



Appeal Decisions

Site visit made on 26 July 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal A Ref: APP/V5570/C/22/3295535

Appeal B Ref: APP/V5570/C/22/3295536

37 Thornhill Road, London N1 1JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ben Mawson (Appeal A) and Ms Mirjam Weichselbraun (Appeal B) against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a plastic artificial hedge attached to the side railing of the means of enclosure facing Barnsbury Square.
 - The requirements of the notice are:
 1. Remove the plastic artificial hedge attached to the side railing of the means of enclosure facing Barnsbury Square and its associated fixings;
 2. Upon the completion of step 1 above, remove all resulting debris materials from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of 2 months and the substitution of 3 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice is varied by the deletion of 2 months and the substitution of 3 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeals A and B on ground (c)

3. In an appeal on ground (c), it is for the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control stated in the notice does not constitute a breach of planning control. Section 171A(1) of the 1990 Act set out that a breach of planning control constitutes (a) carrying out development without planning permission; or, (b) failing to comply with any condition or limitation subject to which planning permission has been granted.

4. Development is defined by Section 55(1) of the 1990 Act as 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.
5. The appellants argue that the artificial hedge does not amount to development. It is clear that the works do not amount to engineering or mining operations. Nevertheless, the appellants maintain that they do not amount to building or other operations either.
6. Section 336(1) of the 1990 Act identifies a building as including any structure or erection. The approach of the Courts in construing the definition has been to ask first whether what has been done has resulted in the erection of a 'building' for the purposes of section 336(1). If so, there can be little doubt that the erection of it has amounted to building or other operations.
7. The Courts have held first in *Cardiff Rating Authority*¹ and subsequently in *Skerritts*² that three primary factors are decisive of what was a building. They are size, permanence and physical attachment.
8. The appellants' evidence indicates that the foliage appears to be attached to a plastic frame which is affixed to plyboard by large staples. The entire hedge is then attached to the railings by plastic ties.
9. The appellant indicates its installation could have been done by a layperson or homeowner. However, the hedge exceeds 1m in height with a length of around 18.5m. That is of considerable size and as such is unlikely to have been fitted in one single continuous piece. As such, it seems to me that it would have been brought to the site in sections and erected piece by piece. The fact that it may not have been carried out by a builder does not mean that it cannot be considered to be works which ordinarily would be carried out by a builder.
10. Moreover, whilst the hedge may easily be detached from the railings, the evidence indicates that there is clearly no intention for it to be movable. Indeed, it is difficult to see where else an artificial hedge of such scale could be accommodated within the property. In addition, the appellants have indicated the artificial hedge has a specific security purpose in the location it has been erected to prevent views into the site from the street. As such, it seems to me that the artificial hedge has a substantial degree of permanence.
11. The appellant indicates that it has a similar degree of attachment to a tent or flat and significantly less than washing line. However, whilst that may be the case, this has a significantly greater degree of permanence than a tent or a flag. Moreover, considering the size of the hedge, its degree of attachment is significantly greater than one would expect from a washing line which is likely to be affixed in only one or two places.
12. On that basis, I consider the erection of the artificial hedging constitutes building operations and thus development under section 55(1) of the 1990 Act.
13. In the absence of any evidence of planning permission having been granted for the artificial hedging, I conclude that it amounts to development without

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385

² *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

planning permission. The alleged breach of planning control as stated in the notice therefore amounts to a breach of planning control.

14. The appeal on ground (c) thus fails.

Appeals A and B on ground (g)

15. An appeal on ground (g) is made on the basis that the time given for compliance with the notice is too short. The notice gives 2 months for compliance. The appellants initially argued that a period of 18 months would be suitable.
16. Some of the appellants' case on ground (g) is targeted at whether or not it was expedient for the LPA to issue the notice. However, that is not a matter which is open to me to consider.
17. In addition, much of the appellants' case on ground (g) discusses the merits of the artificial hedge, including raising points regarding its need to overcome security concerns. However, in the absence of any appeal on ground (a), it is not open to me consider the planning merits of the development.
18. The appellants argue that compliance should have been until October 2022. This is to allow the natural planting behind the artificial hedge to establish so that it would be provide sufficient security screening such that the artificial hedge would not be necessary.
19. A letter attached from the appellants' gardener indicates that the planting on the boundary will be fully established by November 2022. Given the evidence the appellants have provided which sets out the security concerns faced by them, it seems to me that increasing the time for compliance by an additional month to 3 months would reasonably balance the time needed for the natural planting to establish and the need for expediency in dealing with the planning harm. The extended compliance period would give the appellant until the estimated October/November 2022 period for the planting to establish.
20. The appeal on ground (g) therefore succeeds to a limited extent.

J Whitfield

INSPECTOR