



Appeal Decision

Hearing Held on 25 May 2022

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

an Inspector appointed by the Secretary of State

Decision date: 7 June 2022

Appeal Ref: APP/M5450/C/21/3271955

Land at the rear of 8 Clifton Road, Harrow HA3 9NS and at the rear of 6 Clifton Road, HA3 9NS and at the rear of 4 Clifton Road, Harrow HA3 9NS shown edged with a solid red line on the Plan annexed to the notice ("the Land")

- 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 Suzette Thomas against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice, numbered ENF/0099/16/P, was issued on 15 February 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission, the construction of a detached single storey building on the Land ("Unauthorised Building").
Without planning permission, the material change of use of the Land to use as an office (Class E (g) (Commercial, Business and Service)) of the Town and Country Planning (Use Classes) Order 1987 ("Unauthorised Use").
- The requirements of the notice are to:
 1. Cease the Unauthorised Use (within 3 months).
 2. Demolish the Unauthorised Building (within 6 months).
 3. Remove from the Land all means of enclosure that separates the Unauthorised Building from the dwelling houses at 8 Clifton Road, Harrow, HA3 9NS and 6 Clifton Road, Harrow, HA3 9NS and 4 Clifton Road, Harrow, HA3 9NS (within 6 months).
 4. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of this Notice (within 6 months).
- The appeal is proceeding on the grounds set out in section 174(2) (a) (d) (e) (f) (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.

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. That section requires that copies should be served on the owner and occupier of the land to which the notice relates, and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice.
3. However, I may disregard non-service under section 176(5) of the Act provided that neither the appellant nor the person not served have been substantially prejudiced.

4. The appellant has provided a copy of the register of title number MX215429, with associated plan, from HM Land Registry. That evidence demonstrates that land at the back of 6 Clifton Road has been in the freehold ownership of Leveloak Developments Limited¹ ('LDL') (Company registration number 468487) since 1979. The title plan shows that the land of that title is within "the Land" which is the subject of the notice, within the solid red line of the enforcement plan.
5. The Land Registry documentation states on its face that the entry on the register is correct as of 19 March 2021 which I note to be shortly after the issue of the notice. Therefore, I am satisfied that the stated company was an owner of "the Land" at the time the notice was issued. Further, submissions from the appellant at the hearing indicated that the company remains in ownership of the land.
6. At the hearing, the Council acknowledged that that it had not served a copy of the notice on this company by name or to its registered or principal office.²
7. The Council suggested that LDL had in practice been served with a copy of the notice, since a copy had been served on:
*"The Owner, The Single-storey building at rear of 8 Clifton Road, Harrow, HA3 9NS and at the rear of 6 Clifton Road, Harrow, HA3 9NS and at the rear of 4 Clifton Road, Harrow, HA3 9AS."*³
8. However, I am not persuaded this constituted proper service on the company for a number of reasons.
9. Firstly, I have seen no evidence that LDL is the owner of the single storey building to whom this copy of the notice was addressed. Rather, the evidence before me indicates that it is the appellant that is the owner of the building notwithstanding that some of it is situated on land owned by LDL. Therefore, it is the appellant who meets the addressee description upon the copy that was served in this way. Moreover, the appellant says it was not forwarded to LDL.
10. In any event, the Act is clear that due service on an addressee simply described as "the owner" is possible only where the name of any person having an interest in the premises cannot be ascertained after reasonable inquiry⁴. The Council was not able to satisfactorily explain at the hearing why the Land Registry search said to have been conducted before issue of the notice did not identify LDL as an owner of "the Land"⁵. Had it been so identified, proper service would have been achieved upon the company at its registered or principal office.
11. I accept that the appellant had declared on her planning application⁶ dated 3 February 2020 that she was the sole owner of the land subject to that application. However, that fact does not absolve the Council of its statutory responsibility under section 172 of the Act to serve copies of the enforcement notice as required in law.

¹ Of 62 Station Approach, South Ruislip, Middx HA4 6SA.

² Section 329(1)(d) of the Act refers.

³ Number 15 in list of those served; Page 5 of the enforcement notice.

⁴ Section 329(2) of the Act refers.

⁵ Neither had the Council chosen to use its discretion to issue a Planning Contravention Notice in advance of the enforcement notice which might have identified LDL in its ownership of part of "the Land".

⁶ Contained within Appendix 4 of Council's submissions.

12. The Council confirmed at the hearing that it had at no time since the issue of the notice contacted LDL, either to notify it of the appeal made or of the hearing or for any other reason. The appellant confirmed the same, and further stated that she had not been in touch with LDL since 2004 when she had attempted to start negotiations to purchase the land. Having reportedly received no response, she had occupied and developed the site in any event.
13. In all the circumstances, LDL has clearly been substantially prejudiced by the Council's failure to serve it with a copy of the notice. On all the evidence, that company is more likely than not to be unaware that these appeal proceedings exist – following the issue of a notice of which it is similarly unaware – and, significantly, also being unaware of the deemed planning application (DPA) which has been made and which (if granted) would authorise a development upon land it owns. To deprive LDL of its opportunity to make appeal representations upon the notice and DPA would be very unfair and prejudicial to their interests.

Conclusion

14. I conclude that Leveloak Developments Limited has been substantially prejudiced by this non-service of the enforcement notice and that this is not a case when I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeal under ground (e) therefore succeeds. I will exercise the powers transferred to me accordingly and the enforcement notice will be quashed. In these circumstances the appeal under the various grounds as set out in section 174(2) of 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 fall to be considered.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graeme Free BSc (Hons) MA MRTPI
(Associate Director, DLP Planning Limited)

FOR THE LOCAL PLANNING AUTHORITY:

Mark Olding
(Senior Planning Enforcement Officer)
Hanna Miturska
(Infrastructure Engineer)
Katie Hogendoorn
(Senior Planner)

INTERESTED PERSONS: None