



## Appeal Decision

Site visit made on 19 June 2018

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 June 2018**

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**Appeal Ref: APP/X5210/C/17/3190505**

**Land at: Flat 25, Highstone Mansions, 84 Camden Road, London NW1 9DY**  
("the property")

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Ms Lucy Medhurst against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, reference EN17/0522, was issued on 20 October 2017.
  - The breach of planning control as alleged in the notice is: *Without planning permission unauthorised replacement of 4 x single glazed Crittall windows with double glazed aluminium windows to side and rear elevations at 2<sup>nd</sup> floor level.*
  - The requirements of the notice are: (1) Totally remove the unauthorised windows; or (2) Reinstate single glazed, steel framed windows to match the originals; or fit double glazed, aluminium-framed windows with proportions and detailing to match the originals.
  - The period for compliance with these requirements is 3 months.
  - The appeal is proceeding on the ground set out in section 174(2) (a), (c) and (f) of the Act.
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### Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

### Procedural matters

2. The appeal form [page 2 of 5] records that an appeal was lodged on ground (c) and sets out the facts on which that ground is made. The Council's statement does not address ground (c) and whilst I have considered whether to go back to the Council to invite comment I have decided that I have sufficient evidence before me in order to deal with this ground without seeking such comments.
3. The Appellant's appeal statement contains a link to a website. However it is not appropriate for me to search a website because the appeal statement is dated November 2017 and so the content of the website might have changed between that date, when the Council might have viewed it, and when I came to deal with this appeal. The Planning Inspectorate has also published guidance relevant to this situation<sup>1</sup>. I have not therefore looked at the website.

### Ground (c)

4. The Planning Practice Guidance [hereinafter "the Guidance"] says that an Applicant is responsible for providing sufficient information to support an

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<sup>1</sup> See The Planning Inspectorate's published Procedural Guide, which says: "You should not use hyperlinks within documents you send to us. Instead, you should download such documents yourself and attach them separately".

- application for Lawful Development Certificate [LDC]<sup>2</sup>. Lawful development is development against which no enforcement action may be taken, for example because it is permitted development. This is the equivalent of ground (c) in an enforcement appeal and so the Appellant needs to show that: “...*there has not been a breach of planning control*” [as per section E. (c) of the appeal form].
5. Section 55(1) of the Act defines development to include the carrying out of building operations in, on, over or under land. The replacement windows are inevitably fixed in place, the works appear to have been undertaken by a suitably qualified specialist and they are clearly intended to be permanent. Accordingly I consider that the replacement windows involved a building operation, within the definition of development in section 55(1) of the Act.
  6. In reaching this view I appreciate that section 55(2)(a)(ii) of the Act says the carrying out of works which do not materially affect the external appearance of the building shall not be taken to involve development of the land. However in the light of my inspection and the information provided, there is a noticeable difference between the windows subject to the notice and the Crittall windows which remain in place elsewhere on the block. The frames are wider, the glazing bars are internal rather than external, and the proportions of the largest windows on both elevations are different. I acknowledge that metal frames have been used and the difference between steel and aluminium might not be readily appreciable when seen from any public vantage-point<sup>3</sup>, but I am satisfied, taking into account the prominent position of the front elevation of the property within the public domain, that the installation alleged in the notice has resulted in a material change to the external appearance of the building.
  7. For completeness I consider the question as to whether the replacement windows might be permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 [“the GPDO”]. Article 3 and Class A of Part 1 to Schedule 2 of the GPDO says that the enlargement, improvement or other alteration of a dwellinghouse, which would include the replacement of windows, constitutes permitted development. However in this case it is undisputed that the Property comprises a flat within a mansion block. Article 2(1) of the GPDO says, except in relation to Schedule 2 Part 3, that a dwellinghouse does not include a building containing one or more flats. Accordingly the Property does not benefit from permitted development rights and so the replacement windows required planning permission.
  8. For the above reasons the ground (c) appeal must fail. In reaching this view I have no reason to dispute the claims that the dimensions of the windows are the same and that there are the same number of horizontals and verticals as the original windows. Whilst I accept the broad contention that passers-by would have to look up at an optical angle of around 30 %, windows in the front elevation are likely to be seen in association with views along the canal from North Road Bridge. I propose to deal with the other arguments advanced under the ground (c) as part of my consideration of the ground (a), below.

### **Ground (a), planning merits: *Main issue***

9. The main issue in the ground (a) is the effect of the development on the appearance of the host property and whether the development would, at

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<sup>2</sup> Paragraph: 006, Reference ID: 17c-006-20140306.

