



Appeal Decision

Site visit made on 11 July 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/N5660/C/22/3290336

288 Brixton Hill, London SW2 1HT

- 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 Mrs J Neyman against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 16 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of two CCTV cameras on metal triangular brackets, one on either side of the shopfront, attached to the pilasters at ground floor level ('the unauthorised CCTV cameras').
 - The requirement of the notice is: Remove the unauthorised CCTV cameras from the premises and make good the pilasters.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. I have carefully reviewed the submissions provided by the appellant. But much of the material does not relate to the relevant grounds of appeal pleaded in this case. As the ground (a) appeal has lapsed, I cannot consider any planning merits of the appeal development.
3. Planning merits include the reasons for the cameras' installation, how the cameras compare with other developments in the area and aesthetics. My attention has also been drawn to complaints about the Council, alleged behaviour of Council officers and complaints about the appearance of other locations in the area. But these are not matters for me to address in an appeal under section 174, on the grounds which are before me.
4. I shall address the grounds of appeal pleaded in the relevant order, ie (e), (b), (c), (d), (f). This is because, if the enforcement notice was not properly served it would be contrary to natural justice to adjudicate on its contents and if the matters have not occurred, there is no possibility of or point in considering whether there was a breach of planning control or if immunity has accrued.

Reasons

Ground (e)

5. 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.
6. 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."
7. Section 329 of the 1990 Act concerns the service of notices. It provides that:

"(1) Any notice or other document required or authorised to be served or given under this Act may be served or given either—

(a) by delivering it to the person on whom it is to be served or to whom it is to be given; or

(b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or

(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or

(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (3A), to that person at that address (subject to subsection (3B)); or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office."
8. From the information provided, the sole owner of the property is the appellant. They were identified by Land Registry records and case law has established that using a Land Registry address constitutes proper service. Delivery of the notice was attempted via special delivery (which is tracked, ie recorded) on 18 November 2021 with the notice not due to come into effect until 11 January

2022. As such, I am satisfied that the above statutory requirements were satisfied.

9. The appellant complains that no prior notice was given by the Council for the issue of the enforcement notice and that it appeared just before the Christmas holiday. But there is no requirement for the Council to give notice of enforcement action for section 172 of the 1990 Act to be satisfied, nor is there anything to prevent enforcement action being taken in the run up to (or during) the Christmas period.
10. The appellant considers that the enforcement notice should have been served on them by email. But section 329(3B)(b) of the 1990 Act is clear that section 329(1)(cc) (ie service using electronic communications) shall not apply to service of a copy of an enforcement notice by a local planning authority.
11. Even if copies of the enforcement notice had not been served as required by section 172, 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."
12. The appellant accepts that they received a copy of the enforcement notice, saying that "it showed up very late at Christmas." In this case, it is clear that the appellant was the only person required to be served and that, even if the notice arrived late, the appellant was able to make a valid appeal (with substantial and lengthy submissions) and that they had the opportunity to appeal on ground (a). Taking these points into account, even if the appellant was not served as required by section 172, they have not been substantially prejudiced.
13. I conclude the appeal on ground (e) fails.

Ground (b)

14. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. In a ground (b) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
15. At my site visit, it was clear that two CCTV cameras, on long triangular metal brackets, have been attached to pilasters either side of the shopfront, at ground floor level. This is consistent with the Council's evidence and so I have no reason to believe the matters stated in the notice have not occurred.
16. I conclude the appeal on ground (b) fails.

Ground (c)

17. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged complies with the terms and conditions of a planning permission or because what is alleged is not 'development' as defined by section 55 of the 1990 Act. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

