



Appeal Decision

Site visit made on 5 June 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 12 June 2017

Appeal Ref: APP/G5750/C/16/3163685

Land at 1A Carlyle Road, Manor Park, London E12 6BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Abdul Rafeeq against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 4 November 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of boundary treatments.
- The requirements of the notice are to: (1) Demolish the boundary treatments (as shown edged blue on the photographs attached at Appendix 1 [*to the enforcement notice*], at the location delineated with a blue line on the [*plan attached to the enforcement notice*]). (2) Remove from the site all debris arising from compliance with the above step.
- The period for compliance with these requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2) (c) of the Act. As the requisite fees have not been paid the deemed application does not fall to be considered.

Formal Decision

1. The enforcement notice is varied by adding the following words to the end of the first requirement in paragraph 5 of the notice: "; OR, reduce the height of the boundary treatments to no more than 2 m in height above ground level". Subject to this variation, the appeal is dismissed and the notice is upheld.

Procedural matter

2. The letter dated 15 November 2016 from the Appellant's solicitor to the Council says: "*Our clients only require one such hoarding and it is their intention therefore to remove that which is nearer to Carlyle Road*". Without expressing any view on whether the description as a "*hoarding*" is appropriate, my site visit revealed that the lower structure evident on the right hand side of the first photograph¹ at Appendix 1 to the notice had been removed before that date.

Ground (c)

3. Under this ground of appeal the Appellant needs to show that: "*...there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. The Guidance makes clear² that in an enforcement appeal the onus of proof in respect of matters of fact is on the Appellant.
4. It was agreed during the site inspection that the remaining components of the structure[s] that were existing at the time of my visit extended to around 6 metres [m] above ground level. This was an estimate and the true height

¹ The photograph on page 3 of 7 thereof.

² See for example paragraph: 053, Reference ID: 16-053-20140306.

might be slightly more or less, but for the reason set out below it is not crucial to determine the precise height. No case has been made that the structure[s] are not development within the scope of section 55 of the Act, but it is relevant to note the term "*building operations*" is expressly said to include rebuilding.

5. On the limited information before me the precise date on which work on the structure[s] was commenced is unclear³. The Town and Country Planning (General Permitted Development) (England) (Order) 2015 [the 2015 Order] came into force on 15 April 2015. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations began. The Council has cited the 2015 Order in its statement and the Appellant has not disputed that it is the relevant Statutory Instrument, but even if the works commenced prior to 15 April 2015, the relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995 [the GPDO] are not materially different in respect of boundary treatments.
6. Article 3 and Class A of Part 2 to Schedule 2 of the 2015 Order permits: "*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*". However A.1 says development is not permitted by Class A if: "*(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*". These provisions were clearly set out in the Council's statement and, at final comments stage, the Appellant has not explained why this Class is not relevant or how it is met by the structure[s] that have been erected.
7. I conclude that, since the structure[s] significantly exceed the height limitation of 2 m and in the absence of any other sound reason why the structure[s] do not comprise a breach of planning control, the ground (c) must fail.

Other matters

8. The grounds of appeal say there was: "*...always sheeting/cladding and a very large metal shutter to the rear of 1 Carlyle Road*", but no appeal on ground (d) has been lodged. In any event it is admitted that: "*This cladding was removed at a point in time...*" and I have already noted rebuilding is within the definition of development. The photograph of the old shutter that has been submitted reveals it only covered part of the rear wall of No 1 and was much lower in absolute height than what now exists. The pipes that are evident in that image are behind the structure that has been erected, which means it is in a different position relative to the rear wall of that property. On this basis I conclude that what has been erected is a materially different structure from the old shutter.
9. The photograph of the old advertising, which appears to say "*MOT WHILE YOU WAIT*", appears to have been painted on the flank wall of No 1. There is no evidence of the "*numerous*" hoardings that are referred to in the grounds of appeal. Even if there might have been a similar structure in existence at a previous date to that which now exists, there being no clear evidence before me to substantiate the claim, my earlier logic applies. In other words its removal and replacement would require a fresh grant of planning permission.
10. I appreciate the sheeting/cladding has been erected to protect neighbouring buildings from car fumes and washing of customer vehicles, that the materials

³ The strong inference from the correspondence is that work commenced in October 2016, but it is conceivable that initial preparation, such as groundworks, was undertaken prior to this date and so I shall cover the possibility.

used in its construction are similar to those evident on the garage and that the structure at the rear of No 1 cannot be seen from the public highway. However these points relate to the planning merits of the development that has been undertaken. In the absence of the deemed application fee[s] having been paid the merits of the development do not fall to be determined in this appeal and so I would exceed the terms of my jurisdiction if I were to express a view.

11. There has been reference to a clause on the title deeds, but that is a civil matter that is not relevant to my determination of the development. There would appear to be a number of reasons that underpin the dispute between the Appellant and his neighbour but, whilst I have reviewed the extensive correspondence that has been submitted, this has no relevance to this appeal.
12. Notwithstanding all of the above and the absence of a ground (f) appeal, the acknowledged relevance of the planning permission granted by the 2015 Order leads me to conclude that the requirement of the notice is excessive. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve, wholly or partly, any of the purposes set out in Section 173(4). These include remedying the breach to require the land to be restored to its condition before the breach took place or by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land. The first requirement appears to reflect the former, but it is appropriate to vary the notice to allow the Appellant the option to reduce the boundary treatment so that it could benefit from the planning permission.
13. If one looks at it the other way, if the notice was upheld without a variation to this effect, the Appellant would have to remove the entire structure first before he would be able to consider exercising the permitted development right. That might incur additional costs, which could be avoided by the variation that I propose. I can be satisfied that this would cause no injustice as it will provide an option for the Appellant, which might go some way towards achieving his objective, and the Council has referred to the deemed planning permission in its statement. For the avoidance of doubt the power to make such a variation in section 176 of the Act only requires the Secretary of State to be satisfied that the variation will not cause injustice to the Appellant or the Local Planning Authority. So whilst I acknowledge it might have implications for the ground floor windows in the rear of No 1, since the planning permission is granted by a Statutory Instrument it represents a realistic option for the Appellant. The varied requirement does no more than allow for that option to be exercised.

Conclusion

14. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice, but subject to the identified variation.

Pete Drew

INSPECTOR