



Appeal Decision

Site visit made on 28 August 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2019

Appeal Ref: APP/H5390/C/18/3213982

Loft Flat 250 Lillie Road, London SW6 7PX

- 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 Peter Gawith against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 7 September 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the removal of Juliette railing from rear elevation at first floor level and installation of metal railings enclosing the flat roof to facilitate the use of the flat roof as a terrace.
 - The requirement of the notice is:
 - a) Cease the use of the flat roof as a terrace, remove from the land the metal railings enclosing the flat roof and reinstate the Juliette railing flush to the rear elevation of the back addition in accordance with approved planning permission reference 2015/03961/FUL.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is quashed.

Preliminary Matter

2. The Juliette railing had been reinstated by the time of my site visit. I need however to consider the appeal in relation to what existed when the notice was issued.

The Enforcement Notice

3. Notwithstanding what grounds of appeal have been advanced, I have a duty to ensure that the notice is in order. If I consider that the notice is defective, I have broad powers under the provisions of S176(1)(a) to make corrections. I can only do so however where I am satisfied that this will not cause injustice to either the appellant or the Council. If the notice cannot be corrected, I must quash the notice. An enforcement notice is a legal document with serious potential consequences upon current and future owners of the property.

The site address

4. The building at 250 Lillie Road is within a traditional terrace that has been subdivided into 2 residential units. The ground and first-floor form a single unit

known as the 'Garden Flat'. Above that and accessed from the same main front door and hallway, is the 'Loft Flat'.

5. When I arrived at the site and met the appellant and an officer from the Council, it became apparent that the address of the appeal site and as set out on the notice is incorrect. The appellant explained and the Council's officer agreed that rather than referring to the 'Loft Flat', the address on the notice should be the 'Garden Flat', the appellant's property.
6. Furthermore, the plan that accompanies the notice is incorrect. It shows a red-line around a site elsewhere in the Council's area. The Council recognised this error and on 10 September, 3 days after the notice had been issued, a letter was issued addressed to the same people who had been served with copies of the notice, pointing out the error along with a revised plan. This drew attention to the need to read the notice with the revised site plan and to "please disregard the earlier site plan".
7. The 10 September letter does not formally state that it corrects the defect with the enforcement notice and it is not clear from a strict reading of s173A of the Act, that the Council can correct such an error other than by withdrawing and re-issuing a corrected notice. I have not taken the letter as being a formal revision to the enforcement notice. The revised site plan does however correctly identify 250 Lillie Road.
8. The incorrect flat has been referred to but it is clear that the allegation relates to the rear elevation at first floor level at No 250 Lillie Road. All occupants and owners of both flats have been served with copies of the notice and could have made representations about it if they were concerned about these or other matters. The appellant has clearly understood that it is his property to which the notice relates. Taken on its own, I am satisfied that I could correct the errors with the address and also delete the original plan, substituting it for the revised site plan that accompanied the 10 September letter, without causing injustice.

The allegation and requirements

9. Attention is drawn within the Council's officer report to planning permission ref 2015/03961/FUL that was given on 13 October 2015 for:

"the erection of a single storey rear extension to the side and rear of the existing back addition; replacement of existing window in rear elevation of back addition at first floor level with French doors and Juliet balcony".
10. Condition No 6 of that permission states:

"The Juliet balcony to the front of the French doors at first floor level hereby approved shall be fixed flush to the rear elevation of the existing back addition and the roof of the single storey extension at ground floor level must not be converted into or be used as a terrace or other form of open amenity space. No alteration shall be made to the roof slope, no railings or other means of enclosure shall be erected on the roof and no alterations to the rear elevation to facilities access onto this roof".
11. The notice states that the breach of planning control alleged falls within paragraph (a) of s171A(1) of the Act, which is "the carrying out development without the required planning permission". This suggests that the Council

consider that it is appropriate to consider the breach as either unauthorised operational development or as a material change in use.

12. A confusion arises however within the reasons for issuing the notice. The Council has at paragraph 3(a), referred to the alleged breach of control having occurred within the last 10 years. This relates to the time limits for taking enforcement action set out in s171B of the Act. This reference therefore indicates that the Council consider that the breach is either a material change of use of the property or alternatively, a breach of a planning condition.
13. The report that resulted in the issuing of the notice does not explicitly analyse why the works that have taken place are, allegedly a breach of planning control. However, within the paragraph entitled "Enforcement Investigation" condition 6 of planning permission 2015/03961/FUL is set out fully. There is no suggestion that the works were operational development or a material change of use. It seems therefore that the Council have considered a breach of planning condition 6 has occurred. If so, the notice should have referred to paragraph (b) of s171A(1) in the first paragraph which would more appropriately be "failing to comply with any condition or limitation subject to which planning permission has been granted".
14. In turn, the allegation in paragraph 2 of the notice should explicitly then refer to the breach of a planning condition, specifying which condition and the planning permission that has allegedly been breached. It is crucial for the terms of the allegation to be clear and correct because that also frames the terms of the appeal on ground (a), that:

"in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged".

Conclusion

15. As explained above, I have broad powers to correct and vary the terms of an enforcement notice but this cannot be undertaken where it would cause injustice. In my view, the enforcement notice is riddled with errors. Whilst the concerns with the address could be corrected without causing injustice, together with the other errors this means that the notice is not sufficiently clear or precise. It would be unfair on the appellant to correct the notice making it a very different document than had been served upon him. Doing so would potentially lead to additional matters that may need to be raised. It is also possible that I have mis-understood the Council's intentions in trying interpret the notice.
16. For the reasons given above I conclude that the enforcement notice is not sufficiently clear or precise. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under grounds (a), (b) and (f) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

A Harwood

INSPECTOR