



Appeal Decision

Site visit made on 16 August 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/C5690/C/19/3230266

Land adjacent to 261 New Cross Road, London SE14 5UL

- 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 Michael Lucey 'Sainsbury's Supermarket Ltd, C/O Capita' against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice, numbered ENF/19/00043, was issued on 18 April 2019.
 - The breach of planning control as alleged in the notice is the installation of a fence and associated gates on the land as shown on the photographs, attached.
 - The requirements of the notice are:
 1. Remove the fence and associated gates, shown on photographs attached, from the Land.
 2. Remove all materials, debris, waste and equipment resulting from compliance with requirement one above from the Land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended. 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural matter

2. The appeal was lodged on ground (b), that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, it is clear from the substance of the appeal submission, that the argument put forward under ground (b) related more to an appeal under ground (c), in so far as they state 'There was a fence in this location previously'. As the Council have provided comments on the appellant's assertion, I am satisfied that neither party would be prejudiced by the inclusion of ground (c). I have therefore considered the appeal on this basis and have amended the above heading accordingly.

Reasons

Ground (b)

3. The appeal site lies to the north and adjacent to New Cross Road. It comprises a small triangular piece of land on the junction of New Cross Road and the

service road leading to a number of large retail outlets and a Sainsbury Supermarket.

4. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. This is known as one of the legal grounds and therefore the burden of proof is on the appellant. At the time of my site visit the fence as shown in the Council's photographs, attached to the notice was still in situ.
5. The appellant has submitted very limited information in support of this appeal. In contrast the Council have provided evidence to confirm that the development had been brought to their attention on 7 February 2019. A site inspection was carried out on 13 February 2019. Three photographs have been provided that the Council confirm, were taken on that site visit. These show that the fence and gates had been constructed at this time and predate the issue of the notice on 18 April 2019.
6. The appellant has provided no evidence, to cast doubt on that provided by the Council. Consequently, from the evidence I have before me, I am satisfied that the matter alleged in the notice has as a matter of fact, occurred. The appeal on ground (b) therefore fails.

Ground (c)

7. The appeal is also proceeding on ground (c), that the matter alleged in the notice does not constitute a breach of planning control. This is another legal ground where the burden of proof is on the appellant, to make out the case that there has not been a breach of planning control.
8. The gist of their case appears to be, that the fence and gates have replaced a previously existing fence. However, I have not been provided with any details about the pre-existing fence and gates, or the sequence of events that led to the issue of the notice in April 2019.
9. The fence is of substantial construction and I am satisfied that it constitutes development for the purposes of interpreting planning legislation. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) provides that certain development does not require the benefit of express planning permission. Schedule 2 Part 2 Class A, sets out circumstances where gates fences and walls would not require express planning permission, including the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
10. It goes on to specify the circumstances where such development is not permitted. These include height limitations and where 'any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater'. It is important to note that the appellant has provided no evidence, to explain why he considers that planning permission is not required.
11. The Council have set out in their evidence, that the fence exceeds 2 metres in height, and this concurs with what I observed at my site visit. Moreover, they have provided a fourth photograph, that is stated to have been taken from Google Maps, and is understood to date from May 2018. In this photograph there is a single railing on concrete posts surrounding the Land. This railing

was still in position at the time of my visit, being sited next to, but outside the subject fence. Moreover, I have no evidence that there was another pre-existing fence that has been maintained, improved or altered in the circumstances set out above. Accordingly, I find no evidence that the fence and gates benefit from the rights conveyed by the GDPO.

12. Drawing all of the above points together, the appellant has not provided any evidence to contradict the submissions made by the Council. Consequently, I find that the appellant's evidence falls short of discharging the burden of proof. The appeal on ground (c) therefore fails.

Conclusion

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

Hilary Orr

INSPECTOR