



Appeal Decision

Site visit made on 21 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Appeal Ref: APP/G5180/C/19/3236906

Land at 44, 44A and 44 B Beckenham lane, Shortlands, Bromley BR2 0DQ

- 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 Michael George Edwin Gibson against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 16 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, operational development comprising of a brick built, single storey building used as an additional self contained residential unit. The building, which is attached to the host building, covers the majority of the rear garden of the premises, in the approximate position shaded green on the plan.
 - The requirements of the notice are:
 - (1) Remove the unauthorised building which is attached to the host building, and shown approximately at the area shaded green on the plan, as described in paragraph 3;
 - (2) Remove from the land all materials associated with compliance with paragraph (1) above, and;
 - (3) Leave the land in a neat and tidy condition.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the notice be corrected by:
 - Deleting requirement (3).
2. It is directed that the notice be varied by:
 - Adding the words 'With the exception of the boundary walls, which shall be retained to a height of no more than two metres, ...'
3. Subject to the correction and the variation, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

4. I have a duty to try to get the notice in order and I have wide powers to correct it under Section 176(1)(a) of the 1990 Act if I am satisfied that no injustice would be caused to the parties. The requirement to leave the site in a neat and tidy condition is imprecise and requires a subjective judgement, so that it would not be clear to the appellant whether the notice has been complied with. I am satisfied that the deletion of this requirement does not cause injustice to the parties.

The appeal on ground (e)

5. This ground of appeal is that copies of an enforcement notice were not served, as required by Section 172 of the 1990 Act. Section 329 of the 1990 Act prescribes a number of methods by which an enforcement notice may be served.
6. The Council has not said that it has served a planning contravention notice or used its powers under Section 330 of the 1990 Act to obtain information about the address of the owner. The Council served a copy by hand on the owner/occupier of the property at 44 Beckenham Lane, and on Michael Gibson and June Gibson at the same address, which was disclosed by the Land Registry for them as freehold owners of the property.
7. The appellant argues that copies of the notice were not served on the owners, as copies addressed to them were not served at their home address in West Wickham. The land registry details date from when the property was purchased in 1983 and he asserts that the Council was aware of their current home address. As a result, there was a delay in the appellant receiving a copy of the notice, which reduced the time available to lodge an appeal.
8. Nonetheless, the appellant was able to notify the Planning Inspectorate of his intention to appeal. The appellant subsequently lodged an appeal and was able to state his case. It cannot therefore be said that parties with an interest in the land have been substantially prejudiced. Consequently, the appeal on ground (e) fails.

The appeal on ground (d)

9. 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(1) 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.
10. For the ground (d) appeal to succeed, the appellant would need to demonstrate that the building was substantially completed at least 4 years prior to the date the notice was issued (16 August 2019), that is 16 August 2015. A building is immune from enforcement four years after it is substantially completed and the decision maker must make a finding of fact as to when this has occurred.
11. The appellant states that the block walls on the boundary were built by the tenant of 44a in 2014 and that the roof of the building was completed on 8 February 2015. As the roof was not weatherproof it was covered by a tarpaulin to keep out rain, shortly after the construction was completed. It is stated that a new roof was built in October 2017 replacing all the roofing timbers, the supporting wall beneath and the front elevation. These works go well beyond repair and maintenance of a building.
12. The photographic evidence provided by the Council indicates that there was a small shed on the site and large items covered with tarpaulin, until the new roof was built in 2017. Prior to that date the Google Streetview images and the aerial photographs indicate that the building in its current form was not present on the site. The appellant states that the previous appearance of the building

was due to attempts to repair the roof. However, the extent of the works listed by the appellant amount to the creation of a new roof structure, and it seems to me that the building of the new roof, along with the supporting wall and front elevation changes in October 2017 resulted in a new building. Accordingly, it is more probable than not that the building was substantially completed in October 2017.

13. The appellant has not provided clear and unambiguous evidence that the building was substantially completed for the required period. The appeal on ground (d) therefore fails.

Ground (f)

14. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. The steps require the removal of the entire building. The appellant considers that this is excessive as it would cause disruption to the neighbours as the walls are garden walls which mark three boundaries of the site with neighbouring properties. The Council has indicated that a lesser step would be to reduce the height of the boundary walls to two metres, and to remove those parts of the building that do not form part of the boundary enclosure and the hardstanding.
15. The purpose of the notice is to remedy the breach of planning control, and lesser steps would not achieve that purpose. However, it would serve no useful purpose to require the removal of the boundary walls in their entirety, if a replacement boundary treatment were then to be erected in their place. It would therefore be appropriate to allow the boundary walls to be retained to a height of no more than two metres, as they provide a means of enclosure associated with the lawful use of the land. To this extent, the appeal on ground (f) succeeds.

N Thomas

INSPECTOR