
Appeal Decisions

Site visit made on 22 February 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 13 March 2017

Appeal Ref: APP/T5720/C/16/3156587 & 3156588
44 Homefield Gardens, Mitcham CR4 3BY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Olga Sobolewska-Talaharla and Mr Sumanth Talaharla against an enforcement notice issued by the Council of the London Borough of Merton.
- The enforcement notice was issued on 3 August 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a covered structure in the front garden of the premises.
- The requirements of the notice are to:
 - i) Demolish the unauthorised structure; and
 - ii) Remove all the resultant debris and paraphernalia from the Premises as a result of compliance with step (i).
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

The appeals on ground (e)

1. The ground of appeal is that that copies of the enforcement notice were not served as required. In this respect, notwithstanding being listed on the notice as a recipient, it is claimed that Mr Sumanth Talaharla was not served with a copy of the notice as required. The Appellants say that he only found out about it from his wife who received her copy by standard post.
2. The Council says Mr Talaharla was served but offers nothing specific by way of confirmation.
3. Section 176(5) of the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
4. In this instance, there has been no suggestion that Mr Sumanth Talaharla has been prejudiced in any way by the failure to serve the notice on him as claimed. Indeed, it is clear that neither Mr nor Mrs Talaharla have been prejudiced as both have been able to submit appeals against it. Substantial prejudice has not been made out and I thus intend to disregard the failure to serve as I am empowered to do by s176(5). The appeals on ground (e) fail.

The appeals on ground (c)

5. The ground of appeal is that the matter alleged does not constitute a breach of planning control. Comments regarding the effect on the street scene or on neighbours are planning considerations and are not relevant to this ground of appeal since whether or not the structure amounts to development requiring planning permission is a matter of law.
6. In this respect the Appellants say that the existing structure in the front garden is there solely to support two passion flower plants and that it has no roof or walls and is not attached to the main house.
7. Whilst that might be the situation now, the Council's Expediency/Authorisation Report describes a structure comprising a wooden frame with clear plastic sides and roof, about 1.9m high, covering about 6 square metres, used to accommodate a motor cycle. A photograph is included in the report and, although it is not especially clear, it does show a structure with plastic sheeting and with more substance than that which currently exists. The Appellants have not commented that that description was in any way inaccurate.
8. The Appellants suggest that the Council were addressing a "temporary plant support" in place between June and August and removed before the enforcement notice was received.
9. Whatever title might be given to the structure as originally constructed in the front garden, I find as a matter of fact and degree that what was erected fell within the meaning of operational development as defined in s55 of the Act. It had a timber frame concreted into the ground, infilled sides and a roof. It is that which the Council sought to attack in the notice.
10. Whilst part of it might have been removed before the notice was received, that does not mean the alleged development did not take place, but rather that the requirements of the notice have, in part, been complied with. Planning permission is required for development falling within s55 of the Act and no permission has been granted for the operational development that was carried out whether expressly or by way of the Town and Country Planning (General Permitted Development) (England) Order 2015.
11. A breach of planning control has thus occurred and the appeals on ground (c) fail.

Decision

12. The appeals are dismissed and the enforcement notice is upheld.

B M Campbell

Inspector