
Appeal Decision

Site visit made on 5 July 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2018

Appeal Ref: APP/T5150/C/17/3181677

93 Kenwyn Drive, London NW2 7NX

- 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 Mr Dilip Thakor against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 17 July 2017 under ref. E/16/0664.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of an extension and a covered canopy to the existing single storey rear extension of the premises."*
 - The requirements of the notice are to:
*"STEP 1 Demolish the unauthorised extension and covered canopy erected to the existing single storey rear extension of the premises.
STEP 2 Remove all associated items, debris and materials arising from this demolition from the premises, so that the premises is re-instated (sic) to its former condition prior to the unauthorised development took place."*
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected at Schedule 4, Step 2 by altering the word "re-instated" to the word "reinstated". Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. There is a misspelling in the second step or requirement of the enforcement notice. My decision above provides for a correction accordingly.
3. Whilst the appellant's agent, in an email dated 28 November 2017, understood that an additional ground – ground (a), that planning permission ought to be granted for what is alleged in the enforcement notice – should be added to the appeal, I note that this was not formally done with supporting arguments in response to subsequent correspondence from the Planning Inspectorate. In any event, I am afraid that the fee for the deemed planning application which accompanies ground (a) was not received by the Council within the specified period. As advised by letter dated 27 February 2018, the appeal continues on grounds (e) and (g). The planning merits of the development cannot therefore be considered in this appeal decision.
4. There is also an appeal against a refusal to grant a certificate of lawfulness

for proposed development at 93 Kenwyn Drive consisting of the “*Partial relocation of existing structure to trim back to 6M from original rear wall*”. That appeal (ref. APP/T5150/X/17/3181673) is the subject of a separate decision.

The appeal on ground (e)

5. Ground (e) arises where an appellant wishes to argue that copies of the enforcement notice were not served as required by section 172 of the 1990 Act as amended.
6. The key issue is whether the notice was served properly on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. If it was not served properly, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
7. Section 176(5) of the 1990 Act as amended gives the Secretary of State or the appointed Inspector power to disregard any failure to serve the notice on anyone as required, if neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve him or her.
8. The Council explains that the enforcement notice was served on everyone with an interest in the land at 93 Kenwyn Drive using records held by HM Land Registry. The case of *London Borough of Newham v Miah* [2016] EWHC 1043 (Admin) is authority for the view that the use of HM Land Registry records is a proper approach for a local planning authority to follow, especially if it has not been given other names and addresses. The statutory framework points to the knowledge of the local planning authority as being relevant for the service of an enforcement notice.
9. The registered proprietors on the HM Land Registry records are the appellant and his brother. However, the appellant indicated that at the time of the service of the enforcement notice, the appellant’s brother had died and the appellant had got married so that he and his wife are the legal owners of the property. The appellant said that the envelope containing the enforcement notice was opened by mistake; it should have only been opened in the presence of his brother’s next of kin because it was addressed to both the appellant and his brother.
10. From the information provided by the Council, it seems to me that copies of the enforcement notice were served correctly in accordance with section 172 of the 1990 Act as amended. Whether or how the envelope should have been opened is a private matter for the family but the fact is it was opened. There is no evidence that the deceased brother’s next of kin did not become aware of the enforcement notice. Moreover, the appellant (now the legal owner of the appeal property with his wife) was able to lodge an appeal against the notice and to make written representations well before the date the notice was first due to take effect. So, even if there had been a failure of service in accordance with section 172, I would have been satisfied that this had not caused substantial prejudice to him and would have exercised my powers to disregard it. In the light of all this, the appeal on ground (e) fails.

The appeal on ground (g)

11. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. Three months have been given. An alternative period has not been specifically stated by the appellant.
12. The physical works required by the notice are relatively straightforward and should not take very long to complete. There is no clear evidence before me to show why it may be difficult to find a suitable contractor. It is desirable that the breach of planning control should cease without unnecessary delay in order to address the harm that arises from it. On the evidence available to me, I consider that a period of three months provides sufficient time to comply with the actual physical requirements of the notice.
13. The main thrust of the appellant's case is more to do with the timing of the notice itself. He indicates that it should not have been served while the appeal decision on certificate application no. 16/5313 was still outstanding. However, this shows a misunderstanding of the purpose of a ground (g) appeal and the Council was under no obligation to do as the appellant would have preferred.
14. Given the ongoing medical conditions referred to in the appellant's written representations, to which I have had regard, it is also suggested that time should be given for the appellant to consider a workable solution that would address those medical needs and the planning concerns of the Council. I am satisfied that the three-month compliance period in the notice also provides ample opportunity for such discussions to take place. Moreover or in the event of any unforeseen circumstances arising, it would be open to the Council, at its own discretion, to extend the period for compliance with the notice under the provisions of section 173A (1) (b) of the 1990 Act as amended. The Council is clearly aware of this legislation.
15. In all and having had regard to all the written representations, I am satisfied that the period of compliance of three months stated in the notice is a proportionate response to the breach of planning control that has occurred. It is not unreasonably short. In the light of all this, the appeal on ground (g) fails.

Andrew Dale

INSPECTOR