
Appeal Decision

Site visit made on 21 September 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/K5600/C/21/3276155

Land at Debenham House, 8 Addison Road, London, W14 8DJ

- 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 Mr Chris Sawden against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice, numbered ENF/20/03103, was issued on 20 April 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of a security cabin structure to the front of the main property, marked in the approximate location 'A' on the attached plan (herein referred to as 'Structure A'), and a toilet cabin structure to the rear of the Coach House, marked in the approximate location 'B' on the attached plan (herein referred to as 'Structure B').
 - The requirements of the notice are:
 - (i) Permanently remove Structure A from the land;
 - (ii) Permanently remove Structure B from the land;
 - (iii) Remove from the land all resulting debris and make good the land where each structure was sited.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

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

The appeal on Ground (e)

2. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land.
3. The appellant's submission is that the Council needs to demonstrate that it has discharged its obligations and duties under this ground and has not caused prejudice to all those with a legal interest in the land. However, for a ground (e) appeal the onus is on the appellant to make his case on the balance of probabilities. Moreover s176(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act) provides that any failure to serve may be disregarded if the appellant has not been substantially prejudiced.
4. In this case, there is no dispute that the appellant was served with a copy of the enforcement notice and that he was able to make an appeal against the notice before it came into effect. The appellant does not claim that any other person was not served with a copy of the notice when they ought to have been.

5. I therefore conclude that the appellant has not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeal on ground (e) fails.

The Appeal on Ground (c)

6. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. Again, the onus is on the appellant to make his case on the balance of probabilities.
7. Schedule 2, Part 4, Class A of the GPDO¹ (hereafter referred to as Class A) sets out permitted development rights relating to temporary buildings and structures. It states that *'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'* is permitted development. Following the case of *Wilsdon*², 'required' is taken to mean what is genuinely reasonably required, rather than necessary, merely desirable or convenient.
8. Development is not permitted by Class A if planning permission is required for those operations but is not granted or deemed to be granted³. In this regard, the appellant highlights that a significant number of applications have been granted in relation to the site since 2008, and that such is the complexity of the project, it is taking a number of years to complete.
9. The appellant points, in particular, to two planning permissions from 2009 and 2012. The former is for the *'excavation to provide basement swimming pool and car park underneath rear garden accessed via car lift within Coach House; provision of garden rooflight and ventilation from car park; alteration and extension to ancillary buildings and re-landscaping of rear garden.'* The latter is for the *'demolition of existing swimming pool enclosure, alteration and extension of south wing area including new swimming pool'*.
10. Whilst the Council acknowledges that there is a wealth of planning history at the site, it says none is relevant to the alleged development and that no planning applications have been submitted or approved since 2017. However, there is no requirement within Class A for the operations to be completed within a short period of time and the Council does not argue that the permissions referred to by the appellant have not been granted or implemented.
11. The Council refers to the response to its Planning Contravention Notice (PCN) served on 28 July 2020 that there are no building works currently being carried out on the land for which planning permission or listed building consent has been approved. The appellant's explanation is that the response was correct at that time because all work had ceased on site due to the COVID-19 pandemic. It is explained that works remain to be undertaken from the permissions granted, including the cinema room, cloakroom and kitchenette, outbuilding and corridor.
12. The enforcement notice was also issued some seven or eight months after the date of the PCN therefore any response given in respect of the latter, may not

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² R (oao Wilsdon) v FSS & Tewkesbury BC [2006] EWHC 2980 (Admin); [2007] JPL 1063

³ There is a further limitation relating to mining operations which is not applicable in this case (Class A.1.(a))

have been reflective at the time of the former. I note that the Council state that there are no recent Building Control or Environmental Health records showing any construction works or complaints, nevertheless, at the time of my site visit I saw that work was ongoing at basement level and it appeared that a significant amount of work remained. I also observed some, albeit limited, external work.

13. Although the structures in this case have been at the site since May 2019, it is evident that the operations that have taken place and are currently being carried out to a lesser degree, are significant and complex. It is not surprising therefore that the duration of operations runs into a number of years. It is also unsurprising that operations were stalled by Covid-19 pandemic.
14. Nevertheless, it is for the appellant to show why the structures are reasonably required. To that end, it is explained that the toilet cabin structure is used by contractors and daily workers (rather than permanent house staff), who are not permitted to use internal facilities. In my experience, such facilities are routinely provided in connection with operations and are a reasonable requirement.
15. The appellant explains that the security cabin structure is used to regulate and monitor comings and goings in connection with the on-site work. Again, such facilities are routinely provided for operations, but in this case, there is a greater security imperative given the occupants of the house. It follows that I also find the security cabin structure to be reasonably required.
16. The PCN explains that the mobile security cabin will be moved to the owners next property or other properties, when it is no longer required in its current position. I do not consider that alludes to the purpose being for the long-term security of the residents as suggested by the Council. To my mind it is more likely to mean that as a mobile structure it will be used elsewhere when no longer required at the site. Indeed, the ground (a) appeal and deemed planning application before me is to retain the structures on a temporary basis only, rather than permanently. In any event, the permission provided by Class A is subject to conditions requiring the removal of any structures and the restoration of the land when the operations have been carried out⁴.
17. Moreover, given the exceptional characteristics of the site and the operations carried out, and the resources which are clearly available to the appellant, I find that it is unlikely that the appellant would wish to retain such structures on a permanent basis. Indeed, it is explained that a more robust and elegant purpose-built facility is required to meet the security needs of the occupants in the long term and that a heritage consultant has been instructed to work with the Council with the aim of providing a permanent solution.
18. The size and means of construction of a building is also relevant to Class A permitted development rights; the larger and more permanent the building, the less likely it is to be genuinely 'required temporarily' in connection with the carrying out of development. In this regard, both the toilet and security cabins are relatively small, prefabricated structures, which were delivered to the site in an assembled state and unloaded from the drive. Neither are fixed to the ground and in practical terms it would be quite straight forward to remove

⁴ Class A.2 Conditions

them. Such characteristics further point towards the structures being required temporarily.

19. Therefore, even if I were to agree that the alleged structures amount to building operations requiring planning permission, I find, on the balance of probability, that they were, and are currently required temporarily in connection with and for the duration of operations being or to be carried out on the land subject to the enforcement notice. As such, they are permitted development under Class A and so are granted planning permission by Article 3 of the GPDO, subject to the conditions and limitations set out under A.1 and A.2.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
21. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Richard S Jones

INSPECTOR