The Planning Inspectorate

Appeal Decisions

Site visit made on 17 December 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Appeal A Ref: APP/G5750/C/19/3223720
Land at 40 Tudor Road, East Ham, London E6 1DR

- 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 Abdur Rab against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 1 February 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of a boundary treatment comprising a wall, lights, gate and railings.
- The requirements of the notice are: 1. Demolish the boundary treatment comprising a wall, lights, gate and railings; 2. On completion of the above step, remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Appeal B Ref: APP/G5750/C/19/3223754
Land at 40 Tudor Road, East Ham, London E6 1DR

- 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 Abdur Rab against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 1 February 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of a porch.
- The requirements of the notice are: 1. Demolish the porch; 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. In Appeal B, the appellant's argument on ground (b) is in part that planning permission was not required. However, this is more appropriate to ground (c)- that there has been no breach of planning control. Therefore, after seeking comments from both main parties, I have dealt with Appeal B as if it had also been made on ground (c).

2. As there are no ground (a) appeals, the appellant's comments on the planning merits of the matters alleged in the enforcement notices cannot be considered.

Appeal A

Ground (b) appeal

3. The ground of appeal is that the matter alleged in the notice has not, in fact, occurred. The onus of proof in this regard rests with the appellant, the relevant test of the evidence being on the balance of probability.

4. The appeal site contains a mid-terrace dwelling. A Council photograph showed that in July 2015, at the front of the dwelling the boundary treatment with the street and with neighbouring properties at 38 and 42 Tudor Road (Nos 38 and 42) consisted of painted brick walls just over a metre in height.

5. During my site visit, I observed that the boundary treatment with the street and with Nos 38 and 42 now consists of walls covered with grey tiles, topped with black metal railings. Adjacent to the street there are three coach-style electric lights on raised pillars, with a pedestrian entrance at one end containing a black metal railed gate. The highest part of the boundary treatment is around two metres above ground level.

6. There was no dispute between the main parties that works have been undertaken to the boundary treatment. However, according to the appellant the works simply involved fixing tiles on top of the pre-existing walls and installing railings.

7. Aside from the raised pillars, the walls forming part of the boundary treatment are similar in height to the pre-existing boundary treatment. The walls are of a slightly greater thickness compared with the adjacent walls at Nos 38 and 42. This greater thickness corresponds with the thickness of the tile covering. The walls at the adjacent properties are largely unaltered since 2015 in terms of their height and materials. On the boundary with No 38, it is apparent that the tiles cover a pre-existing wall. Given the above factors, to my mind it is more likely than not that the works undertaken have involved enlarging the pre-existing walls by installing railings, raised pillars and lights, covering the walls with tiles and inserting a gate, rather than erection of a new boundary treatment.

8. Therefore, as a matter of fact and degree and on the balance of probability, based on the available evidence the works undertaken by the appellant did not amount to the erection of a new boundary treatment and the allegation in the notice has not occurred.

9. Accordingly, I shall correct the allegation in the notice to accurately reflect the works that have taken place. It is also necessary to correct the notice

requirements, to reflect the corrected allegation. In making these corrections, I am satisfied that no injustice would be caused.

10. For the above reasons, the ground (b) appeal succeeds to this limited extent.

Ground (f) appeal

11. The ground of appeal is that the requirements of the notice are excessive for their purpose.

12. The appellant made no definitive case on ground (f). According to the notice, the purpose is to remedy the breach of planning control by restoring the site to its condition before the breach took place. By correcting the notice in consequence of the outcome of the ground (b) appeal to require restoration of the boundary treatment to its pre-existing condition, that purpose would be achieved.

13. Therefore, the requirements of the notice as corrected are not excessive for their purpose and the ground (f) appeal fails.

Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Appeal B

Ground (b) appeal

15. The matters raised by the appellant are not attributable to this ground of appeal. A porch has been erected on the dwelling's front elevation. As the matter alleged in the notice has in fact occurred, the ground (b) appeal fails.

Ground (c) appeal

16. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. Again, the onus of proof rests with the appellant, the relevant test of the evidence being on the balance of probability.

17. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2 Part 1 Class D, permits the erection of a porch subject to certain limitations, including at paragraphs D.1 (b) to (d) that it does not have an external ground area of more than 3 m^2, it does not exceed 3 m in height and that no part is within 2 m of a highway.

18. According to the Council, the porch has an overall height of around 3.6 metres. I have been given no reason to disagree with that assessment. The porch did not exceed the other limitations in Class D. However, by exceeding the height limitation at paragraph D.1 (c), the porch is not permitted by Class D and express planning permission should have been obtained prior to its erection.

19. The other matters raised by the appellant are not attributable to ground (c). As the porch is in breach of planning control, the ground (c) appeal also fails.

Ground (f) appeal

20. According to the notice, the purpose of requiring demolition of the porch is to remedy the breach of planning control by restoring the site to its condition

before the breach took place. However, the Act also provides for remedying a breach by making development comply with the terms, including the conditions and limitations, of any planning permission granted in respect of the site. This includes planning permission granted by the GPDO.

21. It is entirely possible that if the porch were to be demolished, the appellant would simply re-use the recovered materials to erect a replacement porch within the limits permitted by Class D. As the external ground area of the porch does not exceed 3 m^2 and it is more than 2 m from the street, any replacement porch is likely to have a similar footprint and location. To satisfy the height limitation at paragraph D.1 (c), a replacement porch would only have to be built slightly lower than the existing structure.

22. Consequently, the availability of permitted development rights for erecting a replacement porch represents a realistic fallback position and is an obvious alternative to the notice requirements. Also, I am mindful that the enforcement regime is meant to be remedial. Altering the porch to accord with the height limitation in paragraph D.1 (c) of Class D would overcome the planning difficulties at less cost and disruption than complete demolition. Therefore, whilst the whole porch has been erected unlawfully, requiring its demolition is unlikely to serve a useful purpose.

23. After seeking the views of both main parties, I am satisfied that the notice requirements could be varied with the necessary degree of precision to make the porch accord with Class D as an alternative to demolition and that there would be no injustice caused. Moreover, I am content that the porch is physically capable of being altered so that its height does not exceed the limitation in paragraph D.1 (c).

24. Therefore, the ground (f) appeal succeeds to this limited extent.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice with variation.

Formal Decisions

26. Appeal A- It is directed that the enforcement notice be corrected by:

    - Deleting the allegation in paragraph 3 and substituting it with the following allegation: "Without planning permission, the enlargement of a boundary treatment incorporating railings, raised pillars, tile covering, lights and a gate", and;

    - Deleting step 1 in paragraph 5 and inserting the following step 1: "Restore the land to its condition before the breach took place by demolishing the enlargement of the boundary treatment comprising the railings, raised pillars, tile covering, lights and gate in the location delineated in blue on the plan attached to the enforcement notice".

    Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

27. Appeal B-It is directed that the enforcement notice be varied by inserting the following step in paragraph 5 after step 1: "OR 2. Reduce the height of the porch so that no part exceeds more than three metres above ground level", by

substituting the existing number "2" in paragraph 5 with the number "3" and in that paragraph between "step 1" and "above" insert "or step 2".

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR