



Appeal Decisions

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9th June 2023

Appeal A: Ref APP/N5660/C/22/3290581

Appeal B: Ref APP/N5660/C/22/3290582

440 Streatham High Road, London SW16 3PX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Theophilus Okutu (Waakye Joint) and Appeal B is made by Mr Carl Coker Appiah against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 22 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission: The installation of two external galvanised metal extract flues (including all associated ducting, brackets, wiring, fixtures and fittings) on the dual pitched roofed building located to the rear of the premises and abutting Westwell Mews – one located on the rear elevation of the building and one situated on the east facing pitched roof ('the two unauthorised extract flues'); and The installation of four air-conditioning units (including all associated ducting, brackets, wiring, fixtures and fittings) at first floor level, upon the flat roof and adjacent to the side elevation of the existing 2-storey rear extension ('the four unauthorised air-conditioning units').
 - The requirements of the notice are to:
 - a) Remove the two unauthorised extract flues from the premises and reinstate the affected elevations as existed prior to the breach of planning control; and
 - b) Remove the four unauthorised air-conditioning units and reinstate the affected elevations as existed prior to the breach of planning control; and
 - c) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the ground set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended (the Act).
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Decisions

1. Appeals A and B are dismissed and the enforcement notice is upheld.

Procedural Matters

2. Appeals A and B are identical.
3. It was not necessary for me to conduct a site inspection to determine the appeals, with decisions made on the submitted written evidence before me.

Ground (d)

4. Under this ground the burden of proof is upon the appellants to demonstrate on the balance of probabilities that, at the date the notice was issued, it was too late for the Council to take enforcement action in respect of the breach of planning control constituted by the extract flues and air-conditioning units.

5. Section 171B(1) of the Act provides, in respect of the unlawful operational development constituted by the matters stated in the notice, that no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
6. The notice was issued on 22 December 2021. Therefore, it is for the appellants to demonstrate to the required standard of proof and with sufficiently precise and unambiguous evidence that the extract flues and air-conditioning units had been substantially completed by 22 December 2017 (the relevant date).
7. While the appellants say that the development occurred in 2017, they have not been sufficiently precise as to the date. Further, they have submitted no evidence that relates to that period. The submitted electrical installation certification and photographs bear 2018 dates and therefore do not satisfactorily demonstrate that the development was substantially completed before the relevant date.
8. I also place significant weight on the evidence of the ariel photography submitted by the Council which I am satisfied shows that the air-conditioning units were not installed when the 7 May 2018 image was taken, and that none of the unauthorised development was installed at the time of the 8 April 2017 image. While the flues can be seen in the 7 May 2018 image, the appellants have not satisfactorily established with evidence the date between 8 April 2017 and 7 May 2018 that they were installed.
9. For these reasons, I am not satisfied on the balance of probabilities that it was too late for the Council to take enforcement action on the date the notice was issued. Accordingly, ground (d) fails.

Conclusion

10. For the reasons given above I consider that the appeals should not succeed, and I uphold the enforcement notice.

Andrew Walker

INSPECTOR