The Planning Inspectorate

Appeal Decisions

Site visit made on 28 November 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal A Ref: APP/G5750/C/19/3225535
Appeal B Ref: APP/G5750/C/19/3225537
Appeal C Ref: APP/G5750/C/19/3225538
119 Harold Road, Upton Park, London E13 0SF

- 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 appeals are made by Mr Irfan Mohammed (Appeal A) Ms Samira Makardam (Appeal B) and Mr Ali Mohmed (Appeal C) against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 22 February 2019.
- The breach of planning control as alleged in the notice is: "Without planning permission, the erection of additions to a front boundary treatment comprising metal railings and a gate".
- The requirements of the notice are:
  1. Demolish the additions to the boundary treatment comprising metal railings and a gate (as shown edged in yellow on the photograph attached at Appendix 1)
  2. On completion of above step, remove all materials and debris from the site.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(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.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. There is no appeal before me on the ground set out in Section 174(2) (a) of the 1990 Act which is that planning permission should be granted for the matters stated in the notice. I am therefore unable to consider the planning merits of the railings and gate or take account of any other dwellings with railings in the vicinity. Moreover, while I note and regret the circumstances under which the appellants feel that it has been necessary to erect the railings and gate so as to protect themselves and their property, the grounds of appeal under which the appeal is proceeding means that I am very limited in the extent to which these personal reasons may be considered. I shall though come back to them under the ground (g) appeal.

3. Although the appellants have stated that the exact breach set out in the notice is not clear, in my view the notice clearly states what the breach of planning

control comprises, and the railings and the gate are shown in the photograph attached to the notice. Moreover, it is also clear what needs to be done in order to comply with the notice. Consequently, I consider that the notice is not flawed.

The appeal on ground (f)

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. With regard to ground (f), it is essential to understand the purpose of the notice. Under s173(4)(a) of the 1990 Act, one of those purposes is to remedy the breach of planning control by restoring the land to its condition before the breach took place. In the notice, the matters which constitute the breach of control are "…the addition of metal railings and a gate". The notice requires the railings and gate to be demolished and to remove any materials and debris following the demolition. The purpose of the notice is therefore clearly to remedy the breach of planning control by restoring the land back to its condition before the breach took place. As the steps require no more and no less, they are not excessive requirements. As such, the ground (f) appeal must fail.

The appeal under ground (g)

5. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The period stated in the notice is 6 months. The Council states that a 6 month period was suggested for compliance rather than the usual 3 month period due to the personal circumstances of the appellants' and their family.

6. The appellants have asked that the railings remain in place as long as the appellants own the appeal dwelling or until the youngest child of the family reaches 18 or alternatively if there are no incidents towards the family in the next six years. The appellants indicate that the railings and gates were installed for security rather than aesthetic reasons following harassment, threats of violence and windows smashed at the appeal dwelling.

7. The appellants have chosen not to proceed with an appeal under ground (a) and requested that planning permission be granted. Nevertheless, all of the suggestions made by the appellants would allow the railings and gate to remain in place for a largely unknown period of years. To extend the compliance period for the length of periods suggested by the appellant would effectively grant planning permission which is outside the scope of this appeal when the only grounds of appeal are grounds (f) and (g). Ground (g) relates specifically to whether the period allowed for compliance as in to remove the railings and gates is reasonable rather than whether it is reasonable to allow the development to remain without the benefit of planning permission.

8. However, the appellants wish to have discussions with the Council about alternative security measures and I do consider that the existing compliance period of 6 months would enable the appellants to have discussions with the Council, submit any relevant applications and also to secure compliance with the notice. The compliance period would also allow time to revisit other previous security options such as reinstalling a panic alarm and other features which may not require planning permission. I therefore consider that the 6

months compliance periods does not fall short of what is reasonable and the appeal on ground (g) therefore fails.

Conclusion

9. I therefore conclude that the appeal should not succeed and so the enforcement notice should be upheld.

E Griffin

INSPECTOR