



Appeal Decision

Site visit made on 6 January 2009

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

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Decision date:
22 January 2009

Appeal Ref: APP/Q1445/C/08/2071381

3 Camden Terrace, Brighton, BN1 3LR

- 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 Ms Nicola Stevenson against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0601.
- The notice was issued on 5 March 2008.
- The breach of planning control as alleged in the notice is *Without planning permission the replacement of timber framed windows and timber cladding to front elevation with uPVC windows and plastic cladding.*
- The requirements of the notice are *1. Remove plastic cladding (lap boarding) to front elevation. 2. Replace with timber cladding (lap boarding) with the same profile and materials as the original, which is to match the adjoining property at No.2 Camden terrace. 3. Remove uPVC windows to the front elevation. 4. Replace with painted timber sliding sash windows with the same profile, materials and method of opening as the originals and to match the adjoining property at No.2 Camden Terrace.*
- The period for compliance with the requirements is 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)[a], [b], [c], [f] and [g] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The notice is altered to delete all reference to the windows, then upheld as it relates to the cladding, as set out in the Formal Decision.

The notice – claimed nullity

1. It is claimed that the notice is a nullity because its requirements are excessive and not precise. As to precision, it is pointed out that a notice requiring a scheme to be agreed with the Council is a nullity. It is argued that the requirement *...to match the adjoining property...* would require the Appellant to consult with and obtain the agreement of the Council before complying with the notice. I do not agree. What exists at No.2 Camden Terrace by way of wooden windows and timber cladding is readily visible. I conclude that the requirement to match them is not unclear and the Appellant would not need to consult the Council or obtain its consent before complying with this part of the notice. What is excessive is a matter that could be dealt with by an appeal on ground (f), and I do not consider it further at this point. I conclude that the enforcement notice is not a nullity.

The appeal on ground (b)

2. It is claimed that there is an error in the notice as it relates to the windows, as the windows that were removed were of uPVC, and not as alleged *...timber*

framed windows... This is supported by evidence in the form of an August 2005 builder's quotation to the effect that the windows to be replaced were ... *poorly fitted PVC* The Council has no contrary evidence, and I conclude on the balance of probability that the original windows were indeed of uPVC. As there is thus an error in the notice allegation, it is necessary for me to consider whether it would be a proper exercise of my powers to correct it.

3. The Council responds that *...no evidence has been provided that the original timber windows had previously been replaced with uPVC windows in exactly the same style etc as the most recently installed uPVC windows.* This comment addresses a suggestion made for the Appellant that there was no breach of control because there had been no material change to the external appearance of the building. This response does not, however, address a more fundamental point: the implication that the Council took enforcement action in the mistaken understanding that the present uPVC windows had replaced wooden ones. There is also a further error that wooden *sliding sash* windows to match those at No.2 are sought, but the wooden windows at No.2 are not sliding sash. An officer report which informed the delegated enforcement process includes the same errors. I have concluded that the errors in the notice reflect errors in the factual basis upon which the Council took enforcement action.
4. As to whether these errors had or are likely to have influenced the Council's decision, I have given particular weight to the evident importance which the Council attaches to the retention of wooden windows of traditional design in this area, whether casement or sliding sash. I have also noted that enforcement action against the windows was taken over two years after they were installed, with the Council having evidently become aware of the window replacement only in the context of a more recent replacement of timber boarding. I have concluded that the belief that the windows at No.3 had been wood framed would have been a very substantial, and probably the most substantial, element in the Council's decision to take enforcement action against the replacement windows. It follows and I have further concluded that it cannot be assumed that the Council would have taken action against the appeal windows if it had been properly informed of what they had replaced.
5. For these reasons I consider that it would not be a proper exercise of my powers to correct the notice to refer to uPVC windows as having been replaced. The uncorrected notice, however, alleges something which I have concluded did not take place, ... *the replacement of timber framed windows...* In these circumstances I shall alter the notice to delete all reference to the windows. As amended the notice will relate only to the cladding. The appeal on ground (b) in relation to the windows succeeds to this extent.
6. It will be for the Council to consider whether, having regard to the relevant policies and other material considerations, including the nature of the windows replaced, it is expedient to issue a replacement enforcement notice against the new windows.

The appeals on grounds (c), (f) and (g) in relation to the windows

7. For the reasons set out above I shall delete all reference to windows from the notice. In these altered circumstances the appeals on grounds (c), (f) and (g) in relation to the windows are also of no effect and fail.

The appeal on ground (c) in relation to the cladding

8. The Appellant relies on the claimed failure of a Council leaflet to make it clear that such cladding was covered by the West Hill Article 4(2) Direction 2000. The Direction did not, however, impose such control. Control over cladding already existed by reason of the site being within a Conservation Area. This is stated in the second paragraph of the leaflet which remarks on extant pre-Direction controls. In any event, the effectiveness or otherwise of the Council's summarising of planning law does not alter the law itself. In the absence of other evidence or argument the appeal on ground (c) fails in respect of the cladding.

