The Planning Inspectorate

Appeal Decision

Site visit made on 15 July 2014

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 6 August 2014

Enforcement notice appeal refs: APP/X5210/C/14/2212282, 83 10 Mackeson Road, London NW3 2LT

- The appeal was made by Mr J B Abelman and Ms C V Greco under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Camden Council.
- The notice was issued on 12 December 2013.
- The breach of planning control alleged in the notice was: Without planning permission the unauthorised erection of bike and bin store to the front of the property.
- The requirement of the notice is to: Within a period of three months the bike and bin store shall be completely removed and associated debris completely removed from the site.
- The appeal was made on grounds (a), (c), (e) and (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is upheld. Planning permission to retain the bike and bin store is not granted.

Procedural matter

1. The Appellants, Mr J B Abelman and Ms C V Greco, made an application for an award of costs against the Council. That is the subject of a separate decision.

Appeal site

2. The appeal concerns a bike and bin store which has been built on to the inside face of the front garden wall to the terraced house at No. 10 Mackeson Road.

3. The front wall to No. 10 alongside the road footway is a rendered wall 0.85m high, with 3 piers about 1.3m high. Between the piers, planters have been placed, which partly screen the bike and bin store built onto the back of the front wall. The bike and bin store was said to be some 0.425m higher than the wall. Its roof was covered with bituminous roofing felt.

4. The bike and bin store occupies a depth towards the front wall of the house of some 0.85m, taking up about 1/3rd the depth of the front garden. The red brick built store extends from the boundary with No. 12 to the north to close to, but inset from, the pedestrian gateway to No. 10.

5. The appeal site lies within the Mansfield Conservation Area, an area containing mostly terraced housing, bounded by Constantine Road and Savernake Road to the north and Fleet Road and Mansfield Road to the south. Mackeson Road

housing is terraced, with 3 storey housing of good, well maintained quality, with a similar attractive Victorian architectural style. Front boundary walls vary in form and height, although low walls predominate.

Invalidity

6. The Appellants said the Enforcement Notice did not comply with regulation 4(a) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 in that it did not "specify the reasons why the local planning authority considers it expedient to issue the notice." Under s.172(1) of the Act, in order for a local planning authority to issue an enforcement notice, it was not enough that it appeared to that local planning authority that there had been a breach of planning control. It must also appear to that local planning authority that it was expedient to issue the enforcement notice having regard to the development plan and any other material considerations.

7. Here, all that the enforcement notice stated was that the London Borough of Camden "consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations." That did not "specify", (i.e. give details or particulars of), the reasons why the LB of Camden considered it expedient to issue the enforcement notice. All that the quoted passage did was mention certain matters to which LB of Camden had had regard in considering that it would be expedient to issue the enforcement notice. Even if the statement had been specific as to which "provisions of the development plan and to other material considerations" it had regard to, that would not be specifying a reason for the issue of the enforcement notice. It would simply be identifying provisions to which regard had been had. The requirement to provide reasons involved more than that. First, it required identification of the specific policies that the local planning authority had taken into account in concluding that it would be expedient to issue the notice. Secondly, having identified those policies it required some articulation of the application of those policies, (or anything else considered relevant), to the facts and matters that has resulted in the LPA concluding that it was expedient to issue the enforcement notice.

8. The Appellants said the enforcement notice did nothing of the sort. That was not just a formality. It compelled the Local Planning Authority to articulate satisfaction of the separate statutory requirement in s.172(1)(b). It disciplined a local planning authority into thinking about whether a breach of planning control warranted enforcement action. LB Camden would have done well to exercise that discipline here. In the event, the enforcement notice was missing one of the essential requirements of an enforcement notice and was, accordingly, invalid.

9. The enforcement notice before me is not invalid. There is a distinction to be drawn between an enforcement notice that is a nullity and one that is invalid. A notice is a nullity if, for example, it is missing a vital component, such as a period for compliance. Such a document would not be an enforcement notice. It would be merely a piece of paper, incapable of correction to become an enforcement notice. An invalid notice is one with a defect, but one that may or may not be corrected. The *Miller-Mead v MHLG [1963] 2 QB 196* judgement, once the guiding case on the matter of correction, is no longer binding. In the case of *Epping Forest DC v Mathews [1986] JPL 132* it was said that obvious errors were capable of correction provided the recipients of the notice could

have been under no misapprehension as to what was being complained of and what they were required to do by way of remedy. The case of *Simms v SSE & Broxtowe BC [1998] JPL B98* is authority for the view that any correction can be made, so long as there is no injustice to either side. It was irrelevant whether corrections go to the substance of the matter. That was confirmed by the case of *R v SSE and L B Tower Hamlets, ex parte Ahern [1989] JPL 757*, in which it was said; "The pettyfogging has to stop". Virtually any correction can be made, the test being whether it would cause injustice. In the present instance, I do not know what correction was considered necessary or would be of assistance. The enforcement notice before me contains the reasons at para. 4 on page 2 as to why it was issued. The Appellants claim that the notice was invalid made no mention of any injustice. I find none. The notice was not a nullity. Nor was it invalid.

The appeal on ground (e)

10. An appeal on ground (e) asserts that the enforcement notice was not properly served on those with an interest in the land.

11. For the Appellants, it was said the enforcement notice was sent to "Jerome Bruce Adelman and Catherine Victoria Greco" at 10 Mackeson Road. The owners were Mr Abelman and Ms Greco. So the notice was sent to the wrong person. The Appellants were living abroad when the notice was served. The Council knew that. Alternatively, the Council could have served the Appellants by sending the document to their Agents. The Council had been aware of the situation, but had failed to serve the notice properly.

12. I regard the misspelling of Mr Abelman's name as a slip of no consequence. No evidence was produced to show that any party with an interest in the notice land had suffered any injustice caused by any bad service. Even where service of an enforcement notice has failed to comply with s.172(3) of the Act, unless an appellant has been substantially prejudiced, there is a discretion to disregard bad service under s.176(5) of the Act. An appeal was made and comprehensive written representations were submitted on behalf of the Appellants. It cannot be said they had been substantially prejudiced by bad service, *(Dyer v SSE [1996] JPL 740)*. The appeal on ground (e) fails.

The appeal on ground (c)

13. An appeal on ground (c) asserts that the matters alleged in the enforcement notice did not constitute a breach of planning control.

14. In this instance, the Appellants said the bike and bin store structure was development permitted by the Town and Country Planning (General Permitted Development) Order 1995, (the Order). In particular, it was said that the bike and bin store was an enclosure, permitted by Class A to Part 2 to Schedule 2 to the Order. That said that the erection, construction, improvement or alteration of a gate, fence, wall or other means of enclosure is development permitted by the Order.

15. The Appellants said that the development was a means of enclosure. It enclosed rubbish bins and bicycles. There was nothing in that part of the Order which said "an enclosure as defined in Class A of Part 2, Schedule 2 needs to be similar to a gate, fence or wall.". One could not shrink the meaning of the words "means of enclosure", *(Kirklees BC v Brook [2005] 2 P&CR 17)*.

16. The Appellants further said that whether or not something was a means of enclosure was a matter of fact and degree, *(Ewen Developments Ltd v SSE and North Norfolk District Council [1980] JPL 404)*. What was required was that the structure be a "means of enclosure", *(Wycombe District Council v SSE and Another [1995] JPL 223)*. There was no basis for restricting the ordinary meaning of those words by requiring them to be "similar" to the preceding items. There was nothing in Part 2, Class A that said that an "enclosure" could not have a roof or lid. Examination of how the word was used elsewhere in the Order (e.g., Part 2, Class E.1 and E.2; Part 38, Class A.1; Part 42, Class B.1), made it clear that an enclosure may be substantial. A box was an enclosure and it had a lid. The presence or absence of a lid was not determinative of whether something was a means of enclosure. The words "means of enclosure" were to be given their ordinary, natural meaning. The Council had accepted that the development "encloses items such as bikes and bins". Unless the development had some other attribute that took it out of the phrase "means of enclosure", the development fell within Part 2 of Class A. The Council had not identified any attribute of the development that took it out of the phrase "means of enclosure." To reject something as a "means of enclosure" on the basis that it involved "more than just the fence/wall" was wrong-headed. If the draftsman had wanted to limit what was permitted to fences and walls, the sentence in Part 2, Class A would have ended at "walls." But the draftsman did not end the sentence there. He went on and added "or other means of enclosure." He did so because he had in mind something else beyond what was captured by the preceding words. The Council were wrong to give those words no practical operation by collapsing them into the preceding words.

17. Nothing leads me to agree with the Appellants that the appeal bike and bin store is an enclosure that falls within Class A to Part 2 to Schedule 2 to the Order. The assessment as to what is a means of enclosure is one of fact and degree as noted by the Appellants. But it is stretching the meaning too far to conclude that the store structure is a means of enclosure that falls within Class A, Part 2. If the bike and bin store, which is more akin to a building or container, was accepted to be a means of enclosure within Class A to Part 2 to Schedule 2 to the Order, it could be difficult to exclude a variety of what a reasonable person would regard as buildings, including, for example, a garden shed. The use of the words "or other means of enclosure" at the end of para. A. of Part 2 MINOR OPERATIONS Class A is only to include something of a similar nature to a gate, fence or wall. It does not include a small building or structure, such as the appeal bike and bin store.

