
Appeal Decision

Site visit made on 17 February 2020

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/H5960/C/19/3230020
23 Montserrat Road, London SW15 2LD

- 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 M Abowitz against an enforcement notice issued by the Council of the London Borough of Wandsworth ('the notice').
- The notice, numbered 2018/0318/ENF, was issued on 3 April 2019.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the unauthorised installation of uPVC windows at the front elevation of the property.
- The requirements of the notice are: Remove the unauthorised uPVC windows at the front elevation and install timber sash windows to match in facsimile the previous timber sash windows with upper glazing bars.
Steps to be complied with: (1) Remove the unauthorised uPVC windows at the front elevation of the property; (2) Install timber sash windows to match in facsimile the previous timber sash windows with upper glazing bars at the front elevation of the property; and (3) Remove from the site all debris arising from compliance with steps (1) and (2).
- The period for compliance with the requirements is six (6) weeks after the date on which this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (e) 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.

Decision

1. It is directed that the enforcement notice is varied by:

the deletion of "within six (6) weeks after the date when this notice takes effect" and the substitution of "3 months from the date that the notice takes effect" as the time for compliance.

Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council of the London Borough of Wandsworth against Mr M Abowitz. This application is the subject of a separate Decision.

Ground (e) appeal

3. This ground of appeal is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected.
4. The onus is on the appellant, in this case a tenant at the property, to prove his case. All that has been submitted in support of the appeal on this ground is a single line that includes the assertion that the owner was not served with the notice.
5. For its part, the Council identified the owner of the property from the Official Copy of Register of Title obtained from the Land Registry ('the Title Document'). This showed the owner to be Starpeak Properties Limited, of 4-6 Windus Mews, Windus Road, London N16 6UP. The Council also says that it served a notice requiring the submission of details of those with an interest in the land. Case law¹ has determined that the use of a Title Document is an appropriate method for identifying the owner of land in the matter of serving notices. From the evidence before me, the Council identified those persons on whom a copy of the notice should be served.
6. Section 329 of the Act sets out the legal framework for the service of a notice. Amongst its terms, sub-section (1)(b) states this can be done "by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; and sub-section (1)(d) states "in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office".
7. The Council served copies of the notice on the owner in these two ways, both involving Royal Mail Recorded Delivery. The evidence shows that the copy sent to the Owner/Occupier at the appeal site was delivered after having been signed for.
8. Although the Title Document shows the ownership situation on the 21 January 2019 and the notice was served on the 10 April 2019, there is no evidence that the owner's address changed in the intervening period.
9. The evidence shows that a copy of the notice was sent to the company at its registered office. However, as there was no-one to sign for the letter, it was returned to the delivery office. It is normal for a card to be left at the property in these circumstances, informing the addressee what has happened and providing details of when and where the letter might be collected. I have no reason to doubt that this was the case here. As it was not collected, it was returned to the Council on 3 May 2019.
10. In these circumstances, I find that a copy of the notice was served on the owner, Starpeak Properties Limited, as required by section 172 of the Act and that the methodology for this was in accordance with section 329 of the Act.

¹ Oldham Metropolitan Borough Council v Tanna [2017]

Therefore, for the reasons given above, I conclude that the appeal on ground (e) should fail.

Ground (g) appeal

11. This ground of appeal states that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
12. The appellant claims that 6 weeks to comply with the terms of the notice is insufficient, given that the property is divided into flats and that 12 months is required to arrange for the work to be undertaken.
13. I am not persuaded that this length of time is required. However, given that the timber windows required by the notice would be likely to be bespoke, rather than mass-produced, they would not be likely to be available for installation within the Council's timeframe. The appellant refers to a period of 3 months for the 'ordering' of the windows. I have not been provided with evidence to support this contention and I find that this would be more likely to allow for their ordering and delivery. It would also provide sufficient time for access to the flats to be organised. For the above reasons, I agree that an extended period is justified.
14. On this basis, the appeal partially succeeds on ground (g) and I will vary the notice accordingly.

Conclusion

15. For the reasons given above, I conclude that the appeal should partially succeed on ground (g). I shall uphold the enforcement notice with a variation.
16. For the reasons give above, I conclude that a reasonable period for compliance would be 3 months and I have varied the notice accordingly, prior to upholding it. The appeal under (g) succeeds to that extent.

Roy Curnow

INSPECTOR