
Appeal Decision

Site visit made on 11 January 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal ref: APP/B5480/C/21/3282748

24 Maybank Avenue, Hornchurch RM12 5SB

- 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 Hasan Ahmed against an enforcement notice issued by the London Borough of Havering.
 - The notice was issued on 26 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a shutter to side of the property facing Lancaster Drive to a height in excess of 1 metre.
 - The requirements of the notice are:
 1. remove the shutter facing Lancaster Drive, to the side of the dwelling; and
 2. remove other debris, rubbish or other materials accumulated as a result of taking step (i) above.
 - The period for compliance with the requirements is two months after the date when this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The enforcement notice is corrected by:
 - In requirement (2) delete 'step 1. above' and replace with the wording 'step (i) above'.
2. Subject to this correction, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. The enforcement notice sets out the requirements of the notice. However, the second requirement refers to step (i) above when in fact this should be step 1. I have corrected the notice and considered the appeal on this basis.

Reasons

The appeal on ground (e)

4. An appeal under ground (e) is that the enforcement notice was not properly served on everyone with an interest in the land.
5. The enforcement notice relates to a semi-detached dwelling on the corner of Maybank Avenue and Lancaster Drive. The enforcement notice was served on the appellant, the owner, the occupier and OneSavings Bank PLC. The appellant submits that the notice was not served on him correctly as it was

handed to a person who they hired as a gardener for a day. Each of the recipients of the notice were served in the same way. The appellant says that their gardener left the notices on the floor next to bin bags and they subsequently found them.

6. Conversely, the Council state that they served the enforcement notice on Ms Shabu, who confirmed to the Council that she occupied the dwelling. Ms Shabu's occupation of the dwelling is disputed by the appellant, but there is no firm evidence from either party about who occupies the dwelling.
7. Section 176(5) of the Act sets out that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
8. It seems to me that the appellant knew about the enforcement notices as they state that they "become aware of it because I found notices on my garden floor". The appellant also refers to earlier dialogue with the Council about the subject of the enforcement notice. The appellant has also known about the enforcement notice given that they were able to make their appeal within time, regardless of the contradictory points made about Ms Shabu. Therefore, even if I agree with the appellant, I am satisfied that they have not been substantially prejudiced by the Council's failure to serve the enforcement notice correctly. The appeal on ground (e) therefore fails.

The appeal on ground (c)

9. An appeal under ground (c) is that there has not been a breach of planning control, for example because permission has already been granted or it is permitted development.
10. The roller shutter is situated at the back of the Lancaster Drive footway. This road is used by vehicular traffic. The appellant confirms that they are around 2.3 metres in height, and higher than the gate that they replaced. The roller shutter is therefore above the metre height limitation set out in paragraph A.1 of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Hence, the roller shutter requires planning permission, and no such permission has been granted. I note the appellant's reasons why they erected the roller shutter, and why they consider that they should be retained, but ground (c) is concerned with whether the roller shutter constitutes a breach of planning control. For the reasons set out, the roller shutter is development that requires planning permission. Hence, ground (c) fails.

The appeal on ground (a) / the deemed planning application

11. The main issue is the effect of the proposal on the character and appearance of the area.
12. The roller shutter replaced a former side gate to the appeal property following a burglary at the house and thefts from the appellant's van. The roller shutter rises above the height of the boundary wall to Lancaster Drive. Properties on Lancaster Drive typically have open frontages that are used for off-street parking. Low or open frontages also characterise properties on Maybank Avenue. The exception is properties on the corners of these roads which have tall boundaries to the sides to provide private gardens. However, the roller shutter does not maintain, enhance or improve the character and appearance

of the local area due to its height which stands out in Lancaster Drive. They therefore do not respect the physical context found in the road.

13. I recognise that the roller shutter provides privacy and security to the property, given the appellant's recent experiences. I also note their point about the height of the roller shutter being influenced by the height of their van. However, there is no substantive evidence before me to indicate that the roller shutter is the only possible solution. It is also unclear whether there would be space within the rear garden for a van given the presence of an outbuilding opposite the roller shutter. But, even if a van could be parked in the rear garden overnight, this, and the privacy and security benefits together with the cost of the roller shutter do not outweigh their harmful impact on the character and appearance of the area. It is open to the appellant to propose a suitable alternative through a planning application if they are to be higher than a metre high to achieve the same privacy and security purposes.
14. I therefore conclude that the proposal harms the character and appearance of the area. The proposal conflicts with Policy DC61 of the Core Strategy and Development Control Policies Development Plan Document which requires development to respond to distinctive local building forms and patterns of development and respect the scale and height of the surrounding physical context. Accordingly, the appeal on ground (a) fails.

Other matters

15. Although a neighbour raises concern with the noise from the roller shutters, I do not consider that this would cause an unreasonable adverse effect on their living conditions.
16. I recognise that the subject of this appeal has been ongoing for some time and that there have been various council officers involved at different stages. I understand the appellant's frustration, their efforts throughout the process, and the effect that this has had on their wellbeing and that of their family. Nevertheless, these matters do not alter or outweigh my findings.

Conclusion on ground (a)

17. Having regard to my conclusion on the main issue and all other matters raised, I am satisfied that ground (a) should fail and the deemed application for planning permission should be dismissed.

Conclusion

18. For the reasons explained, subject to the correction set out above, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR