



Appeal Decision

Site visit made on 15 July 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25TH JULY 2024

Appeal A: APP/L5810/C/24/3338586

Appeal B: APP/L5810/C/24/3338587

Land at 109 St Leonards Road, East Sheen SW14 7BL

- 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 Mr Clifford Ruff and Appeal B is made by Ms Claire Banks against an enforcement notice issued by the London Borough of Richmond Upon Thames.
 - The enforcement notice, numbered 23/0467/EN/UBW, was issued on 12 January 2024.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years the unauthorised erection of a closed boarded timber fence projecting above the existing front garden wall to a total height of 1.9m ("the Timber Fence").
 - The requirements of the notice are (a) remove the Timber Fence from the front garden and return the Land to its former condition and (b) remove from the Land any waste associated with the completion of the step above.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the Act). 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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Decisions

Appeal A: APP/L5810/C/24/3338586

1. It is directed that the enforcement notice be varied by 1) removing the words '*Time for compliance: within 1 month from the date this notice takes effect*' in section 5 and replacing them with '*Time for compliance: within four months from the date this notice takes effect*', and 2) deleting the words '*and return the Land to its former condition*' in section 5(a). Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/L5810/C/24/3338587

2. It is directed that the enforcement notice be varied by 1) removing the words '*Time for compliance: within 1 month from the date this notice takes effect*' in section 5 and replacing them with '*Time for compliance: within four months from the date this notice takes effect*', and 2) deleting the words '*and return the Land to its former condition*' in section 5(a). Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. Appeals have not been lodged under ground (f) of section 174(2) of the Act, i.e., that the steps required by the notice to be taken exceed what is necessary to remedy any 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. Nonetheless, there is no dispute that prior to the alleged breach of planning control occurring there was a fence on the land. In this context, the appellants state that they are not certain what is meant in section 5(a) of the notice which refers to '*and return the Land to its former condition*'.
4. The purpose of the notice is to remedy the breach of planning control by removing the timber fence. In this context, the requirement to return the land to its former condition is superfluous. I shall therefore vary requirement 5(a) of the notice, without injustice being caused to the main parties, by deleting the words '*and return the Land to its former condition*'.

Ground (c) appeals

5. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control. The appeal is made on the basis that that the development is permitted by Class A of Schedule 2 of Part 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Class A permits '*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*'. This is subject to various limitations at paragraph A.1. Of these, A.1 (a)(ii) limits the height of a means of enclosure adjacent to a highway used by vehicular traffic to 1 metre above ground level. There is no dispute that the means of enclosure is adjacent to a highway used by vehicular traffic. Neither is there any dispute that the means of enclosure is greater than 1 metre in height.
6. Limitation A.1 (c) does not permit development if '*the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater*'. The appellant says that the means of enclosure does not exceed its former height and therefore benefits from permitted development under A.1 (c). The Council does not dispute matters from a height point of view.
7. Notwithstanding the above, the means of enclosure cannot reasonably be described as works of maintenance, improvement, or alteration. Indeed, the evidence is that most of the former wooden fence was removed, and a new means of enclosure erected. The appellants state, '*at one stage during the repair, the posts to either side of the gate were replaced and leaving the original fence panels in place for a short period*' and '*we accept that the newer timbers are of a brighter colour due to their not having weathered yet*'. It is reasonable that I interpret these comments as meaning that fence posts and panels were replaced.
8. Furthermore, a comparison of the Council's 2008 (figure 3) photograph with the Council's 2023 (figure 4) photograph of the means of enclosure depicts a material difference in the colour and horizontal alignment of a substantial

number of fence panels and a new gate was also erected. Overall, the evidence casts doubt about the appellants' claim that a new fence was not erected.

9. In my judgement, and, when considered as a whole, the breach of planning control relates to a replacement fence: there is no objective or persuasive evidence to indicate that material components of the original structure have survived. I find that the breach of planning control does not therefore fall within the scope of maintenance, improvement, or alteration as the evidence indicates that the original fence was not in existence to be maintained, improved, or altered.
10. For the above reasons, the works do not constitute permitted development and hence the appeals on ground (c) fail.

Ground (g)

11. There is no appeal made under ground (g) of section 174(2) of the Act. An appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. While an appeal on ground (g) has not been made, the Courts have nonetheless held that I have the power to vary the compliance period.
12. The compliance period in the notice is one month. I am cognisant that an occupier of the property has a particular health condition which has an adverse impact on day-to-day movements, senses, or activities. An appeal has not been lodged under ground (a) of section 174(2) of the Act and, to this extent, I have been unable to consider this matter in the context of the consideration of planning merits. Nonetheless, the requirements of the notice are such that some adverse harm may be caused to the occupier of the property from the point of view of matters such as noise and light pollution and, in turn, this may have an adverse disability impact.
13. Given the above, and, to afford the appellants further time to consider the potential to explore the possibility of acceptable alternative options from a boundary treatment point of view (e.g., the planting of a semi-mature hedge), I shall vary the compliance period to four months. In reaching this decision, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. In this case, I find that varying the compliance period is proportionate and necessary. It strikes a reasonable balance between the health condition of the disabled occupier of the property and the need to bring the unauthorised development to an end.

Conclusions

14. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations.

D Hartley

INSPECTOR