



Appeal Decision

Site visit made on 29 August 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2019

Appeal Ref: APP/P5870/C/18/3207606

7 Old Barn Close, Cheam SM2 7BH

- 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 R Murphy against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice, numbered EC18/0004, was issued on 28 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission the alteration and increase in height to existing boundary wall on the Land fronting Old Barn Close by the addition of a fence which is over 1 metre in height as measured from ground level and on land adjacent to a highway used by vehicular traffic in the location shown as a green line on the attached plan.
 - The requirements of the notice are to either:
 - a. Remove the fence panels from the dwarf wall; or
 - b. Reduce the height of the fence panels so that the combined height of the dwarf wall and fence does not exceed one metre or less above the adjacent ground level;and
Remove the materials arising from compliance with 5(a) or (b) above from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. Comments regarding the acceptability or otherwise of the fence appear in the Council's appeal statement, in documents submitted by the Appellant, and in representations received directly from neighbours. Since there is no appeal on ground (a) that planning permission should be granted, I am unable to take such arguments into account. Discussion of the planning merits have no relevance to the grounds of appeal brought here which are: ground (e) that copies of the enforcement notice were not served as required; and ground (d) that at the date when the notice was issued no enforcement action could be taken.

The appeal on ground (e)

3. Section 172(2) of the Act says a copy of the enforcement notice shall be served 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. The notice was served on

Mr Richard Murphy and Ms Angela Brown. The Appellant says there is no Angela Brown residing at the appeal property.

4. The Council has explained that it undertook a land registry search wherein the 2003 entry identifies the owners as Angela Brown and Richard Murphy of 7 Old Barn Close. I note from a copy of a Council Tax bill for the property for the period April 2018 to March 2019 that it is addressed to Mrs Angela Murphy and Mr Richard Murphy. Given that there has been no change made to the land registry it seems highly likely that Angela Brown and Angela Murphy are one and the same person and if that was the case it seems to me that Mrs Murphy would have opened any mail addressed to her by her former surname so that she would have received a copy of the notice.
5. But even if that assumption is incorrect and Angela Brown and Angela Murphy are not the same person, Mrs Murphy's husband, Mr Richard Murphy received a copy of the notice and given that the couple are residing in the same property, it is most unlikely that Mrs Angela Murphy would not have been made aware of the service of the notice by her husband.
6. Section 176(5) of the Act states that where 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. In this case all the Appellant says under ground (e) is that there is no Angela Brown residing at the address. He does not say that someone required to be served has not been served. The copy of the Council Tax bill, however, makes clear that Mrs Angela Brown should have been served.
7. For the reasons given above, I consider that Mrs Angela Murphy would have been aware of the content of the enforcement notice at the time it was served. It has not been shown that she or her husband have been substantially prejudiced by the failure to serve her. Indeed, no such argument has been brought by the Appellant and in legal grounds of appeal such as this the onus is on the appellant to make out his case. Thus, I shall disregard non-service of the notice on Mrs Angela Murphy as I am empowered to do by section 176(5) of the Act. The appeal on ground (e) fails.

The appeal on ground (d)

8. Section 171B(1) of the Act states that where operational development is involved, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The erection of a fence is operational development and to succeed on ground (d), therefore, it would be necessary to show that the erection of the existing fence was substantially complete by 28 June 2014.
9. The Appellant seems to suggest that there was a pre-existing fence which was in a state of disrepair and so a new fence was installed. Even if that were so, it is the erection of the new fence which comprises the operation which amounts to development requiring planning permission. As I understand it, the new fence was erected in 2016 and, that being the case, it was not substantially complete four years before the issue of the enforcement notice, that is by 28 June 2014. For that reason, the appeal on ground (d) is bound to fail.

10. For the avoidance of doubt I would say that for an existing fence which fronts a highway and is in excess of one metre in height, the Town and Country Planning (General Permitted Development) (England) Order 2015 permits its maintenance, improvement or alteration provided it does not exceed its former height. That does not, however, extend to the erection or construction of a new fence to replace the old and so does not apply here where the Appellant says a new fence was installed.
11. In addition to the above, there is, in any event, no clear evidence that there was a pre-existing fence. I note that some neighbours have said that to the best of their knowledge the fence has been in situ for four years or more. However, these are not sworn statements and are belied by the photographic evidence from street view and from a near neighbour which includes one taken within the four year period on 8 August 2015 with no fence in place. The 2012 photograph submitted by the Appellant, said to depict the pre-existing fence, in fact appears to show the fence on the opposite side of the road protruding above the dwarf front boundary as has been pointed out by the Council and a neighbour.
12. On the evidence before me and on the balance of probability, I find that there was no pre-existing fence. However, even if there had been, ground (d) would not have succeeded since, for the reasons given above, it is the existing new fence that would have needed to have been substantially complete four years before the issue of the notice and no evidence has been presented to show that it was.
13. For the reasons given above I consider that the appeal should not succeed.

B M Campbell

Inspector