The appeal on ground (a) in relation to the cladding

9. As I shall delete the windows from the enforcement notice, the appeal on ground (a) and the deemed planning application derived from the notice will relate only to the plastic cladding. The appeal site is within the West Hill Conservation Area where policies set out in the representations reflect the statutory requirement to give special attention to the need to preserve or enhance the character or appearance of conservation areas. In order to further these objectives the Council has made an Article 4(2) Direction.
10. From my inspection of the site and area and from consideration of the representations made I have concluded that the main issue in the appeal on ground (a) is whether the replacement plastic cladding has preserved or enhanced the character or appearance of the Conservation Area.
11. Conservation area design guidance refers to Camden Terrace as a narrow twitten which contains some attractive 19th century cottages accessed from the path. Nos 2 and 3 are a pair of cottages both of which previously had white timber cladding. Such cladding is not a characteristic feature of the conservation area as a whole, but I consider that it makes a positive contribution to the already distinctive character of the twitten. The plastic lap boarding does not have same profile as the original and is wider, so that as stated by the Council its coursing gets "out of sync" with and does not match or line up with the wooden cladding it adjoins. Also its shiny plastic artificial appearance differentiates it from its neighbour. This is particularly noticeable in the narrow twitten, where the observer is only a short distance from No.3 and from the abutting natural wood cladding of No.2. I conclude that the boarding appears incongruous, has involved the loss of a traditional feature of the building, and is contrary to Brighton and Hove Local Plan policy HE6 in particular in that it is not a building material and finish which is sympathetic to the area.
12. For the Appellant it is pointed out that there has been considerable piecemeal change in the Conservation Area in ways which the Council now resists, and that these changes should be accepted as part of an established character. My site inspection included all the streets in the vicinity which I was asked to view, and I viewed an example of plastic boarding that was drawn to my attention. I do not consider, however, that the several changes which I saw have gone so far that, in relation to the appeal site, the character of the area has changed so much that the Council's objective of retaining existing wooden cladding is no longer justified.

13. It is suggested that the cladding be allowed to remain, perhaps treated in order that its "shiny" appearance be removed, and then left to weather. There is however no evidence as to the likely success of this undefined treatment, and I do not consider that a weathering effect on plastic can be relied upon to effect a beneficial change. In any event this would not alter the differing alignment of the boarding to that at No.2. For the reasons stated I have concluded on the main issue in this case that the replacement cladding has harmed rather than preserved or enhanced the character or appearance of the Conservation Area.
14. It was suggested that the letters supporting the Appellant were a truer reflection of the situation and the public interest than the Council's actions. In considering this I start from the basis that it is fundamental to the planning system that planning objectives should be set through the statutory planning process. It is a feature of the planning process that some of the objectives of the community may be in competition or potentially in conflict, of particular relevance in this case being the potential conflict between the most expedient forms of home improvement/maintenance and the character or appearance of the area. One purpose of Development Plans¹ is to provide guidance as to which objectives should prevail in particular circumstances and areas, and I consider that it is clear that within this conservation area it is intended that particular weight is to be given to preserving or enhancing character or appearance. I therefore conclude that notwithstanding the reasonably held views of local residents supporting the appeal, the policies and objectives of the wider community should prevail. Against this background and the harm to an interest of acknowledged community importance, I also conclude that the requirement to reinstate the timber cladding boarding is not disproportionate, and does not breach of the Appellant's human rights.
15. In all the foregoing circumstances I have concluded that the appeal on ground (a) against the enforcement notice fails.

The appeal on ground (f) in relation to the cladding

16. The appeal on ground (f) in this case seeks to establish that the steps required by the notice exceed what is necessary to remedy any breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused thereby. It is suggested that the cladding be allowed to remain, perhaps treated in order that its "shiny" appearance be removed, and then left to weather. I have already dealt with this suggestion in consideration of the appeal on ground (a), and concluded that it would not remedy the injury to amenity. As to remedying the breach of planning control, the requirement to reinstate wooden cladding matching that at No.2 does not, as a matter of fact, exceed what is necessary to remedy the removal of the earlier cladding. The appeal on ground (f) fails.

The appeal on ground (g) in relation to the cladding

17. The appeal on ground (g) seeking more time to comply with the notice turns on the expense to the Appellant of carrying out the requirements of the notice, and the need for time to allow the money to be raised and avoid a forced sale at a time when the housing market is in decline. Estimates of between about

¹ And now also the emerging Local Development Frameworks (LDF) and Documents (LDD) which are to replace Development Plans.

£7000 and £9500 are given for replacement of the windows, and £2,173 for the cladding. The consequential potential minimum expenditure of some £9000 is stated to be beyond the Appellant's means.

18. Whatever the merits and relevance of this argument, my conclusion that the enforcement notice should be altered to delete all reference to windows removes the need to replace them. There is no evidence, nor is it self evident, that the lesser sum required for the cladding could not be met. There is no evidence that 16 weeks would be too short a period for the work of recladding to take place. In the absence of other argument or evidence I have concluded that the appeal on ground (g) fails.

FORMAL DECISION

19. I direct that the enforcement notice be varied by changing the breach of planning control alleged to *Without planning permission the replacement of timber cladding to the front elevation with plastic cladding*, and by changing the requirements of the notice by deleting requirements (3) and (4).
20. Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V F Ammoun

