



Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/T5150/C/23/3330087

Land at 12 Shobroke Close, London NW2 6YT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Miss Z Saiada against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 18 August 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a high boundary fence and a corrugated plastic roofed lean-to extension to the rear of the premises.
 - The requirements of the notice are:
 - STEP 1 Demolish the lean-to extension to the rear of the premises.
 - STEP 2 Remove the over 6ft high timber boundary panels from the rear of the premises.
 - STEP 3 Remove all items, debris and materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is one month after the notice takes effect.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(b), (c), (d), (f) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections as set out in the formal decision.

Preliminary Matters

1. Having regard to the nature of the breach alleged, the case made by the parties and the main considerations under the grounds of appeal, I am satisfied that I am able to determine the appeal without a site visit. In doing so, injustice would not be caused.
2. The appellant's case made under each of the grounds of appeal is set out in the appeal form only. Their case is briefly stated, and under each of the grounds it is only that wrongful allegations have been made. The appellant has not elaborated upon this, despite having the opportunity to do so at the statement of case stage of the appeal process. Neither has the appellant provided any final comments in response to the Council's appeal statement. Furthermore, a site visit would not have been an opportunity for the appellant to have made their case. To have done so would have been out of accord with the appeal procedure and timetable. This would also have caused injustice to the Council.

Ground (b)

3. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appear to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred.

4. What is alleged is operational development comprising:
 - a. the erection of a high boundary fence to the rear of the premises; and
 - b. the erection of a corrugated plastic roofed lean-to extension to the rear of the premises.
5. The Council have provided a series of photographs. Whilst not taken from within the appeal site, they allow a clear view of the boundary treatment between the appeal site and the adjoining property and a clear view of the rear elevation of the appeal property. The Council say that the photographs were taken in March and October 2023. The date of these are, therefore, before and then after the enforcement notice was issued.
6. In the photographs I can see a timber framed structure erected across the width of the appeal site. Most of this timber structure has been fitted with a corrugated transparent roof. I have no doubt that this is what is described in the notice as 'a corrugated plastic roofed lean-to extension'.
7. The photographs also show fencing with concrete posts running along what appear to be the boundaries of the site, enclosing the rear garden of the appeal property. This appears to be historic fencing, in that the timber used to construct the fencing has weathered. Within the appeal site, and close to this existing enclosure along the boundary shared with 10 Shobroke Close, I can also see a taller section of feather edged type fencing. This starts at the rear elevation of the appeal property and the Council's evidence indicates that this extends some 6.1 metres. It is very close to the more historic boundary fence, and erected inside the appeal site. The Council also say that it has a height of 2.71 metres.
8. Having regard to the Council's appeal statement, it is clear that reference in the notice to a 'high boundary fence' is to this taller section of fencing erected within the appeal site.
9. None of the above is disputed by the appellant, including the date of the photographs which show that both the fence and the lean-to extension were in place prior to the issue of the notice. I conclude, therefore, that it is more likely than not that the matters stated in the enforcement notice have occurred. The ground (b) appeal must, therefore, fail.
10. Notwithstanding the above, I have a minor concern with regard to the description of the section of fence that is the intended target of the notice. I say this because there is other fencing along the boundaries of the appeal site that are clearly not the target of the notice. I do not consider the use of the word 'high' to be sufficiently precise as a means to differentiate between the fence that is attacked by the notice and the other, more historic fencing.
11. The Council say that the height of the target fencing is 2.71 metres. Whilst it is not always ideal to include such precise measurements in an enforcement notice, this measurement is not disputed by the appellant. Furthermore, in referring to the target fencing using this measurement, I am satisfied that there would be no confusion between it and the other more historic fencing on the site. Accordingly, so that there is more certainty with regard to the enclosure that is the target of the notice, the allegation could be corrected to include this undisputed height measurement of the fence in question. This is a minor correction that provides

more certainty with regard to what is comprised in the breach of planning control specified in the notice. Accordingly, in correcting the notice in this way, I am satisfied that injustice would not be caused.

