



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 01 May 2020

Appeal Ref: APP/T5150/C/20/3244963
19 Christchurch Avenue, London NW6 7QP

- 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 Abbas Dattoo against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 9 December 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition 3 of planning permission Ref 18/1972 granted on 20 August 2018.
 - The development to which the permission relates is installation of balustrade and associated decking (part-retrospective for decking) to second floor balcony of dwelling house. The condition in question is No 3 which states that: The glazed privacy screen as illustrated shall be installed prior to use and retained in perpetuity thereafter.
 - The requirements of the notice are:
Install and permanently maintain the glazed privacy screen as shown in all respects on the Plans (Drawing No.15026 PM 02.01) attached to this notice
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by deleting the requirement from Schedule 4 and replacing it with "Install and permanently retain the glazed privacy screens as shown on the Plans (Drawing No. 15026PM 02.01) attached to this notice." Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. As the appeal is proceeding under ground (b) only, I sought the views of the parties as to whether a site visit was necessary to determine the appeal. Having considered the views of the parties, I do consider that no injustice is caused to any party by proceeding to determine the appeal without a site visit.
3. The requirements of the notice are "Install and permanently maintain the glazed privacy screen as shown in all respects on the Plans (Drawing No. 15026PM 02.01) attached to this notice." However, the identified Drawing shows 2 privacy screens, one to each side of the balcony rather than one screen. The words "in all respects" are superfluous as the requirement of the notice is to comply with the identified Drawing. The wording of the original condition is a requirement to retain the screens rather than to maintain them. I shall therefore correct the requirements of the notice by deleting the current

wording of the requirement and replacing it with "Install and permanently retain the glazed privacy screens as shown on the Plans (Drawing No. 15026PM 02.01) attached to this notice."

Background Matters

4. 19 Christchurch Avenue was converted into flats in May 2017. On 20 August 2018, the Council granted planning permission ref 18/1972 for "the installation of balustrade and associated decking (part-retrospective for decking) to second floor balcony of dwellinghouse" which relates to the rear dormer element of the appeal flat. The breach of planning control alleged is the failure to comply with condition 3 of the 2018 permission which required glazed privacy screen as illustrated to be installed prior to use with the reason for the condition being "in the interests of the privacy of neighbouring occupiers". Drawing No. 15026PM 02.01 shows a 1.8 metre high obscure safety glazed privacy screen at both sides of the balustrade at dormer level.

The appeal under ground (b)

5. An appeal under this ground is that as a matter of fact a breach of planning control has not occurred. The appellant's initial argument was that the "breach of planning permission had been remedied prior to the date of the enforcement notice". He informed the Council that he had installed the privacy screens on the 9 December 2019 which is the date on the enforcement notice. However, the issue before me is not whether or not compliance had taken place when the notice was issued but whether or not a breach of planning control had occurred having regard to the wording of condition 3.
6. The wording of the condition required the glazed privacy screens to be installed prior to use. The privacy screens needed to be installed before occupiers of the flat use the balcony as the reason for the condition is to protect the privacy of neighbouring occupiers. A breach of planning control therefore occurs when the balcony is used without the benefit of the privacy screens. Whilst the appellant in his final comments suggests that the notice was issued on the 13 December 2019 rather than the 9 December 2019, a later date would not, in any event, alter the date that the breach occurred.
7. The Council has provided evidence of the breach in the form of photographs advertising the appeal flat on Airbnb website and reviews from occupiers of the flat from June 2019 to November 2019. The appellant in his final comments accepts that the flat was occupied between June 2019 and December 2019 but states that the balcony was not in use and that the balcony doors were sealed shut. The photographs provided from the Council of the Airbnb website for the appeal flat clearly show the balcony as a feature and includes a photograph taken on the balcony labelled "balcony with stunning views." One review refers to the flat as "matching the pictures with a great view." Another review from September 2019 states that "the view from the balcony was also beautiful". Unlike the appellant, I do not consider it likely that the latter comment would have been said even without having entered or used the balcony. None of the reviews refer to being unable to use the balcony.
8. In order for the ground(b) appeal to succeed, the appellant would need to satisfy me on the balance of probabilities that the breach alleged in the notice has not occurred. The appellant has provided no evidence to support his argument that the balcony was sealed off and not in use or that occupiers were

informed that the balcony could not be used when the appeal flat was occupied from June until early December 2019, a period of around 5 months. As a matter of fact and degree and on the balance of probabilities, I find that a breach of planning control namely a breach of condition 3 of the planning permission did occur during that period. The appeal under ground (b) must therefore fail.

Other Matters

9. Whilst, the appellant is of the view that he complied with the notice on the 9 December 2019 and that the Council could check compliance from the highway, that is a matter for the parties to resolve. Although, the Covid-19 pandemic does mean that any visit is not possible at the present time, the Council does have powers under Section 173A(1)(b) of the Act to extend the compliance period, should there be good reason to do so.
10. Comments have been made by a neighbour about the planning history of the appeal including a request for me to serve a further enforcement notice. However, the issue before me in determining this appeal is limited to whether a breach of condition 3 of the planning permission has occurred. Similarly, any issues that the appellant has with the Council's conduct of this matter also fall outside the remit of this appeal.

Conclusion

11. For the reasons given, the appeal is dismissed and subject to the correction to the requirements in the notice, the appeal is dismissed and the enforcement notice is upheld.

E. Griffin

INSPECTOR