



Appeal Decisions

Site visit made on 15 January 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 01 April 2020

Appeal A Ref: APP/K5600/C/19/3228578

Appeal B Ref: APP/K5600/C/19/3228964

Appeal C Ref: APP/K5600/C/19/3228377

Appeal D Ref: APP/K5600/C/19/3228359

Appeal E Ref: APP/K5600/C/19/3228349

Appeal F Ref: APP/K5600/C/19/3228348

276 Earls Court Road, London SW5 9AS

- 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 Abdul El-Tobgy, Appeal B is made by Ahmed El-Tobgy, Appeal C is made by Khadija El-Tobgy, Appeal D is made by Thereza McNamara, Appeal E is made by Mostafa El-Tobgy and Appeal F is made by Aisha El-Tobgy against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 1 April 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the erection of an unauthorised outbuilding in the rear garden of 276 Earl's Court Road".
 - The requirements of the notice are
 - i) Remove the outbuilding within the red line as shown on the photograph attached to this notice as "Appendix 1"
 - ii) Remove from the land all resulting debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(c)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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 outbuilding. Moreover, while I note that the appellants have referred to reasons for wishing to retain the outbuilding, the grounds of appeal under which the appeals are proceeding mean that I am very limited in the extent to which these reasons including health issues may be considered. Similarly, the presence of other sheds or outbuildings in neighbouring gardens is not a matter that I can consider or any support from neighbours.
3. The appellants have appealed on grounds (c) and (f) only. However, the appellants have also referred to the outbuilding being in existence for a number

of years which is evidence that should be properly considered as if an appeal had been made under s174(2)(d) of the 1990 Act. As the Council has also addressed this matter, I do consider that I can address this 'hidden' ground of appeal without prejudice to either party.

The appeal under ground (c)

4. Under this ground of appeal, the onus is on the appellants to make out the case that there has not been a breach of planning control. The breach of planning control alleged is that development has taken place namely the erection of an outbuilding. Section 55(1) of the Town and Country Planning Act 1990 (the Planning Act) sets out what constitutes development which would include building operations and therefore includes the erection of an outbuilding. Section 57 of the Planning Act then states that planning permission is required for development subject to listed exceptions. The appellants have referred to the size of the outbuilding being acceptable. Although the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) Schedule 2 Part 1 Class E does provide that outbuildings may fall within permitted development subject to falling within certain limitations. However, Class E relates only to the provision of outbuildings within the curtilage of the dwellinghouse and it is not disputed that 276 Earls Court is divided into flats and the outbuilding is not therefore within the curtilage of a dwellinghouse.
5. As the development does not benefit from permitted development rights and has no express planning permission, a breach of planning control has occurred and the ground (c) appeal must therefore fail.

The appeal under ground (d)

6. This ground alleges that at the time of the issue of the enforcement notice, no enforcement action could be taken in respect of any breach of planning control. With this ground, the onus is on the appellants to make out their case.
7. Section 171B(1) of the Act states that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, the appellants need to show, on the balance of probability, that the outbuilding attacked in the enforcement notice was substantially complete at least four years prior to the notice being issued. As such, the material date is 1 April 2015.
8. The appellants refer to always having a shed and therefore not needing planning permission for the outbuilding that is the subject of the notice. However, the existence of a previous shed does not mean that the existing outbuilding does not constitute a breach of planning control. Mr Abdul El-Tobgy states that the shed has been in existence since 1989. However, he also refers to the shed partially collapsing and refurbishing it. Thereza McNamara states that the old shed was dilapidated and beyond repair and had to be replaced and that the new outbuilding is a great improvement. Ahmed El-Tobgy refers to replacement walls, windows and doors and says that the outbuilding would appear larger due to the old shed collapsing and changes in ground levels. I do not agree that deterioration and ground levels would account for the marked differences between the old shed and the existing outbuilding. The photograph of the previous shed does not resemble the existing outbuilding, the subject of the notice, particularly with regard to design or height. The Council has provided photographs taken in October 2018 after complaints were

made regarding the construction of an outbuilding that clearly show the existing outbuilding partially constructed with elements of the new roof visible.

9. Taking all of the above into account, the appellant has not established, on a balance of probabilities, that the existing outbuilding was substantially completed for the required four years i.e. by the 1 April 2015. As such, the Council was able to take enforcement action. The ground (d) appeal therefore fails.

The appeal under ground (f)

10. 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 matter which constitutes the breach of control is "...the erection of an unauthorised outbuilding". The notice requires the removal of the outbuilding and removal of all resulting debris. 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. The steps required by the notice do not exceed what is necessary to remedy the breach. As such, the ground (f) appeal must fail.

Other Matters

11. I note that the appellants have referred to making improvements to the appearance of the outbuilding and at the time of my site visit, the outbuilding was covered in artificial green foliage. However, without a ground (a) appeal, the appearance of the outbuilding or any proposed improvements are not matters for consideration as part of this appeal. Similarly, without any alternative drawings and a ground (a) appeal, proposals to reduce the height fall outside the remit of this appeal. I understand that the shed is used for storage and that the loss of the shed will be likely to result in a financial loss. However, these matters also fall outside the remit of the limited grounds of appeal before me.
12. Whilst reference is made by the appellants to the right to enjoy property as owners, any such right is subject to compliance with planning policies and the Conservation Area designation.

Conclusion

13. For the reasons given, I conclude that the appeals should not succeed and the enforcement notice is upheld.

E. Griffin

INSPECTOR