
Appeal Decision

Site visit made on 1 February 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 3 March 2017

Appeal Ref: APP/V0510/C/16/3149469

47 Cardinals Way, Ely, Cambridgeshire CB7 4GF

- 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 Melinda Nettleton against an enforcement notice issued by East Cambridgeshire District Council.
 - The notice was issued on 5 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission (i) the installation of 2no Closed Circuit Television Cameras (CCTV) on the rear elevation of the dwelling on the Land less than 10m apart.
 - The requirement of the notice is: (i) remove 1 of 2no CCTV cameras from the rear elevation of the dwelling known as 47 Cardinals Way, Ely, Cambridgeshire CB7 4GF.
 - The period for compliance with the requirement is 1 calendar month after this 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.
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Summary of Decision

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

Procedural Matter

2. The notice fails to specify all, or indeed any policies and proposals in the development plan which are relevant to the decision to issue it, as required by Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, Regulation 4(b). As appears from its appeal statement the Council plainly considers that such policies are relevant to the issue of the notice. In addition it states in terms that the decision to issue the notice was made "mindful of" the Council's planning policies.
 3. This failure to comply with the statutory requirements is apparent on the face of the notice. However full reasons are given in the notice for its issue despite the lack of reference to any policies, so it cannot be disputed that it appeared expedient to the Council to issue the notice as required by s172(1)(b). I do not regard the notice as invalid as it is otherwise correctly drafted and tells the recipient fairly what she has done wrong and what she must do to remedy it.
 4. The notice is still defective so I must consider whether it should or could be corrected or varied using powers contained in s176(1)(a) and (b). There is no evidence that the appellant has been prejudiced by this omission in preparing the appeal. Any alteration to the notice would now be moot, so there is no need to correct the defect in that part of the notice.
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Ground (c) – that the matters alleged are not a breach of planning control

5. Under this ground of appeal the sole issue is whether the matters alleged in the notice constitute a breach of planning control. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 2, Class F grants planning permission for the installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes.
6. The planning permission for the erection of the appeal property and others on the estate includes a condition intended to remove permitted development rights for extensions and alterations of the dwellings. The Council is uncertain as to whether the condition applies to the installation of any CCTV camera but it is unnecessary and would be unfair to the appellant in this appeal to decide the point as the notice is aimed at removal of one camera only.
7. Also, due to the wording of the allegation which refers to the installation of two cameras rather than the addition of a second camera, compliance with the notice would result in a deemed planning permission being granted under s173(11) of the Act for the remaining camera. This would be so even if the condition operated to remove permitted development rights for cameras, which appears to be the Council's intention.
8. However the GPDO does not grant permission where any part of the camera would be less than 10m from any part of another camera installed on a building. I saw that two CCTV cameras have been installed adjacent to each other on the rear elevation of 47 Cardinals Way, a mid-terrace house. The appeal statement accepts that the cameras comply with every requirement of permitted development other than that they are less than 10m apart.
9. The appellant takes issue with what she sees as the Council's rush to judgement when it requested an immediate planning application. However the question of whether it is expedient for the Council to issue an enforcement notice is not a relevant matter on ground (c). Nor is the human rights legislation engaged in an appeal on ground (c) which is one of the legal grounds of appeal. I note the presence of a third camera at the front elevation of the property but this is not a relevant consideration as it is the second camera on the rear elevation that is the target of the enforcement notice.
10. I conclude that the two cameras adjacent to each other would require express planning permission and, as none has been granted their installation amounts to a breach of planning control. Therefore the appeal on ground (c) fails.

Ground (a) and the deemed application for planning permission

Background, main issue and reasons

11. The appeal site is in the Ely Conservation Area (CA) which includes the modern housing estate of which No 47 forms part, being imposing town houses. In considering the grant of planning permission special attention must be paid to the desirability of preserving or enhancing the character or appearance of the CA. The Council accepts that the CCTV cameras as installed are visually unobtrusive. I saw that they were positioned high on the rear elevation of No 47 and readily visible from within the rear garden and neighbouring gardens. However the cameras are relatively small in scale and I am satisfied on balance that they preserve the character and appearance of the CA.

12. The main issue is the effect of the two cameras on the rear elevation of the premises upon living conditions of occupiers of neighbouring occupiers with regard to any issues of overlooking and any sense of loss of privacy.
13. No 47 is in the middle of a row of three houses which have fairly small rear gardens. It has fence and wall boundaries about 1.8 to 2m high. The cameras were installed in 2015 due to harassment experienced by the appellant and the advice from police was to install CCTV equipment at the property, including her garage which is in a driveway across from the rear of No 45. It is unclear what if any advice they gave on the number, specification or position of the cameras.
14. The two cameras face away from each other and appeared to overlook the adjacent garden areas when I viewed them on site. No camera has been installed on the garage itself, however one of the cameras points across the garden of No 45, at the garage which it monitors, as well as the surrounding area that includes another garage and visitors' parking spaces.
15. The owner of No 49 has expressed concerns about personal privacy, reporting that one of the cameras scanned his rear garden when he was sitting out. The installer has stated that this would require physically adjusting the camera head. However the evidence still suggests that the cameras can focus on movement that includes movement within the rear of the adjacent properties. The gist of the appellant's reply to this is that the camera is not set up to overlook those gardens but it will turn that way if the neighbours themselves, by their movements make the camera point in their direction. That would engender a sense of loss of privacy that would be completely unacceptable.
16. A domestic camera that captures footage of other residents' property is subject to other legislation and it is not the role of the planning regime to police the use or abuse of such equipment. However two cameras close together at the rear of No 47 have led to a harmful overlooking effect on the adjacent gardens. The gardens might be masked from view by adjustments to the cameras but a condition to ensure particular privacy settings are used would be impractical to monitor or enforce against. Even if privacy settings are used the perception of overlooking would remain. The cameras provide day and night time coverage and even when not in use, they invoke a strongly felt sense of constant surveillance.
17. I recognise the need for security measures in light of the unfortunate events experienced by the appellant and her family, and I note that neighbouring properties can be overlooked from the host property to some extent. However these factors do not justify the level of detriment to living conditions occasioned by the development. I see no reason why a single camera may not effectively monitor the appellant's property but without the increased sense of overlooking and loss of privacy that results from the presence of a second.
18. I conclude that the development results in substantial harm to the living conditions of neighbouring occupiers contrary to Policy ENV2 of the East Cambridgeshire Local Plan 2015 which expects new development to avoid significantly detrimental effects on the residential amenity of nearby occupiers. This policy accords with the National Planning Policy Framework's aim to ensure good amenity standards for existing and future occupants of land or buildings.
19. On ground (a) I have taken into account the European Convention on Human Rights, in particular Article 1 of the First Protocol, and Article 8 which states

that everyone has a right to respect for his/her private and family life, his/her home and possessions. However, this must be weighed against the wider public interest. For the reasons given above, I have found that the development is harmful to the living conditions of neighbouring occupants. I am satisfied that this legitimate aim can only be adequately safeguarded by the refusal of the deemed planning application under the ground (a) appeal. On balance, I consider that such action would not have a disproportionate effect on the appellant or her family.

20. I conclude that for the reasons set out above the ground (a) appeal should fail and the deemed planning application should be refused.

Overall Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

22. 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 1990 Act as amended.

Grahame Kean

INSPECTOR