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## Appeal Decision

Site visit made on 18 September 2018

**by Chris Preston BA(Hons) BPI MRTPI**

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

**Decision date: 15 October 2018**

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### **Appeal Ref: APP/X5210/C/18/3200487 85 Jamestown Road, London NW1 7DB**

- 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 Mr Richard Kaffel (Jamestown Road LLP) against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, numbered EN17/0067, was issued on 09 March 2018.
  - The breach of planning control as alleged in the notice is: Without planning permission: Building not according to approved plans 2014/4058/P – Appeal allowed 10/4/2015 (Ref: APP/X5210/W/14/3000701).
  - The requirements of the notice are: (1) Totally remove the plain glass aluminium framed windows from the front elevation and instate the timber framed sash windows that were approved on appeal 2014/4058/P – Appeal allowed 10/04/2015 (Ref: APP/X5210/W/14/3000701) and (2) Make good any damage caused as a result of the above works.
  - The period for compliance with the requirements is within 3 months of the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period in relation to the appeal on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act, as amended.
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### **Decision**

1. The enforcement notice is quashed.

### **The Enforcement Notice**

2. Although it is not a matter that has been raised by the appellant, or any other party, I have a duty to consider any defects within the notice and, where possible, make any necessary variations or corrections to put the notice in order providing that no injustice would arise. As a legal document, it is important that the enforcement notice is legible on its face, without needing to infer or imply its meaning.
3. Section 173 of the Town and Country Planning Act 1990 (the Act) specifies the necessary content of an enforcement notice. Subsections (1) and (2) state that:

*(1) An enforcement notice shall state—*

*(a) the matters which appear to the local planning authority to constitute the breach of planning control; and*

*(b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.*

*(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.*

4. Section 171A(1) identifies that breaches of planning control will fall into two categories; (a) carrying out development without the required planning permission; and (b) failing to comply with a condition or limitation subject to which planning permission has been granted.

5. In this case, the enforcement notice describes the breach as:

*Without planning permission: Building not according to approved plans 2014/4058/P – Appeal allowed 10/4/2015 (Ref: APP/X5210/W/14/3000701)*

6. Section 1 of the notice identifies that the breach is considered to fall under section 171A(1)(a) of the Act. That would suggest that the Council consider that it amounts to development without planning permission, as opposed to a failure to comply with a condition or limitation on a planning permission. In the 'Reasons for Issuing the Notice' the Council also states that it appears that the breach has occurred within the last 4 years. That would be the relevant time period for taking action against unauthorised operational development, whereas the time limit for taking action against a failure to comply with a condition would be ten years.
7. If the Council did intend to serve a notice in relation to unauthorised operational development, as opposed to a failure to comply with condition, the breach would more accurately have been described as: *Without planning permission, the installation of plain glass aluminium framed windows in the third and fourth floors of the building, as depicted on xxxx (with reference to a plan or photograph to depict which windows were alleged to be unauthorised).*
8. However, the description of the breach refers to non-compliance with approved plans in relation to an extant planning permission which was approved in at appeal in 2015. Condition 2 of that permission required that the development should be carried out in accordance with the approved plans submitted with the application. The requirements of the notice are to remove the aluminium framed windows and install timber framed sash windows as approved in the 2014 permission. Having regard to the description of the breach, the requirements of the notice, and the Council's statement, it seems likely that the intention was to enforce against non-compliance with condition 2. However, that is not what the enforcement notice states. Thus, there is some confusion as to precisely which limb of s171A(1) of the Act the notice seeks to enforce. As the decision maker, it is unclear to me and I see no obvious reason why it would be any clearer to other parties.
9. Inspectors have relatively wide powers to correct any defects in a notice, providing that no injustice would arise, and I am mindful of the need to avoid an unduly technical assessment of the notice. However, the issue of whether the breach is unauthorised operational development or a breach of condition does have implications for the requirements of the notice. If the allegation was a failure to comply with condition 2 of the extant permission, the remedy for that breach would be to remove the unauthorised windows and install new windows, as shown on the approved drawings.

10. If, however, the allegation was unauthorised operational development under s171A(1)(a), the removal of any unauthorised windows would be sufficient to remedy the breach. It could also be argued that the replacement of any pre-existing windows at third floor level and re-inserting the brickwork in the previous 'dummy' windows would remedy that element of the breach by returning that part of the building (i.e. the third floor) to its condition before the breach took place.
11. Consequently, it seems to me that the confusion over which limb of s171A(1) is in play is not a mere technicality but one that has implications for the way in which any breach is remedied. In those circumstances I am not satisfied that I could correct the notice without injustice to one or both parties.
12. My concerns do not end there. The notice does not explicitly state which elements of the building are considered to be unauthorised. The allegation itself provides no detail and section 4(b) refers to the 'the plain glass aluminium windows' without specifying which particular windows are affected. It could be implied that it refers to any 'plain glass aluminium windows' within the building but that is not entirely clear.
13. Further confusion is added by the requirement to 'Totally remove the plain glass aluminium framed windows from the *front* (my emphasis) elevation' at section 5(1). The building occupies a prominent corner position and has elevations facing onto Jamestown Road and Oval Road. The entrance to the ground floor retail unit sits on the corner between the two streets and the entrance to the residential upper floors is on Jamestown Road. However, that entrance aside, the two elevations are extremely similar in architectural terms and it is difficult to discern which is the 'front' of the building.
14. The Council's reason for refusal in relation to the application to retain the windows<sup>1</sup> included the words; '*There is no objection to the principle of reopening the window to the front elevation at third floor level; this faces into Jamestown Road and would not result in a loss of privacy or harm to neighbouring amenity*'. That is perhaps an indication that the Council considers the front of the building to be on the Jamestown Road aspect but the enforcement notice itself is entirely unclear on the matter.
15. Nor is it clear if the reference to 'front elevation' in singular form is deliberate. If so, it raises ambiguity as to which elevation is being referred to. It may be a case of loose phraseology but I could not correct the notice without prejudice because injustice may arise on the part of the appellant if I was to broaden the scope to include reference to both elevations, thereby making it more onerous.
16. In view of the above, I find that there are a number of drafting issues in relation to the enforcement notice that result in ambiguity and uncertainty over its scope and intention. Accordingly, in its present form it does not comply with the requirements of section 172(2) of the Act because it is not sufficiently precise to enable a full understanding of what the alleged breach of planning control is, nor is it clear in relation to the steps required for compliance.
17. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these

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<sup>1</sup> LPA reference 2017/5170/P

circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

18. I appreciate that this may cause frustration for the parties who are no doubt keen to find a resolution to the matter. However, given my concerns over the ambiguity within the terms of the notice it would be inappropriate for me to continue to determine the appeal. It would be a matter for the Council to decide if it wishes to serve another notice which clearly identifies the alleged breach and the required actions to remedy that breach. The appellant would have the right to appeal such a notice and the matter could proceed on a sound footing.

*Chris Preston*

INSPECTOR