
Appeal Decision

Site visit made on 16 August 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/Y5420/C/21/3277124
445 Archway Road, London N6 4HT

- 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 Mr Andreas Nicola Toumazos against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 4 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised outbuilding to the rear.
 - The requirements of the notice are:
 1. Remove from the land, the outbuilding in its entirety.
 2. Remove any resultant debris from carrying out step 1 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice is:
 - corrected by deleting the word "454" under section 2 of the enforcement notice (the land affected) and its replacement with "445".
 - varied by deleting the words "Three (3) months" within section 5 (What you are required to do) and its replacement with "Five (5) months".
2. Subject to this correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

The appeal on ground (e)

3. The main issue to consider is whether the appellant has shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, he has been substantially prejudiced. In the legal grounds of appeal, the burden of proof is upon the appellant, with the standard of proof being the balance of probabilities.
4. The appellant states that the notice was not properly served because the address on the notice refers to No 454 Archway Road instead of No 445 Archway Road.

5. The Council state that they served the notice at the correct address being 445 Archway Road on 10 May 2021, but there was a typographical error in paragraph 2 of the notice, in so far as No 454 was stated on the notice instead of 445. However, it is obvious and clear when reading the notice that this is a typographical error. For instance, the list of persons served, the cover letters and the site plan accompanying the notices all correctly identify the correct address of No 445 Archway Road¹.
6. Furthermore, the Council state that notwithstanding the error, the notices were all hand delivered and served on the correct addresses. Photographs provided by the Council illustrate the notices were hand delivered through letter boxes at the appeal site, at No 445 Archway Road, in addition to the freeholders known address at No 375 Archway Road. As such the Council asserts that the notice was served on the correct address and interested persons.
7. The appellant disagrees and refers to *Pease v Carter & Anor (2020)* and considers that this case is relevant in respect of statutory notices served in all aspects of property and block management. However, this judgement related to notices served under section 8 of the Housing Act 1988, which is a separate matter from an enforcement notice served under the 1990 Act. Furthermore, no substantive evidence nor authority has been advanced to support the appellant's contention that the requirements and principles which apply for serving notices served under section 8 of the Housing Act 1988, should equally apply to the different context of the 1990 Act. As such, since the statutory regime is different, the law in relation to the notices served under the Housing Act 1998 is not relevant to this ground of appeal under the 1990 Act.
8. Evidently, the appellant received a copy or copies of the enforcement notice and was able to lodge an appeal within the relevant timeframe. Furthermore, the appellant has not identified the parties who they consider were not notified in accordance with Section 172, and thus has not demonstrated any substantial prejudice by failure to do so. It cannot therefore be said that parties with an interest in the land have been substantially prejudiced. Consequently, the appeal on ground (e) must fail.
9. It is necessary however to correct the address on the notice by deleting "454" and replacing this with "445". This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

The appeal on ground (f)

10. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
11. The enforcement notice requires the removal of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
12. The appellant states that the steps required are excessive in terms of remedying the breach since the Council accepted the principle of an outbuilding

¹ Appendix 1 of the Council's Statement of Case.

under a recent refused application for a shed². The appellant also states that they have permitted development (PD) rights and would wish to lower the height of the outbuilding to a maximum height of 2.5m in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The appellant also states that they also seek to change the materials.

13. PD rights only apply when the development fully accords with the limitations set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). If development is commenced but any limitation is exceeded, the whole development would be unlawful, not just the element in excess of PD. Limitations to, for example, the size of development are expressed precisely in the GPDO. There cannot be a 'de minimis' infringement. It has been held that PD rights cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance.
14. With regard to the principle of the development and changes to the materials of the building, given that the ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and I must take the notice at face value. Indeed, it is open to the appellant to submit a planning application to the Council for a revised scheme if they so wish.
15. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
16. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

17. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 months to 6 months, given that Covid-19 restrictions may not allow the owners to be provide access to the property given it is tenanted.
18. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements, and since the appeal was lodged, we are now if a different situation with the pandemic, with the easing of social distancing restrictions. I consider that the 6 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements, especially as there is a separate gate to the side of the property which provides access to the rear garden. In my view, 5 months would strike a more reasonable and proportionate balance to comply with the notice. I shall therefore extend the period from 3 to 5 months for compliance with the notice.
19. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

² Council ref: HGY/2019/0568: Refused on 02 April 2021.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

R Satheesan

INSPECTOR