



Appeal Decision

Site Visit made on 8 November 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/G5180/C/21/3278104

Land at 85 Lynwood Grove, Orpington BR6 0BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Higham against an enforcement notice issued by London Borough of Bromley.
 - The notice, numbered EN/19/00399/UNAUTH, was issued on 7 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission the installation of a new front wall incorporating railings and gate, adjacent to a highway used by vehicular traffic, and extending to a maximum height of 1.64 metres above ground level.
The requirements of the notice are to remove the unauthorised front wall incorporating railings and gate.
 - The period for compliance with the requirements two months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

2. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken in respect of the matters alleged in the notice. This ground of appeal assumes that there has been a breach of planning control, but it is immune from enforcement, as the development was substantially completed more than four years before the notice was issued. The burden of proof lies with the appellant to make out their case, and the standard of proof is the balance of probability.
3. For the appeal to succeed, the appellant would need to demonstrate that the wall, railings and gate were substantially completed at least four years prior to the date the notice was issued (7 June 2021), that is 7 June 2017.
4. The appellant states that the wall was completed in September/October 2016 and has provided photographs dated 12 September 2016, 5 October 2016, 7 October 2016, and 25 November 2016 showing it 'in situ', without the gate or railings. An extract of email correspondence between the appellant and the installer has been provided dated 29 March 2017, confirming that works will start the next day. The appellant states that the works were completed by 30 March 2017. A planning application¹ was submitted on 12 May 2017 for a single storey detached garage (retrospective). The accompanying drawing, dated 10

¹ Ref 17/02209/FULL6

May 2017, includes a photograph showing the wall, railings and gate as installed on the front boundary of the site.

5. The Council does not dispute the appellant's evidence and agrees that the development has acquired immunity from enforcement action due to the passage of time. I conclude that, on the balance of probabilities, the wall, gate and piers were substantially completed more than four years prior to the date the notice was issued and the development is therefore immune from enforcement.
6. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

N Thomas

INSPECTOR