



Appeal Decision

Site visit made on 31 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 December 2023

Appeal Ref: APP/U5360/C/23/3317490

Flat D, 90 Mortimer Road, Hackney, London N1 4LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by De Beauvoir Management Ltd against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 23 January 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of decking and railings to facilitate the creation of a roof terrace at the first floor.
 - The requirements of the notice are to:
 1. Remove the balustrade railing and timber flooring atop the first floor extension as shown in appendix 1;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) 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 has lapsed.
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Decision

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

Ground (e)

2. This ground of appeal is that copies of the notice were not served as required by section 172 of the Town and Country Planning Act 1990 as amended (the Act). Section 172(2) provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected.
3. The onus is on the appellant, in this case De Beauvoir Management Ltd to prove their case. The appellants claim that the notice was not correctly served on all those parties with an interest in the appeal property within 28 days. Those not served are said to be the long leaseholder, Renaissance Restorations Ltd (RPR Ltd).
4. For its part, the council identified those with an interest in the land and served a copy of the notice on:

- The Legal Owner, Flat D 90 Mortimer Road Hackney London N1 4LA (Also known as 92d Mortimer Road)
 - The Occupier(s), Flat D 90 Mortimer Road Hackney London N1 4LA (Also known as 92d Mortimer Road)
 - The Company Secretary De Beauvoir Management Ltd (Co. Regn. No. 13582409) of 92 Mortimer Road, London N1 4LA
 - The company Secretary De Beauvoir Management Ltd (Co. Regn. No13582409) of Cound Hall Estate Office, Cound, Shrewsbury, United Kingdom, SY5 6AH
 - David Roy Sykes Waller, Cound Hall, Cound, Shrewsbury SY5 6AH
 - The Company Secretary Fleet Mortgages Ltd (Co. Regn. No. 8663979) of 2nd Floor, Flagship House, Reading Road North, Fleet, Hampshire GU51 4WP
5. David Roy Sykes Waller is said to own the virtual freehold, long leasehold interest and leasehold interests in the appeal property. He is shown as: Company Director of De Beauvoir Management Ltd, address listed as Cound Hall; Director of Renaissance Group Holdings Ltd, address listed as Cound Hall; and Director of Renaissance Investments Holdings Ltd, address listed as Cound Hall. It seems that he is also the long leaseholder of the appeal property under Renaissance Property Restorations Ltd. A copy of the notice was served on Mr Waller and by appealing the notice before it took effect shows that Mr Waller and by association, RPR Ltd of which he is director, were aware of the notice.
6. Under s176(5) of the Act, 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.
7. From the evidence before me, it appears that a copy of the notice was served on the owner and occupier of the land and those with an interest in the land. Appeals have been made by Mr Waller and De Beauvoir Management Ltd, a company also associated with Mr Waller, and they have had the opportunity to argue their case fully during the appeal proceedings. While a copy of the notice was not directly addressed to RPR Ltd, it cannot be said that the company, whose sole director is Mr Waller, has suffered any substantial prejudice.
8. For the reasons given above, I conclude that the appeal on ground (e) fails.

Ground (g)

9. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. In making an appeal on ground (g), the onus is on the appellant to suggest a different compliance period. The appellant on this ground outlines legal agreements between different parties and they refer to the situation being complex. However, they do not suggest an alternative time period and there is nothing before me that demonstrates that undoing what has been done should take more than three months. Consequently, there is no justifiable reason for the compliance period to be extended and I consider it to be reasonable.

10. If it was not possible to comply with the requirement in the notice within the given timeframe, under s173A of the Act the Council, as stated in its submissions, may extend any period specified for compliance.

11. The appeal on ground (g) therefore fails.

SA Hanson

INSPECTOR