
Appeal Decision

Site visit made on 11 October 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 7 November 2016

Appeal Ref: APP/T5150/C/16/3152649
92 Preston Hill, Harrow, Middlesex HA3 9SJ

- 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 Mrs Gertrude Hawrylczak against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 18 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building in the rear garden of the premises.
 - The requirements of the notice are Step 1. Demolish the building in the rear garden of the premises. Step 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the building in the garden be demolished. The purpose of the notice must therefore be to remedy the breach of planning control.
3. The appellant submits that it is not necessary to require the complete removal of the building as it would be sufficient to reduce its height so that it falls within the scope of the 'permitted development'¹ (PD) height limit of 2.5m. She states that the building is actually 2.5m high and that it is only the 'finishing edges' that add an additional 10cm. A reduction in height would therefore remove the harm caused by the development and remedy the breach of planning control.
4. The Council submit that the notice does no more than identify the breach of planning control and to state the minimum that needs to be done to resolve the breach. In addition, they state it is not appropriate to re-design the building in

¹ Town and Country Planning (General Permitted Development) Order 2015 Schedule 2, Part 1, Class E (the Order)

the context of an enforcement notice appeal as there is no procedure for third parties to make comments and this could result in injustice.

5. I consider the height reduction suggested by the appellant would not remedy the breach of planning control. This is because the breach of planning control is the action of erecting the building. Altering its height would not undo that initial action and would not address all of the harm caused by the development set out in the reason for issuing the notice. Furthermore the Order setting out the PD limits also states² that development which is not lawful cannot be altered so as to become PD retrospectively. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

Conclusion

6. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR

² Article 3 (5) (a)