access to the roof terrace. While the change of a window to a door may be considered to be acceptable, the change of material is not acceptable for reason given in paragraph 3.2.1.

3.4 New window at lower ground floor level

3.4.1 A new window opening has been created and a uPVC window installed at lower ground floor level to the side elevation

Top left picture: shows newly created opening and uPVC window installation (left window) and existing window replaced with uPVC (right of the two windows).



The view from the new window is shown here to the (bottom right picture) as well as the wall obstructing the view (bottom left picture).

3.4.2 CPG1 Design guidance (Chapter 4) states that alterations should always take into account the character and design of the property and surroundings; windows, doors and materials should complement the existing building. It is considered that the materials used for the new window are harmful to the character and appearance of the Mansfield Conservation Area and the uPVC window is an incongruent feature.

4.0 Amenity

4.1 CPG1 Design (para 5.23) recognises that balconies and terraces can provide valuable amenity space for flats that would otherwise have little or no private amenity space. The property in question

covers both the lower and first floor, so the garden to the rear can be used for amenity space. Balconies can also cause nuisance to neighbours. Policy CS5 seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. Policy DP26 seeks to ensure that development protects the quality of life of occupiers and neighbouring occupiers in terms of loss of privacy.

4.2 CPG6 Amenity states in paragraph 7.4: "Development should be designed to protect the privacy of both new existing dwellings to a reasonable degree. Spaces that are overlooked lack privacy. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking. The degree of overlooking depends on the distance and the horizontal and vertical angles of view. The most sensitive areas to overlooking are habitable rooms such as:

- Living rooms;
- Bedrooms;
- Kitchens; and
- The part of a garden nearest to the house."

4.3 The terrace is considered to have a detrimental impact on the privacy of the neighbouring occupiers in terms of increased overlooking. By reason of its position at upper ground level it has close range views into the rear gardens of the two other flats at 16 Mackeson Road. Furthermore it is possible to achieve views into what appears to be a bedroom at No. 14 Mackeson Road. The terrace faces the rear of properties on Lisburne Road with the windows of habitable rooms at no. 21 Lisburne Road situated only 14m away. CPG6 (para 7.4) requires a minimum distance of 18m between the two closest points on each building. Therefore, there is concern over direct and uninterrupted overlooking into nearby private gardens and into rear windows of neighbouring properties.

4.4 The existing terrace at 18 Mackeson Road is at roof level and so there is sufficient distance between the edge of the terrace and nearby windows for overlooking not to be an issue. An application (2004/3164/P) for a rear terrace at 10 Mackeson Road was previously refused on the grounds of loss of privacy to the neighbouring property.

4.5 Although the use of the roof terrace by the occupant may generate noise and cigarette smoke, it would be residential in nature and as the terrace is approximately 3.5 sqm it could not accommodate a large number of people at any one time.

4.6 A solid privacy screen in this location would have to be erected to reduce overlooking to neighbouring properties, however, due to the height it would be required to be constructed to prevent direct overlooking; this would significantly increase the overbearing nature of the terrace and provide an incongruent feature to the terrace and conservation area.

4.7 It is considered that a privacy panel erected between the balcony and the rear window of No.14 could be erected; however this would not mitigate the unacceptable overlooking and resultant loss of privacy to other properties in the vicinity.

4.8 The location of the new opening and window installed at lower ground level to the side elevation may be considered acceptable, there is already a small bathroom window present.

4.9 Direct views and overlooking from the window would be obstructed to the neighbouring property by a boundary wall that is currently present. However, there is no method to ensure the wall is retained in its current form to ensure privacy to the neighbouring property and garden in the future.

4.10 If this new window is to be retained, it must be obscure glazed, fixed shut and permanently maintained as such to mitigate possible overlooking and resultant loss of privacy.

5.0 Conclusion

5.1 While the terrace is acceptable in design terms and use of materials, its location causes an

unacceptable impact on the amenity of surrounding occupiers through direct overlooking, namely nos.14 and 16 Mackeson Road and 21 Lisburne Road.

5.2 The replacement of timber framed windows and door with uPVC to: the front at ground level, at lower ground side elevation, to the rear elevations at lower ground level and the replacement of a timber window with uPVC door to the rear elevation at upper ground level is considered to be unacceptable on the grounds that uPVC is considered to be harmful to the host building and the character and appearance of the conservation area, contrary to Camden Development Policies.

5.3 The location of the newly created window at lower ground side elevation is acceptable if obscured (and permanently maintained as such), however the materials are considered to be unacceptable on the grounds that uPVC is considered to be harmful to the host building and the character and appearance of the conservation area, contrary to Camden Development Policies.

Recommendation:

The notice shall allege the following breaches of planning control:

The unauthorised replacement of timber windows with uPVC at ground floor level to the front elevation, the unauthorised replacement of timber windows and door with uPVC windows and door to the rear elevation at lower ground level, the unauthorised creation of a new window opening and fitting of uPVC window to the side elevation at lower ground floor level, the unauthorised replacement of a timber window to the existing lower ground side elevation with uPVC, the unauthorised removal of a timber window and installation of a uPVC door at upper ground floor level and installation of railings to create a roof terrace at rear upper ground floor level.

WHAT ARE YOU REQUIRED TO DO:

1. To the front elevation: remove the uPVC windows to bay at ground floor level and reinstate timber to match those previously removed;
2. To the rear elevation: remove x2 uPVC windows and door at lower ground floor level and reinstate timber sliding sash windows and timber door to match those previously removed;
3. To the rear elevation: replace uPVC door and frame at upper ground level with timber sliding sash window to match that previously removed and reinstate wall beneath and make good to match the existing rear wall finish;
4. Remove the railings around the rear terrace at upper ground floor level and decking from the roof surface and make good the roof;
5. To the side elevation: Either, remove the newly created window at lower ground floor level and reinstate the wall; or
Replace the unauthorised uPVC window with a timber sliding sash window with obscure glazing and fixed shut (to be permanently maintained as such) to match the existing timber windows on the side elevation;
6. Remove the uPVC window at lower ground floor level and reinstate timber sliding sash window.

PERIOD OF COMPLIANCE: 3 months

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

1. It appears to the Council that the above breach of planning control has occurred within the last 4 years.
2. The replacement windows and doors, by reason of their material and detailed design, harm the appearance of the host building and the character and appearance of the Mansfield Conservation Area, contrary to policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Core Strategy; and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local

Development Framework Development Policies.

3. The rear roof terrace, by reason of loss of privacy through direct overlooking, has a detrimental impact on the amenity of neighbouring occupiers including nos.14 and 16 Mackeson Road and 21 Lisburne Road, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.