
Appeal Decision

Site visit made on 12 May 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Appeal ref: APP/V5570/C/21/3289584

123 Junction Road, Islington, London N19 5PX

- The appeal is made by Caraselle Direct under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Islington Council.
- The notice was issued on 24/11/2021; reference No. ENF/2020/264.
- The breach of planning control was: Without planning permission, the erection of a timber fencing around the front forecourt.
- The requirements of the notice are:
 - i. Demolish and remove the timber fencing and supporting posts and fixings from the front forecourt of the property, making good in matching materials any damage to the host property and hardstanding.
 - ii. Clear any resulting materials and debris from the land.
- The period for compliance with the requirements is one month.
- The appeal was made on grounds (b), (c) and (g) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld

Appeal development

1. The appeal concerns an approximately 1.3m high timber slatted fence erected in front of and around the glazed frontage of the property, No. 123 Junction Road, separating it from the adjoining footway.

The enforcement notice appeal on ground (b)

2. An appeal on ground (b) asserts: "That those matters, (that is, the matters stated in the notice which may give rise to the breach of planning control), have not occurred."
3. The Appellants, Caraselle Direct, said what the enforcement notice described as timber fencing was in fact a temporary timber hoarding, set up around the forecourt to No. 123 Junction Road following the grant of planning permission P2021/1268/FUL. It was only in place until the installation of the permitted metal railings is completed.
4. Appeal ground (b) was introduced to meet the straightforward but somewhat unusual situation whereby what the Local Planning Authority say has happened has not in fact happened. The Appellants here are really saying that the description of the alleged breach of planning control is inaccurate. I deal with that point in the ground (c) appeal below. The notice acts against what I think

most people would regard as a timber fence. It cannot reasonably be said that there has not been an enclosing fence built to the frontage of No. 123. The appeal on ground (b) fails.

The appeal on ground (c)

5. An appeal on ground (c) says there has not been a breach of planning control. The Appellants said the enclosure was a hoarding erected as a temporary structure. It was needed to limit anti-social behaviour following the relocation of the bus shelter close by. It was to remain in place until metal railings could be manufactured and installed. The installation of the fence had not amounted to development, as described in s.55 of the Act.
6. I agree with the Council that the appeal fencing is not a hoarding as claimed in the Appellants' evidence at Appendix 1. That describes a hoarding as a temporary structure of solid construction, typically erected around the perimeter of construction sites to shield them from view and prevent unauthorised access. It goes on to say that hoardings or fences are recommended to be a minimum height of 2.4 m. Flat-sided hoardings are considered more difficult to climb than fencing and to prevent viewing of the site interior. The appeal fence is only about 1.3m high, easily breached by anyone intent on harm or mischief. Clearly, this fence is not a hoarding to a construction site. It is a temporary fence said to be awaiting replacement by a bespoke permanent metal fence.
7. S.55 of the Act - Meaning of "development" and "new development" says that: (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. And - (1A) For the purposes of this Act "building operations" includes amongst others - (d) other operations normally undertaken by a person carrying on business as a builder. The fence to the No. 123 Junction Road frontage may be small scale, but its erection did, in my view, amount to a building operation that required planning permission. The appeal on ground (c) fails.

The appeal on ground (g)

8. The appeal on ground (g) says that the period of time in which to comply with the requirements of the enforcement notice is too short and that a longer period should be substituted. Whether or not a permanent replacement is yet available is not relevant to this ground of appeal. The notice allows one month for compliance. The fence could be taken down and removed within a matter of minutes. There is no justification for an increase in the period for compliance that could amount to a temporary permission. The appeal on ground (g) fails.

FORMAL DECISION

9. The appeal fails. The enforcement notice is upheld.

John Whalley

INSPECTOR