<sup>3</sup> This is consistent with the fact that the requirements of the notice provide the option of installing aluminium framed windows, albeit with proportions and detailing to match the originals.

a minimum, preserve the character or appearance of the Regent's Canal Conservation Area [CA].

### **Planning policy**

10. The Development Plan [DP] includes the London Borough of Camden Local Plan ["LP"], which was adopted in 2017. The Council has also referred to Camden Planning Guidance, which was adopted as a Supplementary Planning Document [SPD] on 6 April 2011, following consultation, and updated in 2013 and 2015. Having regard to the date of adoption and the definition of SPD in the Glossary in the National Planning Policy Framework ["the Framework"], I attach the SPD substantial weight. The Council published a Conservation Area Statement for Regent's Canal<sup>4</sup> [CAS] in 2001 and I attach it substantial weight.

### **Reasons**

11. The appeal site is a seven storey L-shaped 1930's block of what I was told comprises a total of 62 flats on the corner of Camden Road and the Regent's Canal, next to North Road Bridge, which is a grade II listed structure. The deemed application relates to a second floor flat with 3 windows to the side and 1 to the rear of the block. Highstone Mansions lies within the CA and the rear of the site forms the boundary of the Camden Broadway Conservation Area.
12. The CAS notes the character of the canal changes as it passes under North Road Bridge and skirts the high wall of Lyme Terrace on the towpath side<sup>5</sup>. Associated with this commentary is a photograph of Highstone Mansions, which includes the windows at issue in this appeal. When this side of the mansion block is viewed as a whole, particularly from the listed bridge or the towpath below, the uniformity of the fenestration is a significant component in achieving the overall integrity of the building's character. The Appellant accepts that the majority of the flats facing the canal have retained the original Crittall windows. Although it was agreed during the site inspection that only the fourth floor is complete, and I do not doubt that some of the poor quality upvc windows in this elevation might be lawful by virtue of the passage of time, there remains a predominance of original windows with their characteristic regular composition.
13. The development has resulted in the replacement of the original, single glazed steel framed Crittall windows with double glazed units in aluminium frames. I acknowledge that some thought has gone into trying to match the design of the original windows, for example in terms of the number of glazing bars and the fact that the frames have been coated white at the front of the block and black at the rear. However from my inspection and the information before me, it is evident that the new frames are thicker and heavier in appearance. Furthermore the horizontal glazing bars are noticeably different by virtue of being within the double glazed units rather than standing proud of the exterior of the windows. The proportions of the largest windows on both elevations are also wrong relative to the original Crittall windows in the flat below. This has further eroded the uniformity of the front and rear elevations of this block by adding yet another variation upon its elevational composition to the detriment of its character and appearance.

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<sup>4</sup> The PDF version of the document which the Council supplied with its questionnaire is described as being the *Regents Canal Conservation Area Appraisal*. That title tallies with the description in the delegated report and at paragraph 2.5 of the Council's appeal statement. However in both instances it is said to date from 2008. Whilst that is not a date I can see on the face of the document [see in particular page 36 thereof] it would appear that this is the document that the Council relies on in its delegated report and appeal statement.

<sup>5</sup> Page 15 of the CAS.

