



Appeal Decisions

Site visit made on 17 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeals A and B Refs: APP/C5690/C/19/3233765 and 3233766 Land at 73 Bromley Road SE6 2UF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Omar Orjuela, and Appeal B is made by Ms Aideen Whelehan against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice, numbered ENF/19/00004, was issued on 14 June 2019.
- The breach of planning control as alleged in the notice is the installation of uPVC windows on the front, rear and side elevation of the premises at first and ground floor level.
- The requirements of the notice are:
 1. Remove all uPVC framed windows from the front, rear and side elevations of the property at ground level and first floor level and replace with timber-framed windows of the same design, detailing and appearance of the windows as per Photograph A attached to this report.
 2. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the property and its premises.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 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 have lapsed.

Summary decisions: The appeals succeed in part and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

Preliminary matters

1. The Council acknowledge that there is an error in the notes that accompanied the notice, where the effective date refers to 19 July 2019, rather than 24 July 2019 as shown on the notice. This error has no effect on the validity of the notice.

Reasons

Ground (e)

2. An appeal on this ground relates to whether copies of the notice were served, as required by s172. Most of the evidence provided by the appellants under their ground (e) appeals relate more to, whether the notice is defective as a result of the omission of the photograph, rather than the service of the notice itself. I consider that these are matters that should be considered under the ground (f) appeals and I intend to consider them accordingly.

3. The evidence indicates that the enforcement notice was served on the owners and the occupiers of 73 Bromley Road and The Company Secretary and Directors of National Westminster Bank PLC at the Mortgage Centre Greenock. I have not been provided with any evidence to suggest that there are any interested parties with an interest in the land that should have been served with a copy of the notice. Moreover, in general terms someone who has appealed and makes written representations, cannot be said to have been substantially prejudiced as the appeal protects their interest.
4. I find that there is no evidence that anyone has been substantially prejudiced by the failure to serve him or her. In any event the notice has been appealed within the prescribed timescales and this has protected their interests. The notice was served in accordance with the statutory provisions and the appeals on ground (e) fail.

Ground (f)

5. It is necessary to consider whether the steps required by the notice are excessive. It is for the appellants to make their case. It is the appellants case that the enforcement notice, as served, was missing photograph A. They contend that it is therefore not clear what steps they need to take to comply with the notice. No alternative steps have been advanced by the appellants.
6. Defects in enforcement notices fall into two main categories: those that make it a nullity and those that may make it invalid. In the former there is in effect no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal. In the latter there will be those defects that are capable of being corrected under the Inspector's powers in s176(1)(a) and those that are too fundamental to be corrected without causing injustice and lead to the notice being quashed.
7. The starting point is the requirements of s173 of the Act. This sets out the "contents and effect" of an enforcement notice and indicates a number of matters that a notice "shall" state. A failure to meet any one of those requirements is likely to create a nullity. Accordingly, a notice will be a nullity if it is missing some vital element, such as the steps required to be taken, or the activities which the LPA require to cease.
8. The requirements of the notice have been set out at paragraph 5 of the issued notice, which I have outlined in the banner-header above.
9. I acknowledge that the Council have erroneously failed to attach the photograph A referred to in step 1, and it is this photograph that indicates how the replacement windows need to be designed. It is clear from the notice that the Council are seeking to remedy the breach of planning control.
10. The scope of the notice is limited by s173(4)(a) and (b). Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. The first step makes it clear that the uPVC windows in the front, side and rear elevations at ground and first floor are to be removed. I consider that this would in itself, remedy the breach of planning control and the requirements are precise. The notice therefore complies with s173 (3). There is no need for it to then specify how any replacements should appear, save for requiring that the land is restored to its previous condition, which falls within the scope of s173(4)(a).

11. It is an established principle that the developer and the landowner are generally best placed to know the condition of the land, before the breach occurred. The Council's evidence refers to letters and emails sent to the owners between 9 January, and 31 January 2019 and their response on 7 February. It is therefore likely that the appellants are aware as to what existed before the breach.
12. For the above reasons, I find that the requirements of the notice can be varied without causing injustice to the parties, as the variation would not be more onerous than first issued. Accordingly I intend to vary the requirements at paragraph 5 of the notice; by the removal of the words '*replace with timber-framed windows of the same design, detailing and appearance of the windows as per Photograph A attached to this report*'; and their substitution with the words '*restore the land to its condition before the breach took place.*' The appeal on ground (f) therefore succeeds to this extent.

Ground (g)

13. The notice specifies a period of six months for the required steps to be carried out. The appellants, however, consider that the period given for compliance with the notice is too short because of the financial implications involved with replacing the windows. They have suggested that the windows could be replaced over a period of four years.
14. I acknowledge that the appellants have already made a financial commitment when installing the unauthorised windows and their replacement will require additional resources. However, the development must be considered in the context of the harm caused to the character and appearance of the host building and the Culverley Green Conservation Area (CGCA). The Council have clearly identified in their reasons for issuing the notice, that the windows have a harmful effect on the CGCA. I have no reason to disagree with that view.
15. The time for compliance refers to the time required to undertake the works. In this case the removal of the windows and the resultant debris. If I was to extend the period for compliance, as suggested, this would effectively amount to granting temporary planning permission, which I have no powers to do under ground (g). The required works do not involve any complex building operations. Consequently, I am not satisfied there is good reason to extend the compliance period further. The ground (g) appeals fail accordingly.

Conclusion

16. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

Formal Decisions – Appeals A and B

17. It is directed that the enforcement notice is varied by the deletion of the words '*replace with timber-framed windows of the same design, detailing and appearance of the windows as per Photograph A attached to this report*' and the substitution therefor by the following text: '*restore the land to its condition*

before the breach took place' in paragraph 5.

18. Subject to the above variation, the enforcement notice is upheld.

Hilary Orr

INSPECTOR