



Appeal Decision

Site visit made on 6 July 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal Ref: APP/C5690/C/21/3289613 68 Manor Avenue, London SE4 1TE

- 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 John Paul Morgan against an enforcement notice (the notice) issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 8 December 2021.
 - The breach of planning control as alleged in the notice is the unauthorised installation of timber trellis panels and posts to the front and side elevations above the two-storey side extension without the benefit of planning permission.
 - The requirements of the notice are:
 1. Remove the unauthorised timber trellis panels and posts to the front and side elevations above the two-storey side extension and return the balustrading to its former design before works were undertaken as demonstrated in appendix A attached to the notice.
 2. Make good all damage resulting from the compliance with the requirements of this notice.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Procedural Matter

2. The appellant has indicated on the appeal form that he wishes to lodge an appeal under ground (e) but from the additional text on the form and the Statement of Case, it is clear that there is no ground (e) appeal. I shall proceed on this basis.

Whether the notice is invalid

3. The appellant questions the validity of the notice. It was dated 8 December 2021 and came into effect 5 January 2022. Section 172(3) of the 1990 Act states the service of the notice shall take place:
 - (a) not more than 28 days after its date of issue; and
 - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Whilst the 28-day period was observed, over the Christmas period there are three bank holidays which the appellant submits, in terms of *Wednesday* reasonableness, were not taken into account. Furthermore, the Explanatory Note accompanying the notice stated that any appeal made had to be received by the Planning Inspectorate before 31 December 2021. The appellant submits that this further reduced his timeframe and breached Article 6 of the Human Rights Act 1998, namely the right to a fair trial.

4. I find that the 28-day period was observed and I note that s172(3) of the 1990 Act makes no allowances for public and bank holidays. The notice is therefore not invalid. However, it is good and established practice, in the interest of fairness, to take into account any public or bank holidays when setting the time frame for notices. It is also good practice to check that the date within the notice aligns with the date specified in the Explanatory Note for submitting an appeal.
5. In this case the appeal was received by the Planning Inspectorate on 22 December 2021, notwithstanding the confusion over the stated dates. The Courts have held that Inspectors have discretion to disregard any defects in the serving of a notice. As a very full and comprehensive case to support the appeal was made in good time by the appellant, in my view there will be no injustice caused if I exercise my discretion by disregarding the misalignment of the Explanatory Note date with the notice date and proceed to determine the appeal.

The ground (c) appeal

6. Under a ground (c) appeal, the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission. The appellant submits that the existing structure is a replacement for the previous privacy screen erected around 2006. Whilst the materials have changed over the years, the design is largely the same and as such does not amount to development.
7. The appeal site comprises an end of terrace period dwelling comprising basement, upper ground floor, first and second floor. The site lies within Brockley Conservation Area though this has no bearing on my consideration of the ground (c) appeal. There is a two-storey side wing accessed from a flight of steps which provides the entrance to the building, above which there is a room with a flat roof. It is this roof that forms the terrace accessed from what appears to be a side window at second floor level. The edge of the terrace is bounded by metal railings on three sides.
8. The works attacked by the notice comprise timber posts added to the railings to support timber trellis panels affixed along the front of the terrace (x1) and along part of the side return (x2). The effect of the works is to provide screening and privacy. They were part of a larger pergola structure which was erected in 2018 but during the Council investigation the roof of the pergola was removed in 2020 and the posts supporting the roof were reduced in height to the level of the trellis panels.
9. The meaning of development is set out in s55(1) of the 1990 Act and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. S55(1a) confirms that such operations include rebuilding,

structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder. S55(2) of the 1990 Act goes on to clarify at subsection (a)(ii) that the carrying out of works that do not materially affect the external appearance of the building shall not be taken to involve development of the land. Therefore, a judgement needs to be made depending on the facts of the case.

10. The building in this case is the dwelling at the end of the terrace and I find the posts and trellis panels have clearly affected the exterior of the building. The Courts have held that it is the effect on the external appearance and not just the exterior which must be considered. Furthermore, judging the effect must be in relation to the building as a whole and not by reference to a part of the building taken in isolation.
11. The use of the word “appearance” means that it is not sufficient for the external surface of the building to be affected by the alteration. The alteration has to be one which affects the way in which the exterior of the building can be seen by an observer outside the building. In addition, the external appearance has to be materially affected. That effect must be more than minor to merit consideration.
12. The position at the appeal site means that the front and side elevations of the terrace are visible to passers-by. As the street is lined with mature trees and there is a tree in the front garden of the appeal site and the neighbouring property, views of the timber posts and panels are restricted, especially in the summer. The side wing is also set back from the principal elevation of the building, which further restricts the view when approaching from the north.
13. The appellant has submitted a Google Street View image from 2008 which appears to show a brushwood/grass style screen affixed to the front railings of the roof terrace and part of the side return railings. It is not a solid screen as light can be seen through it, which is similar to the existing arrangement. There is also a softness to the form of the screening that is different from the current fixed rigid design of the trellis panels and posts. However, given the extent of the screening appears to be very similar and the height above the railings is also similar to the trellis panels and posts, I find, as a matter of fact and degree, that the external appearance of the building has not been materially affected by the replacement screening.
14. As such, the installation of the replacement screening does not therefore amount to development within the meaning of s55 of the 1990 Act, for which planning permission would be required. As there has been no development, I do not need to go on to consider whether planning permission has been granted by way of the Town and Country Planning (General Permitted Development) (England) Order 2015. The alleged alteration does not constitute a breach of planning control and the appeal on ground (c) succeeds.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeals under grounds (a), (f) and (g) set out in s174(2) to the 1990 Act do not need to be considered.

D Fleming INSPECTOR

