
Appeal Decisions

Site visit made on 16 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 10 January 2020

Appeal A: APP/U5360/C/18/3216385

Land at 75-81 Amhurst Park, Hackney, London N16 5DL

- 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 J Wider against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 17 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the alteration of an outbuilding to the rear of the property and erection of a part single, part double, part triple storey rear extension.
 - The requirements of the notice are:
 - Demolish the double, part triple and part four storey rear extension and make good the rear elevation to its appearance before the unauthorised development was carried out;
 - Demolish the outbuilding to the rear of the property in its entirety;
 - Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 8 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in sections 174(2) (e), (f) and (g) 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.
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Appeal B: APP/U5360/C/18/3216090

Land at 75-81 Amhurst Park, Hackney, London N16 5DL

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The Notice

1. The Council, in its representations, has acknowledged that the stated requirements of the notice do not match the alleged breach. To accord, the first requirement of the notice should instead read in part "Demolish the part single, part double, part triple storey rear extension..." From my site visit I can confirm that this is the correct description, and I am correcting the notice, accordingly.

Formal Decision

2. It is directed that the enforcement notice be corrected by the deletion of the wording in the first requirement "Demolish the part double, part triple and part four storey rear extension..." and its substitution with the wording "Demolish the part single, part double, part triple storey rear extension..." The enforcement notice is also varied by the deletion of "8 months after this notice takes effect." and the substitution of "9 months after the date this notice takes effect" as the period for compliance. Subject to this correction and variation the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. In Appeal B no ground (a) appeal was made. In Appeal A, although the appeal form shows that a ground (a) appeal was being lodged, the prescribed fees were not paid within the specified period. This appeal has, therefore, effectively lapsed and the application for planning permission deemed to have been made no longer falls to be determined. In the absence of such I am unable to assess the planning merits and/or impacts of the development carried out. Accordingly, the appellant's representations regarding the Council's development plan and the National Planning Policy Framework can hold no relevance in my decision.
4. The appellant on Appeal B has requested that account be taken of the fact that in 2014 the Council issued and subsequently withdrew an enforcement notice relating to development undertaken at the appeal premises, and that part of the development the subject of the current enforcement notice "has existed for more than four years, and that the new action is time barred in relation to Nos 75 and 77..." Although no such appeal in this regard was openly lodged it would suggest that a ground (d) appeal is being made, whereby it is being claimed that at the date the notice was issued no enforcement action could be taken in respect of any breach of control which may be constituted by those matters. The onus of proof that the alleged breach of planning control is immune from enforcement action is on the appellant, and is taken on the balance of probabilities.
5. In such circumstances the appellant should provide precise and unambiguous evidence to support his case. In this regard the appellant on Appeal A states in paragraph 1.9 of his Statement that "the extensions relating to the appeal proposal were completed in mid-late 2017." This materially conflicts with the assertion by the Appeal B appellant that the Council is time barred. Besides, even if a distinction could be drawn between the sections of rear extension built across the terrace, rather than being looked upon as a single entity, with

substantial completion on different dates, the appellant has not provided clear evidence in this regard to support the assertion.

6. On this point I find that the Council's approach, having issued and later withdrawn an earlier enforcement notice has, in this instance, had no particular bearing on the case. Indeed, given the main parties' accounts of the site's planning history, I am satisfied that the development now enforced against has material differences from that which was previously the case. Accordingly, the Council was quite entitled to issue a new and updated notice relating to the development having been undertaken at that particular date.
7. Apart from this the only visual evidence provided are Google Street photographs dated June 2008 which show that since that time that the outbuilding nearest the road has been both physically altered and significantly widened. The Council's report dated 9 October 2018 which recommended that an enforcement notice be issued refers to this as a building which has been so altered as to be of a materially different form requiring planning permission.
8. At my site visit I noted that a second, smaller, detached outbuilding was in situ. Positioned eastwards along the appeal site's rear boundary, the appellant says that this building was erected in late 2017. Although the enforcement notice was not issued until October 2018 it does not appear from the Council's background papers that this building is referred to in the enforcement notice. The notice refers to "the alteration of an outbuilding" and the relevant requirement refers only to the outbuilding in the singular. As such, from the extent of the representations received, I have concluded that the said smaller outbuilding is untouched by the enforcement notice.
9. Finally, with regard to Appeal B, I note the appellant's representations regarding the factual error in the enforcement notice's requirement relating to the description of the rear extension at issue, and his consideration that, due to this, the notice should have been withdrawn. However, the alleged breach of control specified in the notice correctly describes the extension in situ. Despite the discrepancy in the wordings I consider that the appellant would have been left in little doubt as to the extent of the notice's requirements. Further, notwithstanding the ground (e) appeal, given the absence of a deemed planning application, and any alternative scheme that could have been considered under ground (f), a reduced analysis in planning terms of the breach occurring and any remedial measures becomes necessary. In this context, as the Council has acknowledged its error and the appellant has provided comments in this regard, I am satisfied that the Council's error has not caused injustice or prejudice to the appellants. As such, I am correcting the notice, as necessary.

