



Appeal Decision

Site visit made on 25 August 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2022

Appeal Ref: APP/U5360/C/21/3289231

32 Shoreditch High Street, Hackney, London E1 6PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by SOLA 9 LTD against an enforcement notice issued by the London Borough of Hackney.
 - The notice, reference 2019/0004/ENF, was issued on 15 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of a metal frame and external lighting affixed to the facade of the Property at first, second and third floor levels.
 - The requirements of the notice are:
 1. Remove the metal frame and lighting as shown in Appendix 1 'Photograph of the breach';
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. This appeal involves items previously used in connection with the display of advertisements. However, the enforcement notice alleges operational development requiring planning permission. I have noted references to whether or not deemed consent exists under the provisions of Regulation 6 and Class 13 of Part 1 of Schedule 3 of *The Town and Country Planning (Control of Advertisements) (England) Regulations 2007* but, for the avoidance of doubt, that is not a matter before me.

Ground (e)

3. Section 172(2) of the Act requires that a copy of an enforcement notice shall be served—
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) 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.

4. In this case it is argued that the notice should have been served on Blow Up Media UK Ltd, a company which, it is said, owns the framework and lighting targeted by the notice. It is argued that ownership of these items indicates an interest which is materially affected by the notice.
5. However, s172(2)(b) is only relevant where there is an interest in the land. I am not persuaded that ownership of an item on the land indicates an interest in the land, even if it is an item targeted by the notice.
6. The Council previously issued a 'removal notice' under s225A of the Act against the structures and, unlike the enforcement notice, this was served on Blow Up Media UK Ltd. However, a notice under s225A is not an enforcement notice and has different service requirements¹. Consequently, the fact that the Council served that notice on Blow Up Media UK Ltd does not show that the company had an interest in the land for the purposes of s172(2)(b).
7. I appreciate that the Council could have sought further information prior to issuing the notice via a planning contravention notice issued under s171C of the Act or a notice issued under s330. However, those are optional actions. Since I am not persuaded that the Council was in error regarding the service of the enforcement notice, it cannot be criticised for not issuing notices under s171C or s330.
8. For these reasons, the appeal on ground (e) fails.

Ground (d)

Background

9. To succeed on ground (d), the appellant must demonstrate that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The standard of proof is the balance of probability.
10. The notice was issued on 15 November 2021. The question is whether or not it was too late to take enforcement action at that time. Section 171B(1) of the Act establishes that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
11. The appellant does not query the breach of planning control alleged and there is no appeal on ground (b) (that the matters stated in the notice have not occurred). Nevertheless, in the somewhat unusual circumstances of this case, it is necessary to consider the nature of the allegation, which sets the context for the ground (d) appeal.

The allegation

12. The frame and lighting were installed in order to display advertisements. Section 336(1) of the Act defines 'advertisement' as:

¹ S225A(3) requires that the removal notice is served on 'a person who appears to the local planning authority to be responsible for the erection or maintenance of the display structure'.

any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly.

13. In accordance with that definition, while an advertisement was on display, the frame and lights were part of that advertisement. However, it is clear that no advertisement was displayed on the frame when the enforcement notice was issued. Consequently, the Council takes the view that the frame and lights were not part of an advertisement at that point in time. In support of this the Council refers to *Winfield v SSCLG* [2012] EWCA Civ 1415; [2013] JPL 455. In that case an advertisement was displayed on wooden posts. The Court of Appeal decided that 'During the period of cessation, the unadorned structure is no longer "in the nature of, and employed wholly or partly for the purposes of, advertisement"'. This Court of Appeal decision was plainly relevant to the question of whether advertising at the property had ceased in this instance.
14. In considering whether advertising has ceased, the period of time without advertising material is an important consideration. In this case the building can be seen with the advertising in place in November 2020 but without it in images from April, May and July 2021. No advertisement was displayed either at the time the notice was issued in November 2021. Thus, the advertising shroud was removed at some point between November 2020 and April 2021 and the site was free from advertising material for a period of several months (and possibly for up to a year) prior to the notice being issued. It is clear from *Winfield* that the reason for any break is also a relevant consideration. The appellant has not given any explanation of why the advertising material was removed for such a long period.
15. With the above in mind, it appears that the use of the site for advertising had ceased at the point when the notice was issued and the frame and lighting targeted by the notice were not part of an advertisement at that time. On that basis, an enforcement notice targeting operational development was issued. I can see nothing in the information before me to cast doubt on the way the breach of planning control was characterised in the notice.

Was the Council too late to take enforcement action?

16. The Council argues that the breach of planning control only occurred when the advertising shroud was removed and the frame/lighting ceased to be part of an advert. In considering that, I am mindful that the wording of s171B does not specifically require consideration of when the development became a breach of planning control. Rather, it refers to when operations were 'substantially completed'. When did that occur in this case?
17. The shroud covered up much of the frame. Without the shroud, the frame has a utilitarian, somewhat unfinished appearance. This could scarcely be more different to the slick, vibrant appearance of the advertisements it supported. In short, an advertisement is a very different thing to a bare frame, even if the frame was an integral part of the advertisement. While the appellant claims that the frame and lighting were installed more than 4 years before the notice

was issued, at that time they were integral to, and part of, an advertisement. In my view the cessation of use of the frame and lighting for advertising purposes facilitated by the removal of the advertising shroud has resulted in development (the installation of the frame and lights) that is materially different to the advertisement it was previously a part of.

18. Moreover, given the nature and scale of the advertisement shroud, its removal must have been a significant operation in its own right. The shroud wrapped 3 storeys on 2 sides of the building and was attached to the frame in multiple places. Carrying out this operation led to a substantial change in the external appearance of the building and left the supporting frame open to view.
19. Drawing these threads together, I find that the frame and lights were part of something that was significantly different when they were part of the advertisement. The operational development targeted by the enforcement notice was not 'substantially completed' until the operations comprised in the removal of the advertising shroud were completed and the frame revealed. Those operations were carried out less than 4 years prior to the issuing of the enforcement notice.
20. While the appellant considers that the frame and lights were substantially completed when they were installed, my interpretation, as outlined above, more closely aligns with the purpose and intentions of the legislation. It seems to me that the purpose of s171B(1) is to ensure that action is taken against breaches of planning control arising from operational development within 4 years. In this case, while the frame and lights were part of an advertisement, the Council pursued their removal via a removal notice issued under s225A of the Act, which is concerned with the removal of structures used for unauthorised advertising displays. Once they ceased to be part of an advertisement, the Council acted with reasonable speed (far less than 4 years) in issuing the enforcement notice.
21. Thus, my interpretation of the legislation supports the Council's ability to pursue a breach of planning control within 4 years of the breach occurring. To take the opposing view would bring about a situation in which the Council was frustrated in its aim of pursuing a breach of planning control it regards as harmful, no matter how quickly it acted following the breach. That would run counter to the general scheme for the enforcement of breaches of planning control, as set out in the Act.
22. For these reasons, I conclude that it was not too late for the Council to take enforcement action when the notice was issued. Accordingly, the appeal on ground (d) fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Peter Willows

INSPECTOR