

Appeal Decisions

Site visit made on 28 February 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 22 March 2017

Appeal 1 - Ref: APP/X5210/C/16/3156178

Appeal 2 - Ref: APP/X5210/C/16/3156181

Appeal 3 - Ref: APP/X5210/C/16/3156182

3 Burgess Hill, London, NW2 2BY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Council of the London Borough of Camden.
 - Appeal 1 is made by Mrs Anna Black; Appeal 2 is made by Mrs Camille Compton; and Appeal 3 is made by Mr B Compton.
 - The Council's reference is EN16/0160.
 - The notice was issued on 30 June 2016.
 - The breach of planning control as alleged in the notice is: *"Without planning permission: The unauthorised enlargement of the outbuilding located in the rear garden."*
 - The requirements of the notice are: *"1. Completely remove the extension to the side of the original outbuilding in the rear garden and make it comply with the dimensions and design of the outbuilding shown on drawing reference number 20-11 Rev.- dated December 2013 (appendix 1)."*
 - The period for compliance with the requirements is one month.
 - 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. No appeal was made on ground (a) and no fees were paid for the application for planning permission deemed to have been made under section 177(5) of the Act as amended. Accordingly, there is no deemed application to be considered.
-

Decisions

1. The appeals are dismissed.

Background

The appeal site

2. No. 3 Burgess Hill was constructed as a two-storey dwellinghouse, but it has been altered and enlarged by the conversion of the roof space and an excavation of the basement and is now used as flats.
 3. The basement excavation and alterations were carried out following a grant of planning permission (Ref. 2014/1923/P). It resulted in the conversion of three flats into five flats within the basement and new front and rear stairs. The approved scheme included, among other things, the provision of a cycle store in the rear garden.
 4. At the time of the application, the property had a timber outbuilding in the rear garden, which was used as a 'studio' by the occupant of the ground floor flat. The appeal development is an extension to this outbuilding to provide a cycle store.
-

Reasons for issuing the notice and grounds of appeal

5. Following the receipt of a complaint that the building had been enlarged without planning permission, the Council invited a planning application for the development. When no application was received, the Council decided that it was expedient to serve an enforcement notice. The reason for issuing the notice was that the altered outbuilding was an overly large and dominant feature within the rear garden and that it conflicted with design policies in development plan.
6. At the appeal stage a local resident objected to the development on grounds that included overdevelopment within the garden, unacceptable overlooking and loss of privacy of the garden of No. 5 Burgess Hill, and loss of trees.

General principles with appeals made on legal grounds

7. The appeals are made on legal grounds only; ground (c) and (e). There is no appeal on ground (a) and consequently, the planning merits of the development are not matters that I can consider.
8. With legal grounds of appeal the decision depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority.
9. The burden of proof regarding decisive matters of fact rests on the appellants. They have asserted firstly, that the notice was not properly served; and secondly, that the development is lawful and thus immune from enforcement action. They must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of those assertions.
10. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).
11. The appellants' case on both grounds of appeal is set out on the appeal form which was submitted by their agent. No further statement of case or supporting evidence has been received.

The appeal on ground (e)

12. An appeal on ground (e) is that copies of an enforcement notice were not served as required by section 172 of the 1990 Act.
13. The appellants' representations are set out in Section E of the appeal form. The writer states that: *"The building is owned by three people jointly. Anna Compton (sic. 'Black'), Camile (sic. Camille) Compton and Hilary Cohen who lives at [full address given]. The first two owners were served correctly but not Hilary Cohen. Notices were also served on the house - which was being refurbished and therefore unoccupied both to the owner (who did not live there) and the occupier (it was empty) and on a previous tenant who has no interest in the land nor does she live there a Mrs T Malinina."*
14. The Council refutes the appellants' assertion that the notice was not served properly. A Land Registry search undertaken before the notice was issued showed that *"Anna Victoria Black"* and *"Camille Lea Compton"* were the registered owners of the property. There was no Land Registry record of *"Hilary Cohen"* being an owner or a person having an interest in the land. A copy of the notice was served on the registered owners and on Mrs T Malinina, who at the time of service was listed on the Electoral Roll as an occupier of the property.

