The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2021

Appeal Ref: APP/F5540/C/20/3266066
Premises known as 686 - 692 London Road, Hounslow TW3 1PG

- 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 Jasjit Singh Dhami (of Terra Properties Limited) against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 24 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a side boundary wall to the commercial premises.
- The requirements of the notice are: i. Demolish the side boundary wall. ii. Remove all the resultant debris from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (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.

Summary of Decision

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

The ground (b) and (c) appeals

2. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the erection of a side boundary wall, has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

3. The appellant asserts that there has been a side boundary wall at the site since it was purchased in 2006 and provides photographs of a wall from 2008. A wall is also shown on a set of existing elevations that were submitted to the Council in 2007 pursuant to an application for a change of use.

4. That there was a wall at the site in this location is not in dispute between the parties. The Council undertook a site visit on 3 September 2018 and a photograph has been provided which shows a wall with a substantial section or proportion having been demolished. The totality of the photographic evidence

before me of that wall demonstrates on the balance of probabilities that it was otherwise a substantial solid brick wall.

5. On 14 September 2018 a further site visit was undertaken, and a photograph has been provided showing a materially different wall, being rendered and containing 4 openings that appear to facilitate the installation of windows. The height of the wall is also the same along its entire length and thus at a minimum the demolished substantial section has been completely rebuilt. In 2019 a planning application was also submitted and later refused for a single-storey side extension which I am advised related to the wall with window openings, albeit the full details are not before me.

6. The evidence before me demonstrates on the balance of probabilities that the works were of an extent that would normally be undertaken by a builder and with-it operational development has occurred pursuant to Section 55 of the Act. The appellant is silent as to whether the remainder of the wall was demolished, or whether any further demolition was undertaken, albeit this is clear in respect of atleast the openings. The onus is however firmly on the appellant to provide sufficiently precise and unambiguous evidence as to the extent of the works undertaken. Nevertheless, based on the photographic evidence, the wall the subject of the notice is materially different to that which had existed, at the very least substantially rebuilt, and so as a matter of fact and degree goes beyond repair and maintenance.

7. Accordingly, the appellant has not demonstrated on the balance of probabilities that there has not been the erection of a side boundary wall as a matter of fact.

8. I have therefore found that development has occurred and no planning permission for the wall has been brought to my attention. It is then asserted the side boundary wall falls within permitted development tolerances. The Council have measured the wall and state it is 2.52m in height. This has not been disputed by the appellant. Accordingly, the side boundary wall cannot be permitted development pursuant to Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as it exceeds 2m in height above ground level.

9. The appellant has therefore not demonstrated on the balance of probabilities that there has not been a breach of planning control.

10. The appeals on ground (b) and (c) therefore fail.

The ground (d) appeal

11. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the side boundary wall would thus need to be 24 November 2016, as the 4-year rule for immunity applies.

12. I have already found that there has been a breach of planning control as a matter of fact and that it does not constitute permitted development.

13. The photographic evidence before me then demonstrates on the balance of probabilities that the side boundary wall was erected in September 2018. The

appellant offers very little evidence to the contrary and so has not demonstrated on the balance of probabilities that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.

14. The appeal on ground (d) therefore fails.

The ground (f) appeal

15. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

16. I have already found that the erection of the side boundary wall is a breach of planning control. The requirements of the notice then go no further than remedying that breach. The appellant contends the demolition of the wall would severely affect the layout of the property together with the character and appearance of the area. However, that is a matter for a ground (a) appeal. In the absence of the appropriate fee having been paid, I am unable to consider such matters.

17. As no lesser steps are proposed to remedy the breach of planning control enforced against, the appeal on ground (f) fails.

The ground (g) appeal

18. The appellant contends that the time given to comply with the requirements of the notice are too short owing to the pandemic and periods of national lockdown and holidays. However, any lasting effects of the pandemic or holidays do not convince me that a period of 3 months is too short in which to comply with the relatively straight-forward requirements of the notice.

19. The appeal on ground (g) therefore fails.

Overall Conclusion

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

Formal Decision

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

Paul T Hocking

INSPECTOR