18. Section 55 defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
19. Section 55(2)(a)(ii) of the 1990 Act provides that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building shall not be taken for the purposes of this Act to involve development of the land.
20. As a matter of my planning judgement, the external appearance of the appeal building is materially affected by the appeal development and so planning permission is required for it.
21. The appellant has indicated that the Planning Portal website clearly states that planning permission is not required for security cameras. But this simply is not the case and the Planning Portal states that planning permission is not “normally” required. It will depend on the circumstances and the relevant permitted development rights.
22. As the appellant has referred to permitted development rights, I have had regard to Schedule 2, Part 2, Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). Subject to conditions and limitations, Class F grants planning permission for the installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes.
23. Based on the information provided and my observations on site, the cameras protrude from the face of the building by more than 1 metre and are located less than 10 metres apart. As such, the appeal development does not comply with Class F, paragraph F.1. criteria (b), (d) or (f).
24. Respectively, these criteria provide that development is not permitted by Class F if— (b) the dimensions of the camera including its housing exceed 0.75 metres by 0.25 metres by 0.25 metres; (d) any part of the camera would, when installed, altered or replaced, protrude from the surface of the building by more than 1 metre when measured from the surface of the building; and (f) any part of the camera would be less than 10 metres from any part of another camera installed on a building.
25. My attention has also been drawn to Class F, paragraph F.2.(a). This states that development is permitted by Class F subject to conditions, including that (a) the camera is, so far as practicable, sited so as to minimise its effect on the external appearance of the building on which it is situated. From my observations at my site visit I am not satisfied that the appeal development complies with this condition.
26. The appellant has indicated that they have a 2014 receipt for the purchase of the cameras. But even if they were installed in 2014 (although there is no evidence which satisfies me this is the case) the relevant permitted development rights at that time were substantially the same as those which exist now and so this would make no difference to my conclusion on ground (c).
27. Taking all of the above into account, the appeal development is not permitted development. Moreover, there is no evidence any express grant of planning permission exists for the appeal development either.

28. I conclude that the appeal on ground (c) fails.

Ground (d)

29. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act.
30. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities and the decision must be made on the evidence provided. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
31. Section 171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, 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.
32. No date that the operations were substantially completed has been provided by the appellant. Pursuant to ground (d), the appellant has referred to a purchase receipt for the cameras from 2014. But a date of purchase is not the same as the date of substantial completion for the purposes of section 171B(1).
33. The appellant has provided 3 stills, said to be from videos taken from the security cameras. The stills carry dates and times of 13 November 2017 at 23:24:57, 14 November 2017 at 03:39:29 and 14 November 2017 at 03:41:01. If these stills were taken from the camera installation which is the subject of the notice, this would suggest that it had been installed for in excess of 4 years by the time the notice was issued.
34. However, the image provided by the appellant with the date and time of 14 November 2017 at 03:41:01 shows a camera which has a single supporting arm attaching it to the right-hand side of the appeal building. But the camera in this location which is the subject of the notice has a triangular supporting bracket. This strongly indicates that the camera installation which is the subject of the notice is not the same as that which may have existed on the building on 14 November 2017. This contradicts the appellant's case.
35. The appellant's case is further contradicted by images of the appeal building, provided by the Council, said to be from Google Street View from May 2018. Having considered everything the appellant has written, I have no reason to believe the relevant images relied on by the Council are not from Google Street View or that they are not from the date specified by the Council. I have carefully reviewed these images and I am satisfied that they clearly show that the camera installation which is the subject of this appeal was not present on the appeal building at that time.
36. Moreover, the appearance of the camera installation seen in the November 2020 Google Street View image (part of which has also been provided by the appellant with this date embedded in the image) does not match the camera installation which is the subject of the notice. This is because neither camera in the November 2020 image has the triangular supporting bracket which now exists and is described in paragraph 3 of the enforcement notice.

37. I have carefully considered the appellant's representations in respect of the accuracy of Google Street View information. But this does not address the first contradiction noted above and I do not find it probable that Google could have produced Street View images that coincidentally omit both cameras from different parts of the building as a consequence of the way that Google Street View images are produced.
38. Taking all of the above into account, I conclude on the balance of probabilities that it was not too late for the Council to take enforcement action when the notice was issued. Accordingly, I conclude that the appeal on ground (d) fails.

Ground (f)

39. 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.
40. 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.
41. Based on the single requirement of the notice, the purpose of the notice is to remedy the breach and this is consistent with the Council's submissions.
42. No explanation has been provided of why the single requirement of the notice is excessive and no lesser step than that set out in the notice has been suggested.
43. I conclude that the appeal on ground (f) fails.

Other Matters

44. The appellant has asked me to issue a certificate of lawfulness. But in light of my findings on grounds (c) and (d) above, there is no reason for me to do so.
45. The appellant has drawn my attention to their human rights. But there is no scope to consider human rights in grounds (b), (c), (d) or (e) and human rights considerations do not arise in ground (f) where the issue in this case is strictly whether the requirements are excessive to remedy the breach of planning control.

Conclusion

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

L Perkins

INSPECTOR