
Appeal Decisions

Site visit made on 11 July 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 19 July 2017

Appeal Refs: APP/T5720/C/16/3157665 & 66

21 Merton Hall Gardens, Wimbledon Chase, London SW20 8SN

- 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 Mr Prashant Mansharamani & Ms Swati Patil against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice, numbered 16/E0213, was issued on 9 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of wooden bike store on the Land.
 - The requirements of the notice are to demolish the wooden bike store structure; and remove all the surplus material and debris from the land caused arising from compliance with the first step.
 - The period for compliance with the requirements is one calendar month.
 - The appeals are proceeding on the grounds set out in section 174(2)(c),(e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Preliminary matter

2. At the time of my visit there was no bike store at the front of the property. The appeals have not been withdrawn and I have determined them on the alleged breach of planning control at the time the notice was served.

The appeals on ground (e)

3. Ground (e) concerns whether the enforcement notice was properly served on everyone with an interest in No 21. The submissions made actually question the service of the notice as it was 'not served in anyone's interest'. That is not of itself a basis for a challenge to the notice under ground (e) and there is nothing to suggest that copies of the notice were not properly served.
4. S172(2) of the 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 opinion of the Local Planning Authority, is materially affected. Also, and in any event, Section. 176(5) of the amended

1990 Act means that I may disregard any failure to serve the notice provided that this would not substantially prejudice the person concerned.

5. In this case, the appellants have not been substantially prejudiced since the appeals were duly made within time, and accordingly I would, in any event, disregard the question of service. The appeals fail on ground (e).

The appeals on ground (c)

6. An appeal on this ground is that there has not been a breach of planning control and to that end the onus is upon the appellants. The appellants set out that the bike shed replaced an existing bike shed that had been in situ for many years and was falling apart. The size difference between the two is also minor; the existing shed being narrower by 1 foot and slightly taller by some 8 inches.
7. I have no evidence concerning the previous shed in terms of its size or appearance, save for the *Street View* image submitted by the appellants and, given there was no store in place at the time of my visit, nothing to compare in any event. There is no dispute that a wooden bike store was installed and without any corroborative evidence to substantiate the appellants' view that it replaced something like for like; the appeals on ground (c) must fail.

The appeals on ground (f)

8. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the removal of the cycle store and all resultant materials from the land. That covers everything in the alleged breach of planning control.
9. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). Therefore any lesser requirements, such as painting the shed to blend with the property would simply not meet the requirements of the notice and would not remedy the breach of planning control. I am also unable to consider any planning merits, such as the impact of the store upon the character and appearance of the locality or others stores in the locality or the condition of the previous store and implications for health and safety.
10. These matters should only be dealt with in the context of a ground (a) appeal (the deemed planning application) for which no fee has been paid. Such matters cannot therefore form part of my deliberations under this ground of appeal. Thus the appeals on ground (f) fail.

Conclusion

11. For the reasons given above I consider that the appeals should not succeed.

Richard Perrins

Inspector