



Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2020

Appeal Ref: APP/H5960/C/19/3238320

Land at 11 Gressenhall Road, London SW18 1PQ

- 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 Mahmood Ahmad Jaswal against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice, numbered 2018/0460/ENF, was issued on 19 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the erection of a single-storey extension in the front lightwell and the laying of a concrete hardstanding in the side and rear gardens of the property.
 - The requirements of the notice are to: remove the unauthorised single-storey extension in the front lightwell, and concrete hardstanding in the side and rear gardens of the property and re-instate the former state in facsimile. At a minimum, this shall include:
 1. Removing the unauthorised single-storey extension erected within the front lightwell in its entirety;
 2. Making good any damage to the front facade arising from Step 1 above;
 3. Removing all concrete hardstanding within the side and rear gardens of the property;
 4. Re-grassing all areas exposed by the removal of concrete arising from Step 3; and
 5. Removing and legally disposing of all debris arising from Steps 1, 2, 3 and 4 above.
 - The period for compliance with the requirements is six weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by:
 - the deletion of step 4 of the requirements in its entirety, renumber 'step 5' as 'step 4', and delete the words 'and 4' from step 4.
 - The deletion of the words 'and legally disposing of' from step 4.
2. Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

The Notice

3. I have a duty to ensure that the notice is in order.
4. It is well established by case law that an enforcement notice must clearly set out what the recipient of the notice is required to do in order to comply with its requirements. The notice requires the removal of the concrete hardstanding in the side and rear gardens of the property and to reinstate the former state in facsimile. Step 4 is to re-grass all areas exposed by the removal of concrete. There is no evidence that the re-grassing of the side and rear gardens would

result in the area being reinstated to its former state in facsimile. The requirements are therefore contradictory and lack the necessary degree of precision to allow the recipient of the notice to know what is required in order to comply.

5. It is also excessive to require that the debris arising from compliance with the notice to be legally disposed of, and it is sufficient to require that it is removed from the site.
6. Wide powers to correct a notice are available to me under section 176(1) of the 1990 Act as amended. However, they only apply if I am satisfied that the corrections will not cause injustice to the appellant or the Council. In this instance, it is sufficient to require the gardens to be reinstated to their condition before the breach took place, and to require the debris arising from compliance to be removed from the site. The removal of step 4 and the requirement that debris should be legally disposed of, would not cause injustice to the appellant or the Council and I shall vary the notice accordingly.

Reasons

7. The appeal on ground (d) is that at the date the notice was issued no enforcement action could be taken in respect of the matters alleged in the notice. This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by Section 171B of the Act at the date of issue of the notice. The burden of proof lies with the appellant to make out their case, and the standard of proof is the balance of probability.
8. The alleged breach of planning control relates to two matters, namely the single-storey extension in the front lightwell, and the laying of the concrete hardstanding in the side and rear gardens. The front extension provides a bathroom to the lower ground floor flat. It is within a semi-detached building that is divided into a number of flats. The appellant has not made any case in respect of the hardstanding.
9. The enforcement notice was issued on 19 September 2019, so in order to succeed on this ground the appellant would need to show that the extension was substantially completed on or before 19 September 2015.
10. In paragraph 1.1 of the appellant's Appeal Statement it is stated that the front extension was completed in October 2009. However, this is contradicted by paragraph 6.1 of the Appeal Statement which states that the works had been completed 6 years ago, and paragraph 6.3 states that they were completed in late 2013. It is also contradicted by the Council's evidence which indicates that the extension was not in place in 2011.
11. In support of the appellant's contention that the work was completed in late 2013, a handwritten letter has been submitted from Sonia Rai of 11a Gressenhall Road and is dated 19 August 2019. It is signed and states that the front bathroom has been there since Sonia Rai rented the flat in November 2013, and that the bathroom was previously at the back of the property. The letter is imprecise, and unsworn evidence such as this can only be accorded limited weight.
12. The appellant has also provided a letter to Mr and Mrs Jaswal from Singh Paving Specialist providing an estimate for a front extension (bathroom), dated

6 October 2013. It sets out that 30% of the cost is required before work commences with the remainder to be paid on completion. It states that it has been paid in full. However, it is not clearly stated that the estimate relates to works at No. 11a, nor that they were completed by late 2013.

13. Limited evidence has therefore been submitted in support of the appellant's case, it contains contradictions and is far from being precise and unambiguous. The appellant's evidence is not sufficient to demonstrate, on the balance of probabilities, that the extension has been substantially complete for the necessary period. While the Council has not provided evidence to contradict the assertion that the works were completed in late 2013, the appellant's evidence falls short of discharging the burden of proof. The appeal on ground (d) therefore fails.

Other Matters

14. I have had regard to the suitability of the compliance period in view of the current public health crisis due to the Covid-19 virus. However, I note that the Council has powers under s173A(1)(b) to extend any period for compliance, a matter entirely at its discretion, without prejudicing its right to take further action.

N Thomas

INSPECTOR