Reasons and conclusions on the ground (e) appeal

15. Section 172(2) of the 1990 Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and on any other person having

an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the Council's opinion, is materially affected. It is for the Council to decide who is materially affected, but it risks an appeal on ground (e) if it exercises its discretion wrongly.

16. Section 176(5) gives the Secretary of State or the Inspector power to disregard non-service on a person, provided that neither the appellant nor that person has been substantially prejudiced by the failure to serve him or her.
17. I do not discount the possibility that if Ms Cohen had some interest in the appeal property or the outbuilding at the time that the enforcement notice was issued, she might have made an appeal on a different basis from the appeals that have been made. However, there have been no representations from Hilary Cohen on these matters.
18. Although the Council was unaware of Ms Cohen's alleged ownership and interest in the land, the other appellants and their agent were aware of her and know her address. It is not unreasonable to assume that they might have brought the enforcement notice to her attention. But even if they did not, and Ms Cohen remains unaware of the enforcement notice, the appellants have presented no clear case, and have adduced no supporting evidence, to demonstrate firstly, that Hilary Cohen *is* an owner of the appeal property or a person with an interest in the land; and secondly, that either she, or any other person, has been substantially prejudiced by non-service of the notice.
19. In the absence of an evidentially-based reasoned argument from them or from Ms Cohen, their claim is simply an assertion. On the facts and circumstances before me, I find that the burden of proof placed on the appellants has not been discharged and accordingly, the appeals on ground (e) fail.

The appeal on ground (c)

20. An appeal on ground (c) is that the matters stated in the notice which give rise to the alleged breach of planning control, if they occurred, did not constitute a breach of planning control, either because (1) no 'development' was involved, or (2) planning permission had already been granted, or (3) the matters constituted 'permitted development'.
21. The appellants' representations are set out in Sections E and G of the appeal form. In Section E, under ground (c), the writer contends that: "*Outbuildings are considered Permitted Development. This is a shed for storage of garden tools and bicycles, etc., and is not a habitable room. The eaves height is 2.1m high and the ridge height is 3m. The overall area of buildings in comparison to the land around the original house including this additional shed is less than 20%.*"
22. In Section G (which deals with the payment of fees for the deemed planning application), the writer states that: "*The construction of a garden shed does not require planning consent – it is Permitted Development as long as it is built within the guidelines and therefore requires no planning fee to be paid.*"

Reasons and conclusions on the ground (c) appeal

23. Dealing first with whether the extension to the outbuilding constitutes 'development', section 55(1) of the 1990 Act defines two limbs of development. The first is operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land. The second is making a material change of use.
24. The first limb comprises activities which result in some physical alteration to the land which has some degree of permanence. The second limb comprises activities which are carried out in, alongside or on the land, but do not interfere with the actual physical characteristics of it.

25. Section 336 interprets the meaning of a 'building' and section 55(1A), inserted by the Planning and Compensation Act 1991, defines 'building operations'. These include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder.
26. It is evident that development has taken place that falls within the meaning of a 'building'. The outbuilding meets the three primary factors that have been identified by the courts as being decisive in establishing whether a structure should be regarded as a building for the purposes of the Act. These are: (1) that it is of a size that required construction on site; (2) that it has permanence, rather than being transient or mobile; and (3) that it has a degree of physical attachment, rather than being simply deposited on the land.
27. Turning next to 'permitted development', rights to erect a building or enclosure within the curtilage of a dwellinghouse without seeking an express grant of planning permission are conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended [the GPDO], Schedule 2, Part 1, Class E.
28. Article 2 of the GPDO deals with interpretations of some of the terms used within the Order. It states that: "*dwellinghouse*", *except in Part 3 of Schedule 2 to this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building*". As the appeal property is used as flats, there are no permitted development rights for the appeal development.
29. I find that the matters stated in the notice constituted a breach of planning control as alleged. Development consisting of building operations was carried out for which planning permission was neither sought nor granted. Accordingly, the appeals on ground (c) fail.

Overall conclusions

30. I have taken account of my observations at the site and the surrounding area and all the matters raised in the written representations. For the reasons given above I conclude that the appeals should not succeed and I shall uphold the enforcement notice.

George Mapson

INSPECTOR