



Appeal Decision

Site visit made on 7 December 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2021

Appeal Ref: APP/H5960/C/20/3256128

Moir Court, Balham High Road SW17 7AH

- 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 the Company Secretary on behalf of Granpex Company Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 27 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the past four years, the unauthorised erection of a timber hoarding to a height of 2.3m at the Property.
 - The requirements of the notice are:
 1. Remove the hoarding from the site; and
 2. Remove from the site all debris arising from compliance with step 1 above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) 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. It is directed that the enforcement notice is:

- corrected by deleting the description of the alleged breach of planning control under section 3 of the enforcement notice (The Matters which Appear to Constitute the Breach of Planning Control) and inserting the words:

"The failure to remove the timber hoarding in accordance with condition A.2 (a) of Part 4, Class A of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015."
- corrected by deleting the words " Section 171A(1)(a)" under section 1 of the enforcement notice (This Notice) and its replacement with "Section 171A(1)(b)"
- corrected by deleting the words "within the last four (4) years" under section 4 of the enforcement notice (Reasons for Issuing this Notice) and its replacement with "within the last ten (10) years."
- corrected by deleting requirement 1 under section 5 of the enforcement notice (What you are required to do) and replacing it with the following:

"1. Comply with condition A2(a) of Part 4, Class A of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 by removing the fence".

2. Subject to these corrections, the appeal is dismissed, and the enforcement notice upheld.

Application for costs

3. An application for cost was made by the Company Secretary on behalf of Granpex Company Limited against the London Borough of Wandsworth. This application is the subject of a separate Decision.

The appeal on ground (c)

4. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
5. Under this ground of appeal, it is contended that there has been no breach of planning control as the operations alleged in the notice are permitted development by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), Part 2, Class A 'gates, fences, walls etc' of Schedule 2, which allows for "*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*".
6. The timber hoarding was originally erected to a height of 2.3m and was being used as a site compound area in relation to the replacement windows project for the block of flats which took place in January 2020. This is the development to which the notice relates. There is no dispute that at that time the erection of the hoarding was permitted by the GPDO, Part 4 of Class A, 'temporary buildings and structures' of Schedule 2, which allows for "*the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*".
7. However, development is permitted by Class A subject to the condition A.2 (a) that, "*when the operations have been carried out (a)any building, structure, works, plant or machinery permitted by Class A is removed*". The Council advise that they sought the removal of the hoarding following the completion of the window replacement project, given that no works took place on site for a considerable time.
8. In response to this, the appellant reduced the height of the timber hoarding to 1.9m, in the belief that the structure would benefit from Part 2, Class A of Schedule 2 of the GPDO 2015. Paragraph A.1 of Part 2, Class A, sets out the relevant limitations which proposals must adhere to benefit from permitted development rights here.
9. Whilst the appellant states that the timber hoarding does not exceed 2m in height, limitation A.1 (b) states "*(b) the height of any other gate, fence, wall or means of enclosure erected or constructed (my emphasis) would exceed 2 metres above ground level*". As a matter of fact, the timber hoarding was initially erected or constructed at a height in excess of 2m, contrary to

limitation in paragraph A.1 (b) of Part 2, Class A of the GPDO. Whilst the alterations carried out since may result in development that would be comparable to that permitted by Class A, a fence less than 2m in height has not been erected or constructed from the outset. The GPDO does not grant planning permission to reduce the height of a fence and therefore it cannot be said to benefit from those permitted development rights retrospectively.

10. Furthermore, the appellant states that the hoarding as altered in March 2020 does not exceed its former height, and thus does not fall foul of limitation A.1 (c). However, the former height of 2.3m was only lawful whilst required for purposes set out in Class A of Part 4. It remained thereafter in breach of condition A2.(a), Part 4, Class A of Schedule 2 of the GPDO and so only remained lawful for the duration of the operations being carried out. Thereafter, the Council could have issued a notice against the breach of condition. No benefit can be gained from the retention of the hoarding in breach of a condition.
11. On this basis, the appellant's argument cannot succeed whether considered against the breach described in the notice (erection of 2.3m hoarding) or against the fence that remains following the alteration since both constitute a breach of planning control for the reasons set out. Therefore, the appeal on ground (c) must fail.
12. I have sought the views of the parties on whether the breach that has occurred should more properly be described as a breach of condition A2.(a), of Part 4, Class A of Schedule 2 of the GPDO because the hoarding was not removed but instead reduced in height. The Council consider that the allegation could be corrected to allege a breach of condition (within the past ten years) without causing injustice. However, the appellant considers such a correction would cause injustice since it may change the way in which they had presented their case. However, it seems to me that no consequential corrections of substance would be required to the requirements of the notice since compliance with the relevant condition would still require the fence to be removed. Accordingly, the appellant's case made under grounds (f) and (g) would be unaffected by such a correction. Whilst the time limits would change from 4 to 10 years, no appeal was made on ground (d) in any event. Similarly, any planning merits arguments would have remained the same had there been a deemed planning application to consider.
13. Under section 176(1)(a) of the Act I have the power to correct, vary or amend the notice provided I am satisfied that there is no injustice caused to either party. Notwithstanding the views of the appellant, for the reasons set out above, I consider no injustice would be caused. I shall therefore correct the notice to allege a breach of condition A2.(a) of Part 4, Class A of Schedule 2 of the GPDO within 10 years and vary requirement 1 to read "comply with condition A2(a) of Part 4, Class A of Schedule 2 of the GPDO by removing the fence".

The appeal on ground (f)

14. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

15. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear by the requirements of the notice which seek the removal of the hoarding from the appeal site, which remains applicable notwithstanding my correction.
16. The appellant states the requirements of the notice are excessive since the size of the timber hoarding has already been reduced to benefit from permitted development entitlement under Part 2 of Class A of Schedule 2 of the GPDO 2015. However, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. A building/structure which exceeds the tolerances under this Part is entirely outside permitted development rights. Therefore, the retention of the modified hoarding would not remedy the breach of planning control alleged.
17. The appellant states that major works are envisaged to the main block, and therefore there may be the possibility that the appellant would erect a fence less than 2m in height in the future in association with these works. However, there is no certainty if or when this will occur. Accordingly, this is not a case where it may be said that although the requirements are necessary to remedy the breach of planning control, compliance with the notice would serve no useful purpose because a fence would immediately be re-erected.
18. The appellant also states that in the event that the current colour is found to be objectionable then a further re-decoration could be applied. Given that the appeal on ground (a) has lapsed, I cannot assess the planning merits of whether painting would overcome any concerns and no mechanism exists other than under ground (a) and the deemed planning application to impose conditions requiring additional works to be undertaken. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not remedy the breach of planning control.
19. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. As the notice does no more than seek remedy of the breach, it is not excessive. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

20. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. In light of the current restrictions associated with Covid-19, the appellant asks that the time for compliance is extended from two to six months to appoint a contractor and carry out the works.
21. The current period for compliance should allow sufficient time to appoint a contractor and remove the hoarding, which does not appear to be a particularly difficult task. I conclude that two months would be reasonable and proportionate time to comply with the notice. Therefore, the appeal on ground (g) fails.

Conclusion

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

R Satheesan

INSPECTOR