
Appeal Decisions

Site visit made on 12 October 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Appeal A: APP/G5750/C/20/3248115

Appeal B: APP/G5750/C/20/3248116

46 Churston Avenue, London, E13 0RH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeals A and B are made by Mr A Ali and Mr T Ali respectively against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 20/00048/ENFNOT, was issued on 7 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a light well.
 - The requirements of the notice are 1. Remove the light well (as shown on the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1) and return that area of the property to its form prior to the unauthorised works.; and 2. On completion of step 1, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - Both appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal A is also proceeding on the ground set out in section 174(2)(a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeals are allowed and the enforcement notice is quashed.

Ground (e)

2. This ground is that the notice was not properly served in everyone with an interest in the land. The appellants in the grounds of appeal have said that the notice was not properly served on them as they no longer live at the property. However, the appellants are clearly aware of the notice and have appealed it so have not been substantially prejudiced. The appeals on this ground are not therefore successful.

Grounds (b) and (c)

3. An appeal on ground (b) is on the basis that the matters stated in the notice have not occurred. This ground cannot be successful in this instance as it is agreed that the lightwell has been constructed. The appeals are regarding whether the works would constitute a breach of planning control which is an argument under ground (c). The appellants' case is that the light-well has no impact on anyone and is not visible. It is first necessary to consider whether

the matters constitute development and, if so, whether the development benefits from a grant of planning permission.

4. The lightwell does fall within the definition of development under section 55(1) of the 1990 Act¹. However, the works shall not be taken for the purposes of the Act to involve development where they do not materially affect the external appearance of the building (section 55(2)(a)(ii)). Consideration must be given to whether the works associated with the lightwell are visible from a number of vantage points and material to the building as a whole. The house is situated on a predominantly residential two-storeyed terraced street with small curtilage area between the house and footway. These small front gardens are predominantly hard-surfaced, generally with walls of around 1 metre in height adjoining the pavement. The lightwell is behind such a wall at the host property and is only visible from limited locations i.e. from the pavement immediately next to the garden wall of No. 46 and the adjoining house at No.48. Due to the garden walls, it is not visible from elsewhere on the public street or at ground level but there will be limited views from the upstairs windows on the adjoining houses and on several houses located on the opposite side of the road (although some of those views will be obscured further by the street trees when in leaf). The lightwell is made of UPVC and plastic, and whilst not materials found in the original construction of the properties in the vicinity, UPVC is now seen elsewhere both at No.46 and at many other houses on the street. Given the limited vantage points and size of the lightwell, the matters do not materially affect the external appearance of the building as a whole, which in this case is No.48. The matters do not constitute development of the land and do not therefore require planning permission.
5. The appeals are therefore successful on ground (c) and the notice is quashed, hence the appeals on grounds (a), (d), (f) and (g) and the deemed application for planning permission do not fall to be considered.

Zoë Franks

INSPECTOR

¹ "the carrying out of building, engineering, mining or other operations in, on, over or under land".