



Appeal Decision

Site visit made on 5 July 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal A Ref: APP/H5390/C/22/3306337

Appeal B Ref: APP/H5390/C/22/3306339

Land at: 182 - 184 Emlyn Road, London W12 9TB

- 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 Nicolas Clerc and Appeal B is made by Ms Myriam Abiaad against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 25 July 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a replacement boundary timber fence and entrance gate in the front garden.
 - The requirements of the notice are:
Either
 - a) Remove from the land the replacement timber fence and front entrance gate in the front garden
Or
 - b) Reduce the replacement timber fence and front entrance gate to 1m in height above ground level
 - The period for compliance with the requirements is 2 months.
 - Both appeals are proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The appellants state that their request is to keep their fence and front garden gate. But as ground (a) has not been pleaded, I cannot grant planning permission for the appeal development. For the same reason, I cannot consider the reasons for issuing the notice, disputed by the appellants, nor can I consider any planning merits of the appeal development. These include reasons why it is said the appeal development was constructed, its visual effect or how it compares to other boundary treatments in the area.

Reasons

Ground (e)

3. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172. In a ground (e) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

4. In respect of the service of an enforcement notice, section 172 of the 1990 Act states:

"(2) A copy of an enforcement notice shall be served—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place—

(a) not more than twenty-eight days after its date of issue; and

(b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect."

5. The appellants have indicated that the enforcement notice was not served on them directly but that instead all copies were delivered to their neighbour. Be this as it may, section 176(5) of the 1990 Act states:

"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."

6. In this case, it is clear that the appellants have been able to appeal and, from the information provided, this included an opportunity to appeal on ground (a). Aside from the above issue, there is no evidence that copies of the enforcement notice were not served as required by section 172. So even if all copies of the notice were delivered to the neighbour, the appellants have not been substantially prejudiced and nor is there any evidence anyone else has.
7. I conclude the appeal on ground (e) fails.

Ground (f)

8. An appeal on ground (f) 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 remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
9. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
10. The Council's report indicates that the purpose of the notice is to remedy the breach. The notice does this by requiring removal of the front garden timber fence and front entrance gate or, in apparent acknowledgment of permitted development rights, the reduction in height of the fence and gate to 1 metre above ground level.

11. Pursuant to their ground (f) appeal, the appellants state that the front garden gate is lower than their neighbour's gate and the fence can barely be seen now that the bushes have grown. But these are planning merits arguments which, as set out above, I cannot consider.
12. No lesser steps than those set out in the notice have been suggested for my consideration. No lesser step than requirement (a) would remedy the breach that has occurred or, in the alternative requirement (b), achieve the fallback of what might have been erected as permitted development.
13. I conclude the appeal on ground (f) fails.

Ground (g)

14. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
15. The appellants have indicated that the Council refused their planning application for the appeal development and that decision gave them 6 months to appeal the decision. So pursuant to ground (g), they ask to be given more time to appeal the refusal of planning permission.
16. But from the information provided, the refusal of planning permission occurred on 5 May 2022, Ref 2021/03599/FUL, and so the 6 month period to appeal that decision will have ended on 5 November 2022. There is no evidence any appeal against the refusal of planning permission was lodged and so there is no reason for me to extend the period for compliance with the enforcement notice.
17. I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed.
18. I conclude the appeal on ground (g) fails.

Other Matters

19. The appellants state that, in the event that they must remove or reduce their fence, they would expect that the same decision would be enforced against the owner of 180 Emlyn Road's front gate, bin shed and bike shed. But no enforcement notice for these matters is before me for my consideration.

Conclusion

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

L Perkins

INSPECTOR