
Appeal Decision

Site visit made on 12 October 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/H5960/C/21/3273394

11 West Hill Road, SW18 1LL

- 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 Mrs Caron Chancellor against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 24 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission and within the past 4 years the erection of an outbuilding in the front garden at the Property.
 - The requirements of the notice are:
 - i. Remove the unauthorised outbuilding from the land and restore the property to its previous condition;
 - ii. Remove from the site all debris arising from compliance with step 1.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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 be varied by:
 - Deletion of steps i) and ii) under section 5 - What you are required to do, and substituted therefor by the following steps:
 - 1) Remove the unauthorised outbuilding from the front garden of the property and restore the land to its previous condition. **Or**
 - 2) Carry out the development in accordance with the plans approved by the Council under the planning permission reference: 2021/2601 approved on 12 August 2021, so as to comply with the terms of this permission, including its conditions and limitations; and
 - 3) Following compliance with (1) or (2) above, remove from the land all constituent materials resulting from the works listed in (1) or (2) above.
2. Subject to these variations, the enforcement notice is upheld.

Procedural Matter

3. I have had regard to the appellant's statement which states that the 'outbuilding' is a fence with a roof/canopy added to it. However, given the overall size and design of the structure, I consider the Council's description of the development is perfectly adequate and therefore it is not necessary for me to correct the enforcement notice.

The appeal on Ground (f)

4. 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".
5. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
6. As the notice does no more than seek remedy of the breach, it is not excessive. However, since this appeal was originally lodged the Council have granted planning permission for the erection of a bike store in front garden¹. Details and drawings of this approved planning permission have been submitted by the parties, and the Council accept that this represents a valid option for the appellant.
7. Case law has established that enforcement should be remedial rather than punitive. In light of this extant planning permission, the breach of planning control could be addressed through an alternative option to require the development to be carried out in accordance with the plans approved under planning permission ref: 2021/2601. This would achieve the purpose of the notice which is to remedy the breach.
8. No persuasive argument has been made by the Council to explain why it would not be possible to implement this recently approved scheme. I will therefore add an alternative requirement to make the development comply with the plans approved under the extant planning permission which would remedy the breach of planning control, in line with s173(4)(a) of the 1990 Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
9. As such, the appeal on ground (f) succeeds and I will vary the notice to insert this alternative requirement.

The appeal on Ground (g)

10. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 2 months to 5-6 months, in order to allow sufficient time for an alternative design to be prepared, submitted, determined by the Council, and implemented.
11. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements, and since the appeal was

¹ Council ref: 2021/2601 approved on 12 August 2021.

lodged, the Council have granted planning permission for an alternative development in front garden². Furthermore, the appellant also states that it is possible to implement the revised scheme within 2 months. Therefore, the 5-6 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements. I conclude that the 2 months given, would be reasonable and proportionate time to comply with the notice.

12. On this basis, the appeal on ground (g) fails.

Conclusion

13. Whilst the requirements of the notice are not excessive to remedy the breach, in light of the recently approved planning permission, it is reasonable to require the development to comply with the plans submitted with this planning permission, including its conditions and limitations. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

R Satheesan

INSPECTOR

² Council ref: 2021/2601 approved on 12 August 2021.