



Appeal Decision

Site visit made on 26 September 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/C5690/C/21/3285064

170 Stanstead Road London SA23 1BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Mustafa Mustafa against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 16 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of six timber posts, three timber fence panels and associated gates to the front boundary.
 - The requirements of the notice are:
 1. Completely remove the six timber posts, three timber fence panels and associated gates to the front boundary in its entirety and revert back to previous conditions shown in photograph A in the appendix.
 2. Remove all materials, debris, waste and equipment resulting from compliance with requirement 1 above from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) (d) and (e) of the Act.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant’s case includes legal grounds of appeal (b), (c), (d) and (e). In these legal grounds of appeal the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities². Also, an appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.

Appeal on ground (e)

3. The appellant argues that a copy of the enforcement notice was not served on him (being the property owner) as required by section 172 of the Act. He does not say where it should have been served but I note the address given by him on his appeal form is in West Wickham, Bromley.

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

4. The Council state they served copies of the notice on a named person, occupiers, and "The Owner(s)" at 170 Stanstead Road, by a Council officer posting them through the door. These three addressees are listed on the notice itself. It appears therefore that while a copy was served on the appellant at the appeal site, a copy was not served on him at his West Wickham address. He states this address could have easily been ascertained by the Council from HM Land Registry.
5. However, s176(5) of the Act gives me the power to disregard any failure to serve a notice on anyone as required, where they have not been substantially prejudiced. In this regard I note the appellant must have seen a copy of the notice at some point, otherwise, if not, he would have been unable to lodge his appeal on the grounds he has set out. As such, even if there had been a failure in service, I conclude that it did not substantially prejudice him in making his appeal. Consequently, any failure can be disregarded.
6. For these reasons the appeal on ground (e) fails.

Appeal on ground (b)

7. An appeal on ground (b) is a claim that the alleged matters (i.e. those matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact.
8. At the time of my visit to the appeal site I saw that the front boundary comprised a combination of timber fencing, and metal railings with matching gates.
9. However, it should be noted that "not occurred" in ground (b) is past tense. In this case therefore the appellant must demonstrate that erection of 6 timber posts, 3 timber fence panels and associated gates to the front boundary, as alleged in the notice, had not occurred prior to the issue of the notice on 16 September 2021.
10. The Council's evidence is that officer's visited the appeal site on 6 June 2019 and saw fencing and trellis in place along the front boundary. They visited again on 22 January 2020 observing that the trellis had been removed but a wooden gate had been added. At a third visit on 1 September 2021 it was noted that new timber posts had been erected between the fence panels.
11. The appellant argues⁴ there are no pictures that show the breach in question, or how they relate to 170 Stanstead Road. Also, that there are no wooden posts at the address, and that metal Victorian railings are in place which are original to the house.
12. However, as set out earlier, it is for the appellant to demonstrate, on the balance of probability, that the alleged matters had not occurred before the notice was issued. In this regard he has not submitted any convincing evidence to support his case and it is contradicted by the Council's evidence.
13. To conclude, I find that the appellant has failed to demonstrate, on the balance of probability, that the matters alleged had not occurred prior to the issue of the notice.
14. The appeal on ground (b) therefore fails.

⁴ Appeal Form E.(c)

Appeal on ground (c)

15. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. A breach of planning control is defined at s 171A(1)(a) of the Act to include the carrying out of “development” without the required planning permission.
16. “Development” is defined to include the carrying out of “building operations” (s55(1)). This would include the erection of fencing and gates, as alleged in the notice.
17. The appellant does not dispute that the alleged fencing and gates constitute development. Instead he argues there are no pictures to show the breach or how it relates to the appeal site, also referring to there being metal railings and no wooden posts.
18. However, as set out in ground (b) earlier, the notice relates to the date it was issued and what was physically in place on or before that date. If the development has been altered since issuing the notice it will be a matter for the parties to consider whether there is a continuing breach.
19. To conclude, I have found in ground (b) that the alleged matters occurred as a matter of fact. Additionally, as set out above, that those matters constitute “development” as defined in the Act. Furthermore, since the development has taken place without planning permission, it thereby constitutes a breach of planning control.
20. The appeal on ground (c) therefore fails.

Appeal on ground (d)

21. An appeal on ground (d) is that at the date the notice was issued the development was immune from enforcement action due to the passage of time, in this case 4 years. The appellant therefore needs to show that the development subject of the notice was in place on or before 16 September 2017. As set out earlier, the burden of proof, tested on the balance of probability, falls to the appellant.
22. The appellant refers to the railings which now form part of the front boundary. However, he has failed to submit any convincing evidence that any part of the boundary development was at least 4 years old at the date the notice was issued. His case on ground (d) is also contradicted and made ambiguous by the Council’s evidence relating to their visits to the property.
23. To conclude on this matter, I find the appellant’s case is not sufficiently precise and unambiguous. It is also contradicted by evidence submitted by the Council. Overall he has failed to demonstrate, on the balance of probability, that the appeal development was immune from enforcement action at the date the notice was issued.
24. For these reasons the appeal on ground (d) fails.

Thomas Shields

INSPECTOR