



Appeal Decision

Site visit made on 25 February 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal Ref: APP/C5690/3227507

440 Lewisham High Street, London SE13 6LJ

- 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 BM Samuels Finance Group PLC against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 15 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a three storey building on the Land shown hatched red on the plan attached to the notice.
 - The requirements of the notice are to:
 1. Demolish the three storey premises situated on the land;
 2. Remove all resultant materials, debris waste and equipment arising from compliance with requirement 1 above.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) and (f) of the Town and Country Planning Act 1990 as amended (the Act). 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. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. The appellant's statement of case¹ says that the "building that has been constructed generally complies with the original consent..." . While the appeal papers do not expressly indicate a ground (c) appeal, the allegation of the notice is that the building has been constructed without planning permission and so the appellant's words in my view imply an argument that the matter stated in the notice does not constitute a breach of planning control. Since the Council's submissions deal with this issue, and the appellant has had the opportunity to respond, I have considered the "hidden" ground (c) in my Decision without prejudice to the parties.

Ground (b)

3. For an appeal to be successful under this ground, I must be satisfied on the balance of probabilities that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred.

¹ Letter of 17 December 2019, Ref BMS/ADS/TG/MILLERDEV.PLANNING INSPECTORATE

4. The allegation is that a three storey building has been constructed. On my site visit I found this to have occurred as a matter of fact. Further, the appeal form refers to a three storey block having been constructed containing three flats. Accordingly, the appeal under ground (b) does not succeed.

“Hidden” ground (c)

5. For an appeal to be successful under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that the matter stated in the notice does not constitute a breach of planning control. The appellant has said that the building generally complies with the ‘original consent’ and in that context refers to marginal amendments to the approved design which were to be rectified.
6. The appellant has not specified what he means by the ‘original consent’. The planning history supplied by the Council shows that it gave planning permission on 19 January 2016 under Reference DC/15/093951 for the construction of a three storey building to provide 1 one bedroom and 2 two bedroom self-contained flats, together with amenity space, cycle storage and refuse storage. This appeal development is materially different to the development approved since the building in existence on my site visit contained 1 three bedroom and 2 two bedroom self-contained flats. In any respect, permission under DC/15/093951 was subject to pre-commencement conditions that were not discharged, including a condition that went to the heart of the approval requiring the submission and approval of design details. Accordingly, I find that the planning permission was not implemented. And as it has now expired, it is not relevant to an appeal under this ground whether the ‘as built’ development complies with it, to any degree.
7. Therefore, the appeal development does not benefit from planning permission. As the building is operational development under Section 55 of the Act, and is not otherwise excluded from the requirement for planning permission, the matter in the notice constitutes a breach of planning control. Accordingly, an appeal under ground (c) does not succeed.

Ground (d)

8. For an appeal to be successful under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. Section 171B of the Act requires that in the case of operational development 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.
9. The appellant has not said when he considers the operations were substantially completed, if they have been, or submitted any substantive evidence in that regard. I also note that the application for prior notification of the proposed demolition of The Royal British Legion Club House which previously stood on the site was not made until 20 May 2015 with the application form stating that demolition was expected to commence on the 30 June 2015. Therefore, I am not satisfied on the balance of probabilities that the appeal development was substantially completed at least four years before the notice was issued on 15 April 2019. Accordingly, the appeal under ground (d) fails.

Ground (f)

10. It is clear from the way that the notice requirements have been drafted that the Council is pursuing the purpose of remedying the breach of planning control resulting from construction of the three storey building without planning permission, rather than remedying injury to amenity. Therefore, for the appeal to be successful under this ground I must be satisfied that the steps required exceed what is necessary to achieve that purpose.
11. As the appeal under ground (a) and the deemed application for planning permission have lapsed, it is not possible for me to consider arguments about the planning merits of the development.
12. No lesser steps than demolition of the building and removal of the resultant materials, debris waste and equipment would achieve the above purpose in restoring the land to its condition before the breach took place. Therefore, the appeal under ground (f) fails.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andrew Walker

INSPECTOR