



Appeal Decision

Site visit made on 10 January 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/A5840/C/22/3307173

Ground Floor, Flat 10, 15 Occupation Road, London, Southwark SE17 3FJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Sia Margret Johnbull against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 26 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a timber fence in the garden adjacent to Penrose Street SE17 as shown indicated in red in the approximate position on the attached plan ("the Unauthorised Development").
 - The requirements of the notice are to:
 - 5.1 Demolish the timber fence in the garden adjacent to Penrose Street SE17
 - 5.2 Remove all fixtures & fittings associated with the timber fence and remove all materials as a result of the work above (5.1) from the Land
 - 5.3 Plant 'Prunus Lusitanica' (Laurel shrubs), in the planting bed adjacent to Penrose Street spaced 45cm apart to create a hedge the height of the railings.
 - The period for compliance with the requirements is: Two (2) months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) 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 Matters

2. The appellant ticked ground (b), (c) and (d) on the appeal form. However, the appellant has since confirmed they wish the appeal to proceed on ground (c). From the evidence and from my visit, it is clear that the breach has occurred and that the fencing was erected within the last 4 years. I shall therefore consider the appeal under ground (c) only.
3. The appellant has drawn my attention to their personal circumstances and made reference in their evidence to Article 8 of the Human Rights Act 1998, which concerns respect for private and family life. However, the appellant has appealed under ground (c) only, where the question is whether or not as a matter of fact and law, the matters are in breach of planning control. Ground (c) does not therefore allow for consideration of the effect of the decision on individuals and their rights, nor can I consider the planning merits of the alleged breach.

Ground (c)

4. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that their housing officer gave permission for them to erect the wooden fencing.

5. The appellant has drawn my attention to *Smith v Land and House Property Corp* [1884] LR 28 Ch D 7 and *Hedley & Co Ltd v Heller & Partners Ltd* [1964] AC 465 and *Yianni v Edwin Evans and Sons* [1981] 3 All ER 593. However, none of the cases cited concern the planning system or the Town and Country Planning Act 1990 (as amended)(the Act), which sets out a comprehensive code for the development of land. While the appellant's housing officer may have given them permission to erect the fencing in their capacity as landlord, this does not negate the need for planning permission.
6. From my inspection of the site, I consider the fencing to be a permanent feature which is development for the purposes of the Act. I have no evidence to show that the fencing would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and given its height and proximity to the highway, I do not consider it would be permitted development. Consequently, planning permission is required for the fencing and the appeal under ground (c) must fail.

Conclusion

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

M Savage

INSPECTOR