



# Appeal Decision

Site visit made on 28 October 2008

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:  
6 November 2008**

## **Appeal Ref: APP/Q1445/C/08/2075588**

### **Land at 117 Havelock Road, Brighton, BN1 6GN**

- 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 C Sturdy against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0428. The notice was issued on 21 April 2008.
- The breach of planning control as alleged in the notice is *Without planning permission the replacement of timber sliding sash windows to the front ground floor of the property with uPVC.*
- The requirements of the notice are *1. Remove uPVC windows from ground floor front elevation and replace same with painted timber sliding sash windows to match those at first floor level.* The period for compliance with the requirements is three months.
- 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.

### **Summary of Decision: The appeal fails, as set out in the Formal Decision.**

#### **The appeal on ground (c)**

1. An appeal on the legal ground (c) is that there was no breach of planning control. The Appellant's case is that she was told that planning permission was not required for window replacement on a "like for like basis". A letter from her contractor states that this is what was quoted for and installed. Like for like is not a statutory definition but may be intended to reflect Section 55(2)(a) of the Act which excludes from development works for the maintenance, improvement, or other alteration of any building which affect only its interior or "... do not materially affect the external appearance of the building". That is the relevant legal test.
2. In this case sliding sash wooden windows have been replaced by uPVC windows. In addition to this change to materials, the opening parts are top hung. The use of uPVC has resulted in elements of the frame being more bulky than previously. This is shown by comparison with the wooden sliding sash windows that remain at first floor level above the appeal windows. The change to the ground floor front windows is clearly visible from the street, and is the more noticeable by reason of the contrast with the windows at first floor level. I have concluded that the change to the windows has materially affected the external appearance of the building. The appeal on ground (c) fails.

#### **The appeal on ground (a) – the deemed planning application**

3. No.117 is within the Preston Park Conservation Area. From my inspection of the site and area, and consideration of the representations made, I have concluded that the main issue is the effect of the windows upon the character

and appearance of the building and the Conservation Area. Well established planning policies referred to in the representations reflect the legal requirement in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, that decision makers pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In 2001 the Council by an Article 4(2) Direction withdrew certain permitted development rights so that single dwellinghouses, as well as buildings in use as flats, had to obtain planning permission for various developments including that subject of the present appeal. The Council states that this was done to halt the erosion of features such as sliding sash windows and traditional materials. A Council document entitled *Preston Park Article 4(2) Direction. Introduction of additional planning restrictions* states in part that *Planning permission is not required ... to replace features "like for like" eg ...replacing timber sliding sash windows with matching sliding sash windows...*

4. The mid-terrace appeal building is typical of many in Conservation Areas in that while it is of no outstanding architectural merit in itself, combined with the similarly designed late Victorian buildings nearby it helps form an area that has a reasonable consistency if not a uniformity of design. This produces a pleasant character and appearance part of which is due to the traditional design of the wooden sash windows where these have been retained or sympathetically replaced over the years. Though the Appellant and others have drawn attention to the many examples of different window treatments and other distinctive features of buildings, having walked around the area I have concluded that there is enough of the original character for it to be appropriate to protect what remains. In the case of the appeal building this is particularly so as the front first floor windows are of the original type to which the enforcement notice would require the appeal windows to conform.
5. In all these circumstances I have concluded on the main issue that the change from the original sash windows to ones of uPVC having a different appearance and balance between the parts has been harmful to the appearance of the building and the character of the Conservation Area.
6. The appeal windows are likely to provide better insulation than those they replaced, but it is a feature of the planning process that some of the objectives being sought by the community may be in competition or even potentially in conflict. Planning policies provide guidance as to which objectives should prevail in particular circumstances and areas, and I consider it clear that character and appearance is intended to have particular weight in Conservation Areas. I have concluded that the appeal on ground (a) should fail.

#### **FORMAL DECISION**

7. I dismiss the appeal and uphold the enforcement notice. I 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*

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