



Appeal Decisions

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 October 2024

Appeal A Ref: APP/H5390/C/23/3329817 & 3329818 Ground Floor Flat, 13A Delvino Road, London SW6 4AF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mrs Caroline East and Mr Saxon East against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 28 July 2023.
 - The breach of planning control as alleged in the notice is: The removal of the side boundary brick wall facing Molesford Road and replacement with a timber fence.
 - The requirements of the notice are: (i) Remove from timber fencing and re-instate the brick boundary wall in yellow London stock brick.
 - The period for compliance with the requirement is: 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the word "from" and the substitution of the word "the" in section 3(i); and varied by
 - the deletion of "three (3)" and their substitution with "four (4)" as the time for compliance.
2. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The grounds of appeal do not require considering any matters of planning merit that would be assisted by a visual inspection of the development carried out. Furthermore, the outcome of the appeal will be based on assessing the submitted documentary evidence. In these circumstances, there was no need to visit the appeal site. Neither appeal party has been prejudiced by this course of action.
4. The requirement in the notice refers to "Remove **from** timber fencing....". It readily appears to me that it should say "Remove **the** timber fencing....". This is a very minor error which I intend to correct without causing any injustice to either side.
5. In legal grounds of appeal, such as under s174(2)(e) of the 1990 Act, the burden to make out the case rests firmly with the appellant. The test of the evidence is the balance of probability.

Ground (e)

6. I have read the series of emails to and from various parties, which include between the appellants and the neighbours at 7 Molesford Road or between their representatives where they are often copied into the principal email. They cover matters such as insurance, repairs, and party wall responsibilities. I also particularly note reference by the partner in a legal firm acting on behalf of the appellants which refers to a search of the land registry and available deeds and plans that concludes the wall is a jointly owned boundary wall. However, there are no documentary details to back this up and across all the emails there is nothing to show, on the balance of probability, that the neighbours are part owners of the wall or have joint responsibility for the wall, or at least a section of it.
7. Nevertheless, under s174(1) of the 1990 Act, a person having an interest in the land to which an enforcement notice relates, or a relevant occupier may appeal to the Secretary of State against a notice, whether or not a copy of it has been served on them. Given the various communications aimed at engaging with the neighbours, and the serious implications of not complying with an enforcement notice, it is in my view likely that the neighbours were at least aware of the notice, and they could have appealed against it.
8. In addition, when the appeal was submitted, the Council sent a letter dated 16 November 2023 to the occupiers of 7 Molesford Road giving details of the appeal which also set out how to make any comments on the appeal, to where they should be made and the deadline for doing so. It is therefore further clear that the affected neighbours were aware of the notice and the appeal, and they had time to submit any comments on it, which could have included representations that they should have been served a copy of it or had been denied the opportunity to appeal against it themselves. The Planning Inspectorate did not receive any comments from the neighbours in question.
9. In all the circumstances, the appellants have not discharged the burden on them to show, on the balance of probability, that copies of the enforcement notice were not served as required by s172 of the 1990 Act. Furthermore, in any event, under s176(5) of the 1990 Act I can disregard any claim that there was a failure to serve a notice as required because the persons alleged to have been affected have not been substantially prejudiced as a result.
10. The ground (e) appeal fails.

Ground(g)

11. I am mindful that the timber fence has been in place for a while. In that time, it has been harming the visual character and appearance of the Parson's Green Conservation Area. However, it seems to me that the appellants are set on rebuilding the wall, with the fence referred to as a temporary measure. Moreover, whilst removing the fence would not take long, the rebuilding of the tall roadside wall would take longer, also accounting for the likelihood of engaging a builder to undertake the work. In my view, a further month, making four months in total, would be a more appropriate period. To this extent, the ground (g) appeal succeeds. I shall vary the notice accordingly.

Conclusion

12. For the reasons given above, I conclude that the appeals should not succeed.
I shall uphold the enforcement notice with a correction and variation.

Gareth Symons

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/H5390/C/23/3329817	MRS CAROLINE East
Appeal B	APP/H5390/C/23/3329818	MR SAXON EAST