14. I acknowledge that the visual impact of the changes would be relatively minor, but the alterations nevertheless draw the eye to a degree and would constitute a harmful change to the visual cohesion of a main public vista of the mansion block. These alterations mark a detrimental step away from a key design characteristic of the block, which is reflective of the period during which it was erected and makes a significant contribution to its character. Contrary to LP Policy D1 a, b and e, the replacement windows cannot be said to be a high quality design that respects its local context and character. I also find a conflict with LP Policy D2 e because the development fails to preserve the character and appearance of the CA and with paragraph 4.7 of the Council's design guidance in its SPD. For these reasons I conclude that the development causes less than substantial harm to the character and appearance of the CA. This is a finding to which I attach considerable importance and weight.
15. Paragraph 134 of the Framework says that where a development leads to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against any public benefits of the development. In that context I turn to consider the arguments advanced for the Appellant.
16. The first is the Appellant's personal circumstances in terms of health, which I shall not set down in a public document, but it is suffice to note that evidence has now been provided to support the claims made. I accept that her condition is made worse by draughts and anxiety, that the new windows achieve energy efficiency, are easy to open and close, result in a more consistent temperature and have resulted in cleaner air in the flat. However I have not been provided with evidence that these benefits could not be achieved in a way that did not cause harm. By way of example it is unclear whether the option of secondary glazing has been examined and, amongst other things, I fail to see why the proportions of the large windows vary from the original. Moreover, noting that the original windows appear to have been in situ for approximately 80 years<sup>6</sup>, it is likely that if the replacement windows were permitted that they would exist long after the Appellant's personal circumstances have ceased to apply. For example the lease might be terminated for any number of reasons. In these circumstances I attach moderate weight to these material considerations.
17. The second is the Appellant's personal circumstances in terms of finance, but no written estimates have been provided to support the quantum given at final comments stage, which appears to be disproportionately more than the original outlay even allowing for scaffolding. I am not persuaded that it would be financially unviable and I am only able to attach moderate weight to this factor.
18. The third is that the enforcement notice is a block to the lease extension being granted. However it is unlikely to be the case that the mere existence of the notice is a bar to its extension, rather it is likely to be the fact that the notice is outstanding and might require remedial works. In any event it is said that the lease has well over 50 years left and so this does not appear to be an imminent threat to the Appellant's home or family life. I attach this factor limited weight.
19. The fourth is the reference to other examples of replacement windows in the block. The Council do not specifically comment on the claim that Flat 40 was permitted to install upvc double glazing, but it does say that upvc windows that were installed at Flat 60 have been removed following issue of an enforcement notice. I acknowledge that the Appellant appears to have been conscientious

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<sup>6</sup> Between 1937-2017, according to the Appellant's statement.

in contacting the Council and it is perhaps unfortunate that more notice was not given of the Managing Agent's intention to erect scaffolding, which might have enabled a suitable compromise to be negotiated prospectively. However I have taken account of the variations that exist in my identification of harm and in those circumstances I am only able to attach limited weight to this factor.

20. On the main issue I conclude that the development harms the appearance of the host property and fails to preserve the character and appearance of the CA, contrary to LP Policies D1 and D2, and the SPD. Whilst I acknowledge that the replacement windows have given rise to a number of benefits for the Appellant, even when these are taken cumulatively I consider that they are insufficient to outweigh the harm and policy conflict that I have identified.

**Ground (a): Overall conclusion**

21. My findings on the main issue lead me to conclude that the ground (a) appeal, the deemed planning application, should fail. In coming to this view I have taken account of all matters raised in the Appellant's submissions, including correspondence with the Managing Agent and the minutes of the AGM, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP.

**Ground (f)**

22. Section 173(3) of the Act says a notice shall specify the steps required to be taken in order to achieve any of the purposes set out in section 173(4) of the Act. The Council has not indicated what its objectives were in drafting the notice, but a fair reading of the first, removal, together with the first option in the second, reinstatement of single glazed steel framed windows to match the originals, suggest that it seeks firstly to remedy the breach by restoring the land to its condition before the breach took place. Viewed in that way I find no reason to conclude that these elements of the requirements are excessive and no lesser steps could restore the land to its condition before the breach.
23. Nevertheless the second alternative in the second requirement, to fit double glazed aluminium framed windows with proportions and detailing to match the originals, must in my view fall within section 173(4)(b) of the Act. This option seeks to remedy any injury to amenity which has been caused by the breach by allowing a design that matches the originals but incorporates double glazed units. That appears to be to the Appellant's advantage and so whilst it is said that the Appellant has contacted up to 8 glaziers but nobody was able to do the work that does not make this alternative excessive. To the contrary it appears to be a fair attempt to offer an alternative to reinstatement of the originals.
24. I have reviewed the Appellant's submission in an attempt to identify whether an alternative solution has been advanced that might also remedy the injury to amenity. Whilst it is suggested that the Managing Agent might in future request all flat owners install double glazing for energy efficiency reasons, any such initiative is likely to result in a co-ordinated approach that is agreed with the Council. Moreover double glazing is the second option within 5(2).
25. In my consideration of ground (a) I have referred to the possibility of secondary glazing and have considered whether this might need to be reflected in a variation to the requirements. However I consider that such works are likely to fall within section 55(2)(a) of the Act since it would involve glazing on the inside of the reinstated original windows. On this basis, whilst I have

considered the possibility, I see no reason to make express provision for this possibility by making a variation to the requirements of the notice.

26. In these circumstances I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach and any injury to amenity, which is the limited scope of the ground (f) appeal. For these reasons this ground of appeal must also fail.

**Conclusion**

27. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

*Pete Drew*

INSPECTOR