



Appeal Decision

Site visit made on 27 September 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2022

Appeal Ref: APP/H5960/C/21/3288775

11 Sisters Avenue SW11 5SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Maria Ekwealor against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 29 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years, the unauthorised erection of a front garden timber enclosure comprising of timber hoarding to the front and sides and a timber framed shelter above at the property.
 - The requirements of the notice are to:
 1. Remove the unauthorised front garden timber enclosure (timber hoarding to the front and sides and a timber framed shelter above);
 2. Restore the property to its previous lawful condition; and
 3. Remove from the site all debris arising from compliance with steps 1 and 2 above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) 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 have lapsed.
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Decision

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

Preliminary Matter

2. The appellant's submissions regarding the timber enclosure remaining until the building work has been completed and awaiting the outcome of a court case, are more pertinent to an appeal on ground (g). Such submissions were made in the appellant's appeal form upon which the Council had the opportunity to comment, I have therefore addressed them as though that ground was pleaded.

The appeal on grounds (b) and (c)

3. The grounds of appeal are (b) that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact and (c) that those matters (if they occurred) do not constitute a breach of planning control. Therefore, the burden of proof is on the appellant to demonstrate that a timber enclosure comprising of timber hoarding to the front and sides and a timber framed shelter has not been erected and, that if it has it does not constitute a breach of planning control.

4. The appellant does not dispute that a timber enclosure comprising of timber hoarding to the front and sides and a timber framed shelter has been erected. The appeal on ground (b) therefore fails.
5. The appellant's case is essentially that the timber enclosure is a temporary building that is granted planning permission under Article 3, Schedule 2, Part 4, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Part 4 Class A specifies that the provision on land of buildings or moveable structures required temporarily in connection with and for the duration of operations being or to be carried out on that land or adjoining land, is permitted development.
6. Planning permission was granted on 11 July 2016 for the *excavation to enlarge basement including enlargement of front lightwell with grille over and rear lightwell with railings and stairs*, reference 2015/4703.
7. It appears that work began on the planning permission in around 2017. However, operations ceased a number of years ago due to the appellant's parents passing away and a subsequent ongoing court case.
8. Part 4 Class A does not limit the time for completion of operations, but it does limit the siting of temporary buildings and structures to the *duration* of works.
9. Whilst the appellant stated that there is a builder who carries out essential maintenance of the property, there are no details about what this involves, and I cannot therefore be certain that such maintenance constitutes *operations* for the purposes of Part 4 Class A.
10. I acknowledge the appellant's circumstances and intention to recommence works as soon as possible, but the works were not re-commenced before the notice was issued. As a matter of fact, the operations ceased and were not being carried out. The timber enclosure would not therefore constitute permitted development under Part 4 Class A.
11. Since the development is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) therefore fails.

The appeal on ground (f)

12. This ground of appeal 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 achieve the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
13. The notice requires the removal of the timber enclosure and the restoration of the land. As such I consider the purpose of the notice is to remedy the breach of planning control (s173(a)). That purpose can only be achieved in this case by removing the timber enclosure.
14. The appellant has not suggested any lesser steps but argues that the enclosure is well maintained and causes no harm. Further, that to remove the enclosure would leave an unfinished project exposed to the public. However, these are arguments which relate to planning merits.

15. Where there is no appeal under ground (a) there is no deemed application for planning permission and, as such, there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
16. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The 'hidden' appeal on ground (g)

17. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
18. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed.
19. The appellant's case is essentially that the enclosure should remain until operations can be completed. However, other than a letter to Ashfords LLP dated 8 October 2021, stating that the probate and distribution should conclude within the next six months, and a builders estimate for the completion of the basement conversion, there is no substantive detail about when the operations will recommence.
20. Consequently, given the relatively straightforward nature of the construction, I consider the period of two months for the removal of the enclosure and restoration of the land, is proportionate to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Felicity Thompson

INSPECTOR