



Appeal Decision

Site visit made on 1 December 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/H5390/C/20/3250103

Land at 58 Collingbourne Road, London W12 0JQ

- 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 Ms Shayne Trimnell-Ritchard against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice, numbered 2019/01087, was issued on 19 February 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the installation of raised carport/terrace to the rear garden of no.58 Collingbourne Road.*
 - The requirements of the notice are:
 - a) *Remove from the land the raised carport / terrace, and associated balustrade and staircase.*
 - b) *Remove from the land any soil and aggregate used to increase the height of the land directly under the raised carport / terrace so that:*
 - i) *It does exceed 15cm (the height of the two brick courses) at the point when measured from the ground level of the rear extension as shown on the attached photo.*
 - AND**
 - ii) *The ground level slopes upwards from the rear of the property to the rear boundary so that it does not exceed the original height of the garden as shown in the attached photo.*
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting step b) i) from Paragraph 4 "What you are required to do" and the period for compliance be varied at Paragraph 5 by extending it to 5 (five) months.
2. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Matters relating to the planning merits of the structure in the context of the effect of the development on occupants of the neighbouring property are not relevant to an appeal made on the grounds submitted. Those arguments are more relevant as to whether planning permission should be granted. However, no appeal is made on ground (a) that planning permission should be granted, and so I cannot take them into account in reaching my decision.

The appeal on ground (d)

4. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving building operations, it is four years.
5. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the raised carport/terrace was substantially complete at least four years before the date the notice was issued. In this instance, that date is 19 February 2016. The appellant argues that the construction works commenced in April 2015 and that the ground level has been at the "current configuration" since then, more than 4 years.
6. The photographs provided by the appellant purport to show groundworks to create the level base occurring during April 2015. The photo captioned "30 Nov 2015" shows the reinforced concrete structure without the timber decking, balustrade and staircase. A photograph captioned "19 April 2016" from the appellant shows a similar scenario, with the ground levelled in line with the road, but no timber decking, balustrade and staircase down to the lower garden area. The photograph provided by the neighbour at 56 Collingbourne Road (No. 56) is dated 26 July 2016 (with metadata) and shows the construction of the raised terrace was in progress with the laying of timber decking, steps and the posts for the balustrade.
7. I note photographs provided by the Council which show "no.56 &58 during construction taken by council officer on the 15/09/2020, according to properties tab of digital photo files". These photographs clearly show the raised platform prior to being covered with timber decking. However, it seems likely that the year has been recorded incorrectly in the light of submissions from the neighbour.
8. From the evidence before me, the development comprised both the raising of the land to form a level, reinforced concrete base upon which a car could be parked and the creation of a raised terrace. The terrace could not exist without the groundworks that have taken place to provide a level area within the rear garden and as such the development is a single operation.
9. Having regard to this evidence and without further supporting evidence to the contrary, I conclude that, on the balance of probabilities, the installation of a raised carport/terrace to the rear garden was not substantially complete on 19 February 2016.
10. Thus, the breach of planning control is not immune from enforcement action and the appeal on ground (d) therefore fails.

The appeal on Ground (f)

11. To succeed on this ground the appellant must show that that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control,

- including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
12. It is necessary to first establish what the Council is seeking to achieve by the notice. The reasons given on the notice concern the development creating unacceptable overlooking and a loss of outlook and natural light to No. 56. In this context the development is considered contrary to Policy HO11 of the Local Plan 2018 and key principle HS8 of the Planning Guidance 2018.
 13. It is clear from the Council's reference to planning policy and the requirement for the complete removal of the development rather than a modification, that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place.
 14. Although the appellant acknowledges that the property would not benefit from permitted development because the property is divided into flats, they consider that the requirement for the height to be half that deemed acceptable in the GPDO appears excessive. They consider that if the property was in use as a single dwellinghouse, double this height would be permitted development and that raising the garden level beyond 15cm would have no material impact on the amenity of neighbours and would be considered a "de minimis addition to the lawful ground level". Nevertheless, in the absence of an appeal on ground (a) there is no mechanism to consider the planning merits of the case.
 15. The photograph attached to the Notice shows the garden gently sloping up from the rear of the property towards the rear boundary fence. Three stone steps lead from the garden level to the pedestrian gate at street level. Step b)ii) of the notice requires the land to be restored so that it does not exceed the "height" of the garden as shown on the photograph. The appellant considers this excessive and that the Council's notice does not specify which level is to be complied with. However, they do consider that the level with the existing street would not be unreasonable as this was the level of a section of the land adjacent to the neighbouring property (No. 60). This is shown as a planted area on the photograph attached to the Notice.
 16. The photograph clearly shows the various levels within the original rear garden area of the appeal property and restoring the land to the levels displayed in the photograph would enable compliance with the notice.
 17. However, I do consider that step b)i) of the notice is superfluous considering step b)ii) which aims to restore the land to its previous levels. Accordingly, I shall remove step b)i) from the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. As step b)ii) would remain and compliance with it would achieve what the Council intended from the Notice and would be no more onerous to the appellant, I consider the notice can be corrected in this way without injustice to either party.
 18. For the above reasons, and in the absence of an appeal on ground (a), I find that remedying the breach of planning control can only be achieved by complete removal of the development and all the resulting materials, as set out in the notice requirements as amended. It follows that those requirements are not excessive for their purpose and the ground (f) appeal succeeds in part.

The appeal on Ground (g)

19. The notice provides for the period of 3 months to fulfil the requirements of the notice. However, the appellant has indicated that they would need longer to obtain estimates for the work and find and appoint an available person to undertake the works. Also, a three-month period would not be sufficient to obtain planning permission for any alternative scheme which may overcome the concerns of the Council as this would allow only 1 month to prepare and submit a planning application.
20. Having regard to both parties, I consider that 3 months would not be reasonable. However, the development may also be causing harm to the living conditions of the neighbouring residents which also needs to be considered.
21. I therefore consider that a reasonable period for compliance would be 5 months, and I am varying the enforcement notice accordingly, prior to upholding it. The ground (g) appeal succeeds to that extent.

S A Hanson

INSPECTOR