Background

10. The appellant for Appeal A makes the point that the use of Nos 75-81 Amhurst Park as a school is lawful through the passage of time. Retrospective planning permission was applied for in July 2018 for extensions to the rear of part of the school at ground, first and second floor levels. The Council refused permission due to its consideration that the size, bulk, massing, design and materials would result in an incompatible and intrusive form of development.
11. The decision was not appealed, and the Council subsequently issued the enforcement notice.

The Appeal on ground (e):

12. S172(2) of the 1990 Act requires copies of an enforcement notice to be served (a) on the owner and on the occupier of the land to which it relates; and (b) 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.
13. An attachment to the enforcement notice lists the persons the notice was served upon, and this is confirmed by a s9 Witness Statement, dated 19 October 2018, produced under the Criminal Justice Act 1967. Compiled and signed by the Council official who personally served the enforcement notices on 18 October 2018, it shows that a total of 24 parties listed were each delivered, either via letterbox or registered post, an envelope containing a copy of the notice, a covering letter and an explanatory note. The service includes two separate letters addressed to 'The Headteacher, 75-81 Amhurst Park' and 'The Legal Owner, 75-81 Amhurst Park' which, it is claimed, were placed in the relevant letterbox. Photographs of these envelopes, showing No 81 in the background, have been provided by the Council.
14. The appellant makes the point that, prior to the enforcement notice being issued, the Council did not serve any Planning Contravention Notice (PCN) or requisitions for information in the form of a s330 Notice. Whilst effective enforcement action relies on accurate information about an alleged breach of planning control, in many instances comprehensive information about the planning history of the site and the alleged breach of planning control is readily available from a Council's own records, site visits and other publicly available information. A PCN is one option in a range of investigative powers for planning enforcement purposes, but it is a discretionary procedure and there is no legal obligation on the Council to employ this tool.
15. Nonetheless, in the event the appellant says that the notice was not properly served on everyone with an interest in the land, mentioning that it was not served on the tenant of the appeal site, namely the 'Bnois Jerusalem Girls School.' S176(5) affords me power to disregard non-service, provided that neither the appellant nor that person has been substantially prejudiced by the failure to serve him or her.
16. In this particular instance as the Headteacher of the School at 75-81 was clearly served it would be difficult to conclude that because the Bnois Jerusalem Girls School was not mentioned in name it had been substantially prejudiced by the notice's issue. Given that the envelope was addressed to the Headteacher at the premises, and that two of the twenty four parties served have subsequently made valid appeals against the notice, I am satisfied that the Council's method of service was comprehensive in the circumstances.
17. Along with the other parties served the School's administrators would have been left in no doubt as to the existence of the enforcement notice, its implications and the right of appeal in the circumstances. I find therefore that no undue prejudice has arisen.
18. Accordingly, I conclude that the Council discharged its obligations under s172(2) and the ground (e) appeal does not therefore succeed.

The Appeals on ground (f)

19. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. In this case it is clear from the requirements of the notice that its purpose is to remedy the breach by restoring the building to its condition prior to the breach. I find that the same is true of the outbuilding as, although the notice says that it has affected the character of the local area and adversely impacts on the amenity of neighbouring residential occupiers, the Council does not expound on this.
20. The appellants for both appeals indicate that the alleged harm can be alleviated through lesser steps than that required by the Council and mentions that the white cladding could be removed from the extension and the building could then be rendered. However, there is no properly articulated and detailed proposals before me for assessment that might satisfactorily remedy the breach. There is no extant planning permission, and no fallback scheme which the appellants could rely upon. Moreover, given the circumstances, it would seem politic for any remedial alternative scheme to be the subject of a formal submission to the Council whereupon a consultation exercise could be undertaken, and an objective assessment made. In the current absence of any obvious and detailed scheme, which applies also to the outbuilding, the appeals on ground (f) do not succeed.

The Appeals on ground (g)

21. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The enforcement notice, as corrected, requires the remedial works to be carried out within 8 months of the notice taking effect. However, the appellant has requested that this period be extended to 21 September 2020 to allow for a building contractor to be employed and the works undertaken during a period of time when no children would be on site.
22. Given that this is an established school, the fact that this appeal did not ultimately involve any deemed planning application, and the tenor of the appellant's representations, I consider it likely that negotiations will resume between the School and the Council as to a possible alternative scheme that might be acceptable in the circumstances. Accordingly, to allow for such a possibility, I consider that it would be reasonable in the circumstances to extend the compliance period to 9 months from the date the notice takes effect. Should further time prove necessary it would be open to the Council, under s173A(1)(b) of the 1990 Act as amended to vary the notice to extend the compliance period. Accordingly, the appeals on ground (g) succeed to that extent.

Overall Conclusion

23. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice, but with a correction and variation.

Timothy C King

INSPECTOR