



Appeal Decisions

Site visit made on 16 August 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2023

Appeal A Ref: APP/Y5420/C/22/3302470

Appeal B Ref: APP/Y5420/C/22/3302471

Appeal C Ref: APP/Y5420/C/22/3302472

Appeal D Ref: APP/Y5420/C/22/3302473

The land and building known as 480 West Green Road, Tottenham, London N15 3DA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Eurocrest Sub 3 Ltd, Appeal B is made by Eurocrest Sub 7 Ltd, Appeal C is made by Eurocrest Sub 4 Ltd and Appeal D is made by Eurocrest Sub 6 Ltd against an enforcement notice issued by London Borough of Haringey.
- The notice was issued on 25 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection and enveloping of the building with scaffolding and scaffold coverings, topped with corrugated roof sheets.
- The requirements of the notice are
 1. Remove the scaffolding and scaffold coverings, topped with corrugated roof sheets in their entirety.
 2. Remove from the land any debris arising from compliance with the above requirement.
- The period for compliance with the requirements is 3 months.
- Appeals A, B, C and D are all proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (the Act) as amended.

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words 'and scaffold coverings' from the allegation and the first requirement.
2. Subject to the correction, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

3. As there is no appeal under ground (a), I am not assessing any planning considerations that relate to the development. The appeal is proceeding only on the limited ground (c) which is referred to as a legal ground.

The Notice

4. The allegation includes the scaffold coverings which originally covered the scaffolding but they have deteriorated over time. The material coverings are not development and I am therefore deleting the words "and scaffold coverings" from the allegation and the requirement. In the event of the notice being upheld, the coverings that are still attached to the scaffolding would be removed. Any coverings that become detached during the dismantling process would be removed under requirement 2 as "debris". No injustice is therefore

caused to any party by the deletions but the coverings are not operational development. I will therefore amend the notice accordingly.

The appeal under ground (c)

5. An appeal under ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. The onus of proof is on the appellants to show that there has not been a breach. The allegation relates to the erection of scaffolding topped with corrugated roof sheets around an existing building.
6. The appellants' case is set out in the appeal form. They state that the operations alleged in the notice do not amount to development under Section 55 of the Act and that the 'scaffolding has been erected so as to replace roof' and 'works were delayed due to Covid'. Covid restrictions ended some time ago and were not in force when the scaffolding and canopy were erected. Nevertheless, whilst the appellants are seeking to explain why the scaffolding and roof canopy are still in place, the issue under ground (c) is whether the matter alleged is a breach of planning control. I have no further information from the appellants as to why they consider that the scaffolding and the corrugated roof sheets are not development for the purposes of Section 55 of the Act.
7. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 55 of the Act includes in the definition of the word 'development' the carrying out of 'building, engineering, mining or other operations in, on, over or under land'. Section 55 (1A) states that for the purposes of the Act 'building operations' includes a) demolition, b) rebuilding, c) structural alterations of or additions to buildings and d) other operations normally undertaken by a person carrying on business as a builder.
8. A building is defined by section 336(1) of the Act as including any structure or erection and any part of a building. With respect to the question of what is a 'building,' case law¹ has identified three primary factors as being decisive of what a building is, (a) that it is of a size to be constructed on site, as opposed to being brought onto the site; (b) permanence; and (c) physical attachment. No one factor is decisive.
9. In terms of size, the scaffolding and attached roof canopy spans across the width of between 7 and 8 gardens and is higher than the neighbouring 4 storey building. The roof canopy is extensive as it is wider and higher than the original building and the scaffolding extends beyond the front of the building with a wooden platform.
10. With regard to permanence, the scaffolding and roof canopy have been in place since November 2019. Whilst scaffolding is more usually in place on a temporary basis whilst work is being carried out, that is not the case here. Both the Council and local residents refer to an absence of any work taking place and the Council has not received a schedule of works. The scaffolding and roof canopy had been in place for two and a half years at the time when the notice was served which does indicate permanence and still remains in place now.
11. In terms of physical attachment, the nature of the works requiring fittings and weights and working at height means that the scaffolding frame is likely to

¹ Skerritts of Nottingham Limited V SSETR 2000 EWCA CIV 5569 Cardiff Rating Authority V Guest Keen [1949] 1KB 385, Baldwins Iron and Steel Co. Ltd [1949] 1KB 485

have been assembled and erected on site by specialist workmen. For safety reasons, the scaffolding frame would have to be attached in such a way to ensure that there was no movement when in use. The scaffolding and canopy frame do therefore have a physical attachment both to the ground and the original building which still remains and was put in place in November 2019. As the Council states, removal of the scaffolding would need to be carried out by professional scaffolders with the appropriate equipment.

12. I was able to see parts of the corrugated canopy roof, the front of the scaffolding and part of the side closest to the dwellings on Waldeck Road as well as the inside of the original building as part of my site visit. Whilst the relevant period for the appeal is the period before the issue of the notice, the development remains the same as in the photographs dated the 11 of April 2022 apart from having less scaffold coverings. The original building does have a corrugated roof which has some gaps.
13. Having regard to size, permanence and physical attachment, I do consider that the erection of the scaffolding and roof canopy is a building operation which falls with the definition of development and requires planning permission. There is no express planning permission in place for the development and the appellants have not sought to rely upon any permitted development rights. A breach of planning control has therefore occurred as there is no planning permission in place for the development that has taken place. The appeal under ground (c) fails.

Other Matters

14. There are a number of objections to the development from neighbouring residents and a local councillor. Their concerns largely relate to planning matters which are outside the scope of this limited appeal. However, they have commented upon the scale of the development and when the scaffolding was erected which I have addressed as part of ground (c).

Conclusion

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

E Griffin

INSPECTOR