



Appeal Decisions

Site visit made on 17 May 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal A Ref: APP/L5810/C/23/3333827

Appeal B Ref: APP/L5810/C/23/3333828

Land at 12A Red Lion Street, Richmond TW9 1RW

- 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 Lord Paul Lotz and Appeal B is made by Mrs Debrah Lotz against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice was issued on 14 November 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the installation of railings on the roof of the building ("the Railings").
 - The requirements set out in paragraph 5 of the notice are:
 - (a) Permanently remove the Railings from the roof of the building.
 - (b) Make good any damage to the roof caused by compliance with step 5(a) above.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A and B are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The solar panels referred to in the evidence are not alleged in the enforcement notice and nor are they attacked by it. Therefore, they do not constitute part of the appeal development which is before me in these appeals.
3. There is no appeal on ground (a). So I cannot grant planning permission for the railings or consider any planning merits relating to them, such as whether they are required for safety reasons or how they compare to other sites or development in the area.
4. I viewed the railings, unaccompanied, from various locations on the public highway in the area. Combined with the clear photographs provided, I am satisfied I have all the evidence necessary to determine these appeals.

Reasons

Ground (c)

5. 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.
6. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
 7. Section 55 of the 1990 Act 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.
 8. Section 55(1A) states that, for the purposes of the Act, "building operations" includes demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder.
 9. Section 55(2)(a)(ii) 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 the Act to involve development of the land.
 10. From the information available to me, the railings have been permanently fixed to the appeal building. So I do not consider they are of a temporary nature. They are clearly seen from normal vantage points, including on the public highway of Wakefield Road and Church Terrace.
 11. In light of the above, as a matter of my planning judgement, the railings constitute a building operation and materially affect the external appearance of the appeal building. So they constitute development and planning permission is required for them.
 12. I have considered permitted development rights available under The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order'). However, from the information provided, the appeal site is not a dwellinghouse for the purposes of the Order, so it does not benefit from any permitted development rights under Schedule 2, Part 1 of the Order. Moreover, as the railings are at roof level, they do not benefit from permitted development rights under Schedule 2, Part 2, Class A of the Order.
 13. The rights available under Schedule 2, Part 14 of the Order do not apply to the appeal development in this case either, as the railings do not constitute 'renewable energy' for the purposes of any Class under Part 14. My attention has not been drawn to any other rights from the Order, nor are there any that I consider are applicable.
 14. Taking into account the above, the railings are not permitted development. Moreover, there is no evidence that any express grant of planning permission exists for the appeal development either.
 15. I conclude that the appeals on ground (c) fail.

Ground (d)

16. 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.

17. 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.
18. At the time the enforcement notice was issued, section 171B(1) of the 1990 Act provided 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.
19. The Council has provided a Google Street View image of the appeal site from May 2022. This indicates that the railings had not been installed by that date. As such, the railings cannot have been substantially completed for 4 years on the date the notice was issued and so the Google Street View evidence contradicts the appellants case.
20. 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 appeals on ground (d) fail.

Ground (g)

21. 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.
22. The appellant states that they have agreed to remove the railings as soon as the Council removes a solar panel installation and that that could take the Council 6 or 12 months. But from the information provided, the Council has not considered it expedient to take enforcement action against the solar panels so I have no reason to believe they will be removed. Therefore, this does not constitute a reason to extend the period for compliance with the notice.
23. On the appellant's own case, the railings can be removed easily. So I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed and so the appeals on ground (g) fail.

Other Matters

24. The appellant has questioned the proportionality of the Council's approach and expressed concern about how helpful the Council has been. But these are not matters for me to consider in an appeal under section 174.

Conclusions

25. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice.

L Perkins

INSPECTOR