



Appeal Decision

Site visit made on 23 November 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 10th December 2021

Appeal Ref: APP/H5960/C/21/3268909

30 Woodborough Road, London SW15 6PZ

- 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 Vida Homes - Woodborough Road Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 7 January 2021.
 - The breaches of planning control as alleged in the notice are:
Breach A
Without planning permission and within the last ten years, breach of condition 12 of the planning permission granted by the Council on 23 June 2017 under reference 2017/1971 by failing to implement the hard and soft landscaping scheme approved by the Council on 10 April 2018 under reference 2018/1036 and implementing an unauthorised hard and soft landscaping scheme.
Breach B
Without planning permission and within the last four years, the unauthorised erection of vent enclosure and raised ground level in the rear garden.
 - The requirements of the notice are to:
 1. Breach A - Remove the hard standing, fences and artificial grass from the Property and implement the approved scheme of hard and soft landscaping to the front and rear of the Property (as shown on drawings no. PP1.04 and PP1.05 approved by the Council on 10 April 2018 under reference 2018/1036);
 2. Breach B - Remove the unauthorised vent enclosure which is sited alongside the northern boundary wall;
 3. Breach B - Remove the unauthorised raised ground level in the rear garden and ensure that any remedial works accord with the approved site level plans (as shown on drawing no. PP1.01 approved by the Council on 17 January 2018 under reference 2017/6479); and
 4. Remove from the Property all debris arising from the compliance with steps 1-3.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (e) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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Decision

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

Ground (e)

2. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act.
3. Section 172(2)(a) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates.

4. It is clear from the notice, under the heading "Parties on whom the enforcement notice has been served", that the appellant was served with a copy of the notice as the "Freehold Owner" together with Investec Bank PLC as the "Mortgagee". These were the only 2 recipients served with a copy of the notice, as confirmed in the Council's appeal submissions.
5. There is no evidence that any other owners of the property that is subject to the notice (such as any leaseholders of the 8 flats) or that its occupiers were served with copies of the notice. The appellant has said that all the flats were occupied at the time the notice was issued, and this was not challenged by the Council despite given an opportunity to do so within the appeal procedure and timetable.
6. While I note that the owners and/or occupiers of 2 of the flats made third party representations in support of the appellant's appeal when notified of it, the owners/occupiers of the 8 flats should have been able to make appeals in their own capacities. However, they were not afforded their legal right to do so because the Council failed to comply with statute in omitting to serve them with copies of the enforcement notice. There can be no assumption that, given the opportunity, the flat owners/occupiers would have appealed on the same grounds as the freeholder or that arguments under the grounds would have been the same. They may have had particular perspectives particularly as the notice is in part concerned with private gardens serving individual flats. For these reasons, and being also mindful of Articles 6 and 8 of the Human Rights Act 1998 (right to a fair trial, right for respect for private and family life), I consider that they have been substantially prejudiced.

Conclusion

7. For the reasons given above I conclude that the appeal should succeed on ground (e). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Andrew Walker

INSPECTOR