



Appeal Decision

Site Visit made on 2 June 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 6th July 2021

Appeal Ref: APP/A5270/C/20/3258158

16 Lanark Close, Ealing, London W5 1SN

- 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 Shaun Fernandes against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 1 July 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a metal pole with CCTV camera.
 - The requirements of the notice are
 1. Remove the CCTV camera and part of the metal pole that exceeds the height of the rear boundary enclosure and
 2. Remove all resultant debris associated with compliance of the above step.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended
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Decision

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

Procedural Matters

2. An accompanied site visit took place at the appeal site with an unaccompanied site visit to a neighbouring garden as it was necessary to visit to establish the extent of the development.
3. The appeal is made only on the limited ground (f). There is no ground (a) before me which would have included consideration of the planning merits of the development as part of an application for planning permission.

The Notice

4. The breach of planning control refers to the erection of a metal pole with CCTV camera. The requirements refer to removing the CCTV camera and part of the metal pole that exceeds the height of the rear boundary enclosure.
5. From my site visit, it was evident that the appellant has used the pre-existing pole which forms the end of the rear boundary fence and attached a separate length of pole to it with the CCTV camera on top to create height. Although the Council had referred to taking measurements at the site visit, the presence of a shed and foliage in the corner of the appeal site garden where the pole and

CCTV camera are positioned above the rear boundary enclosure meant that was not possible.

6. I do however consider that the allegation and the requirements of the notice are sufficiently clear for the appellant to understand what is required to be done without reference to measurements i.e. to remove the CCTV camera and that part of the metal pole that exceeds the height of the rear boundary enclosure.
7. The Council did subsequently suggest an amendment to the requirement for clarity to step (1) which simply separated out the requirement to reduce the pole from the requirement to remove the camera. However, I do not consider that such amendment is needed, given that the current requirement does refer to removing the CCTV camera and reducing the pole.

The appeal under ground (f)

8. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The appellant wishes to reduce the pole to no more than 4 metres and re- instate the CCTV camera. The Council does refer to rear boundary fence at around 4 metres in height and the first part of the requirement is a reduction to the rear boundary fence.
9. In the absence of a ground (a) appeal, arguments about whether the requirements exceed what is necessary to achieve the purpose of the notice are appropriate but arguments about wider planning merits are not. For example, the appellant refers to reducing the size of the mounting board of the CCTV camera and painting the pole. However, these matters relate directly to the planning merits of the development as the Council's reasons for issuing the notice refer to character and appearance and overlooking. Similarly, whilst the appellant clearly has security concerns, the issue of whether the CCTV camera is required to be in this particular location at a particular height for protection of property is a planning matter outside the scope of a ground (f) appeal. The issue is whether the steps required by the notice exceed the purpose of the notice.
10. It is therefore necessary with ground (f) to establish what the purpose of the notice is having regard to the purposes set out in Section 173(4)(a) and (b) of the Act. Those purposes are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.
11. The Council indicates that the purpose of the notice is to remedy of the breach. Given that the pole that forms the end of the rear boundary feature was in existence prior to the attachment of a section of pole and CCTV, removing the CCTV camera and the added section of pole would restore the land to its condition before the breach took place as the lower pole would remain as part of the boundary enclosure which falls within purpose (a). If the purpose of the notice is to remedy the breach then requiring the removal of the CCTV camera

- is part of the breach and to allow part of the development i.e. the CCTV camera to be reinstated would not remedy the breach.
12. However, even if I had taken the view that the purpose of the notice was to remedy the injury rather than to remedy the breach, the reduction of the pole and the removal of the CCTV camera are no more than is necessary to remedy the injury to amenity. It is therefore not excessive to require the appellant to carry out the steps required by the notice irrespective of whether the purpose of the notice is to remedy the breach or injury to amenity.
 13. It is the case that the enforcement regime is not meant to be punitive and the Council refers to whether there is an "obvious alternative" to upholding the notice and its requirements. Obvious alternatives are more usually considered where a building or structure is required to be demolished and there is an alternative lesser scheme which can be undertaken as an alternative to demolition and still achieve compliance. That is not the case here as whilst it is clear that the appellant wishes to have a CCTV camera at the appeal site, the Council has stated that the requirements of the notice still need to be complied with so that the CCTV camera is removed when the pole is reduced. Installing a CCTV at a different location is therefore not an alternative to the existing requirements particularly when the Council states that it is not clear where the CCTV is to be positioned and I have found that the steps required by the notice are not excessive.
 14. Based upon the evidence before me, there is not therefore an "obvious alternative" to upholding the notice and its requirements which would be clear and precise and would fall within my limited powers in the absence of a ground (a) appeal.
 15. There are permitted development rights under Part 2, Class F of the Town and Country Planning (General Permitted Development)(England) Order 2015 which apply to " the installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes" which the Council has referred to. Conditions include minimising external appearance. However, the Council's assessment of whether or not putting back a CCTV camera would fall within Part 2, Class F is not detailed and is again dependent upon the nature of the CCTV camera, any supporting structure and the precise location. A similar assessment would be needed as to whether what is proposed after compliance constitutes development.
 16. The appellant has referred to his reasons for having a CCTV camera including a police recommendation to install CCTV. Nevertheless, upholding the notice does not prevent discussions taking place between the relevant parties about an alternative location for a CCTV camera and whether or not what is proposed after compliance with the notice constitutes development or benefits from permitted development rights.

Conclusion

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

E. Griffin

INSPECTOR