Ground (c)

12. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice, corrected as I intend, do not constitute a breach of planning control. The burden of proof is on the appellant.
13. As I note above, the appellant's case on ground (c) is brief. If the claim is that the wrongful allegations made are those made in the notice, then this matter falls squarely to be considered under a ground (b) appeal, which I have done above and have concluded that the matters alleged in the notice have occurred.
14. Furthermore, having regard to the nature of the matters that are the target of the notice, I am satisfied that both fall within the meaning of development, as set out in section 55 of The Town and Country Planning Act 1990 as amended (the 1990 Act). Section 57 of the 1990 Act informs that planning permission is required for the carrying out of any development of land.
15. In the appeal form the appellant suggests that there is a need for me to visit the site so that I can measure. The appellant has not, however, indicated what might be measured or suggested that any measurements of the development subject of this appeal might assist their case. As I note above, an appeal site visit is not an opportunity for the appellant to make further representations, including what they regard as the dimensions of the development in question. Such representations should have been made in accordance with the appeal timetable. The burden of proof is on the appellant. There is nothing in the appellant's case that is before me that adequately explains why the development subject of this appeal does not constitute a breach of planning control.
16. Notwithstanding the above, the Council refer to The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order), which grants deemed planning permission for certain types of development. With regard to the fence, whilst the Council refer to Class A of Part 1, it is Class A of Part 2, of Article 3, Schedule 2 of the 2015 Order that permits the erection of a means of enclosure. The Council indicate that the provisions of A.1.(b) of Class A would apply in this case. This informs that development would not be permitted by Class A if 'the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level'. As the evidence indicates that the fence in question measures in excess of 2 metres in height, it would not benefit from the permission granted by Class A of Part 2.
17. As for the lean-to extension, the Council refer to Class A, of Part 1, Article 3, Schedule 2 of the 2015 Order. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. The Council point to the conditions of the planning permission granted by Class A of Part 1; condition A.3.(a) in particular, which informs that 'the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'. I am satisfied that the lean-to extension is not a conservatory and can agree with the Council, that the timber and transparent corrugated materials used in the construction of the lean-to extension are not of a similar appearance to those used

in the construction of the exterior of the existing dwellinghouse. As the development does not comply with condition A.3.(a) of Class A, it follows that the development is not permitted by Class A of Part 1.

18. I have not been made aware of any reason why neither the fence nor the lean-to extension would require the benefit of express planning permission, in accordance with section 57 of the 1990 Act. Furthermore, having regard to my findings above, I have been given no reason to conclude that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the development alleged in the enforcement notice, corrected as I intend, constitutes a breach of planning control. For this reason, the ground (c) appeal must fail.

Ground (d)

19. An appeal on this ground is that, on the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters stated in the notice. In order to succeed on this ground, the appellant must show that a period of four years¹ has passed beginning with the date on which the fence and lean-to extension were substantially completed. The test of the evidence is on the balance of probability and the burden of proof is on the appellant.
20. The Council has provided a series of aerial photographs of the appeal site dating from June 2019 to March 2021. Whilst some are a little blurred, none appear to show anything that resembles the lean-to extension erected to the rear of the appeal property, as shown in the Council's site photographs referred to above. The April 2020 photograph is the most clear image and appears to show nothing more than a small patio area adjacent to the rear of the property in the location of the lean-to extension.
21. I acknowledge that the aerial photographs are of little assistance in demonstrating whether or not the fence was present at the times the images were taken. Nevertheless, the burden of proof is on the appellant to show that the fence was substantially completed more than 4 years prior to the issue of the notice. No evidence has been provided by the appellant sufficient to demonstrate this.
22. The appellant has failed to discharge the burden of proof that is upon them. Accordingly, I conclude that, on the balance of probability, a period of four years has not passed beginning with the date on which the fence and lean-to extension were substantially completed. For this reason, on the date on which the enforcement notice was issued, enforcement action could have been taken in respect of the breach of planning control alleged. The ground (d) appeal must, therefore, fail.

Ground (f)

23. A ground (f) appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control alleged or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Having regard to the requirements of the notice, its purpose is to remedy the breach.

¹ Having regard to section 171B(1) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

24. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. The appellant has not, however, specified which of the requirements are the subject of the ground (f) appeal and how they consider that these exceed what is necessary to remedy the breach.
25. Notwithstanding this, I have considered whether any alternative or lesser steps might achieve the purpose of remedying any element of the breach in this case, having had regard to both the nature of the breach and requirements of the notice. However, no other steps that would achieve this purpose are obvious to me.
26. Notwithstanding this, step 2 of the requirements could be more precise. I have set out above my intention to correct the allegation so that it is more precise in specifying the fencing that is the target of the notice. Whilst I am satisfied that step 2 relates to the fencing in question, to be more precise, the words used should be consistent with the allegation, corrected as I intend. Accordingly, in the interests of precision, along with the intended correction to the allegation, I will also correct the notice so that step 2 of schedule 4 is consistent with this.
27. All things considered, I can only conclude that the steps required in the notice, once corrected as I intend, are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

29. It is directed that the enforcement notice is corrected by:
- the insertion in schedule 2 of the words "2.71 metre" before the words "high boundary fence"; and
 - the deletion from schedule 4 of the words "over 6ft high timber boundary panels" and their substitution with the words "2.71 metre high boundary fence".
30. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR