
Appeal Decision

Site visit made on 1 August 2022

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal A Ref: APP/N5090/C/21/3268922

Appeal B Ref: APP/N5090/C/21/3268923

16 & 18 Brampton Grove, London, NW4 4AG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Jeremy Stakol and Appeal B by Mrs Marcella Stakol against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 4 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of netting surrounding a hardstanding with associated supporting poles and lights.
 - The requirement of the notice is to permanently remove the netting and associated supporting poles and lights.
 - The period for compliance with the requirement is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (e) & (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the notice be:
 - a) corrected by deleting reference to no.18 Brampton Grove and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and
 - b) varied by replacing the requirement in the notice with "Permanently remove the lighting and the 2 poles erected in 2019."

Subject to this correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mr Jeremy Stakol against the Council. This application is the subject of a separate Decision.

The appeals on ground (e)

3. This ground of appeal is that the notice was not properly served on everyone with an interest in the land. The Council asserts that copies of the notice were hand delivered to the owners and occupiers of both no.16 and no.18 Brampton Grove on 11 January 2021, in accordance with S.172(2) of The Act. This is disputed by the appellants, with the support of the occupier of no.18, Mr Lossos, who states that letters addressed to both no.16 and no.18 were delivered to his residence, no.18.

4. However, I do not need to resolve this dispute as S.176(5) of The Act gives the power to disregard non-service of a notice, provided that the appellants have not been substantially prejudiced by this failure. Mr Lossos confirms that he contacted the owners of no.16 and hand delivered the relevant letters around the second week of January 2021. This allowed just enough time for the appellants to lodge their appeals prior to the date on which the notice took effect. Because of these circumstances, the appellants were allowed additional time to present their case in full. Accordingly, I cannot see that they have been substantially prejudiced if, indeed, there was a failure of procedure. The appeal on ground (e) fails.

The appeals on ground (b)

5. This ground is that the alleged breach of planning control has not occurred as a matter of fact. There is no dispute that the development set out in the notice has taken place. However, the appellants have pointed out that, although they own both no.16 and no.18 Brampton Grove, the development is entirely within the land comprised in the title of no.16, a matter not disputed by the Council. Nevertheless, there is no confusion as to which development is the subject of the notice and, therefore, whilst the appeal on ground (b) succeeds on this limited basis, I am able to correct the notice to refer to the correct address and site area without injustice to the parties.

The appeals on ground (c)

6. This ground is effectively a repeat of the above ground, in that no unauthorised development appears to have been carried out at no.18 Brampton Grove. However, I have already indicated that I can correct the notice to omit reference to this property.

The appeals on ground (d)

7. This ground of appeal is advanced in relation to 8 of the 10 poles and the whole of the attached netting. It is acknowledged by the appellants that 2 of the poles and the lighting were added in 2019.
8. For this ground to succeed, the onus is on the appellants to demonstrate, on the balance of probability, that the development was substantially complete by 4 January 2017.
9. In his signed witness statement, Mr Stakol states that 8 poles and the netting were erected in 2015. His supporting evidence includes an email from Elizabeth and Paul Cohen of no.14 Brampton Grove, dated 27 June 2021, albeit that appears to make no reference to the date of erection. However, his photographs of July and November 2015, with accompanying verification of the dates, show the original poles and the netting in place by the latter date. The receipt for the purchase of the netting, dated October 2015, is consistent with this evidence.
10. In response, the Council has submitted a Google Earth image, said to have been taken on 4 August 2017, on which the poles and netting do not appear to be visible. However, the appellants have disputed the claimed date of this photograph (which is not, in any event, shown on the photograph itself). Furthermore, the photograph is a very small scale oblique aerial photograph and, given the presence of extensive boundary vegetation, I have considerable

doubt whether the poles and netting would be visible in any event, with any significant degree of clarity.

11. I am led to the view that, on the balance of probability, the appellants are correct in stating that the original 8 poles and the netting were erected in 2015. Thus, at the time the enforcement notice was issued, it was too late to take enforcement action. The appeal on ground (d) succeeds to this extent and I shall vary the notice accordingly.

The appeals on ground (f)

12. Since there is no appeal on ground (a) and an associated application for planning permission deemed to have been made under section 177(5) of the Act as amended, I am unable to take into consideration the planning merits of the case¹.
13. The purpose of the notice appears to be to remedy the breach of planning control which, as varied, is the erection of the lighting and the 2 poles in 2019. The permanent removal of these items is no more than is needed to remedy the breach. Whilst I saw during my site visit that these items had been removed, the varied requirement of the notice remains necessary to prevent their reinstatement. The appeal on ground (f) fails.

B.S. Rogers

Inspector

¹ SSTLR v Wyatt Brothers(Oxford) Ltd and Oxfordshire CC [2001]



Plan

This is the plan referred to in my decision dated: 03 August 2022

by **B.S.Rogers BSc(Hons) DipTP MRTPI**

Land at: 16 Brampton Grove, London, NW4 4AG

Reference: APP/N5090/C/21/3268922 & 3268923

Scale: nts