18. That view was confirmed by Court decisions which have established that the words "or other means of enclosure" are governed by the *ejusdem generis rule*, which means that where a statue lists specific classes of items and then refers to them in general, the general statements apply only to the same kind of items to those specifically listed, *(Ewen Developments Ltd v SSE and North Norfolk District Council [1980] JPL 404)*. I conclude that the appeal bike and bin store is not a "means of enclosure" within Schedule 2, Part 2, Class A of the Order and was not development permitted by that or any other part of the Order. The appeal on ground (c) fails.

(In statutory construction, the "ejusdem generis rule" is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically

mentioned.).

The appeal on ground (a)

19. No. 10 Mackeson Road is in the Mansfield Conservation Area of Camden. There is a general duty in respect of conservation areas in the exercise of planning functions in s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

20. The National Planning Policy Framework, (NPPF), requires, amongst others, that local planning authorities asses the significance of any heritage assets affected, including any contribution made by their setting. In determining planning applications, local planning authorities should take account of, amongst others, the desirability of new development making a positive contribution to local character and distinctiveness.

21. The enforcement notice's reasons for issuing the notice said the bike and bin store, due to its height, bulk, location and detailed design resulted in demonstrable harm to the character and appearance of the host building, street scene and the Mansfield Conservation Area. That was contrary to policy CS14 (promoting high quality places and conserving our heritage) of the Camden Core Strategy and policy DP24 (Securing high quality design) and policy DP25 (Conserving Camden's Heritage) of Camden's Development policies of the Adopted Camden Local Development Framework.

22. The decision turns on the acceptability of the appearance of the appeal bike and bin store on the street scene, having regard to the application of relevant national and local policy.

23. As the Appellants pointed out, and criticised the Council for not referring to them in the reasons for serving the enforcement notice, several local policies may be said to support the bike and bin store facility. They were Core Strategy policies C11 and C17; Local Development Framework policies DP17, DP18 and DP27; Camden Planning Guidance CPG7.

24. The Appellants referred to Local Development Framework policy DP17 that seeks to promote walking, cycling and public transport use. It also says that development should make provision for cyclists, including high quality cycling parking. The text to policy DP18 says all developments will be expected to meet the Council's cycle parking standards.

25. The Council said that policies DP17 and DP18 were applicable to new development and residential conversions, not to existing dwellings. Nor did they override the need to comply with policies applicable to specific proposals, particularly DP24 and DP25. They said the Mansfield Conservation Area Statement and Management Strategy adopted in 2008 identified the north view along Mackeson Road as a key townscape view of the Conservation Area.

26. Although the top of the fronting wall to No. 10 has been lowered from its 2010 height, that higher wall appeared to have been an unlawful replacement of what was there earlier. Photographs taken in 2010 show that the original low wall was re-built and rendered to a height above 1m, presumably as part of the construction of the bike and bin store. Following discussion with a Council officer, the wall was re-built from its 2010 state to its present lower height. There was a subsequent divergence of view as to whether the whole

development was then acceptable to the Council. The Council's said the store structure had never been agreed to be acceptable. But because an officer had earlier indicated that the present lowered wall would be satisfactory, the Council would not pursue any action against the wall. That is, even though they must have considered the lowered re-built wall to be unlawful. That no action would be taken against it was conceded, albeit the concept of estoppel by representation has gone, *(R v East Sussex CC ex parte Reprotech (Pebsham) Ltd (HoL 28.2.02))*.

27. The emphasis of the policy background to this case emphasises the need for good design to be applied. In Conservation Areas, there is an added need to demonstrate that the development had regard to the need to preserving or enhancing the character or appearance of that area. In this instance, I disagree with the Appellants' assertion that the appeal bike and bin store effects an improvement to the immediate area. In my view, it incongruously covers and fills a considerable portion of the front garden to No. 10. The bike and bin store is, to some extent, screened by the fronting wall and planters. But from the adjacent footway and from approaches along the road, it is a discordant feature in the street scene, oddly placed in the front garden of the house. The roofing felt covering unhappily emphasises its incompatibility. The entire structure is more appropriate to a rear garden or back yard of a house. The overall effect is one that fails to preserve the fine Victorian character of the house frontages to Mackeson Road. I consider that the appeal bike and bin store also fails to make a positive contribution to local character as set out in NPPF guidance. It also conflicts with Camden Core Strategy policy CS14 by failing to promote high quality places and conserve the local heritage. Further, it is also in breach of Adopted Camden Local Development Framework policy DP24 which seeks high quality design and with policy DP25 by failing to conserve this part of Camden's Heritage.

28. I can understand the utility of the bike and bin store. A secure store for bicycles is an obvious asset. It is also an unfortunate consequence of the modern need for several waste bins for each household that they are often seen to clutter house frontages. Local policies, which support the provision of facilities for cycling and for dealing with refuse, have been referred to by the Appellants. But the need to deal with such matters, said to be in compliance with those policies, is insufficient to override the failure to avoid harm to this part of the Mansfield Conservation Area.

29. I am only dealing with this enforcement notice appeal. But I am also concerned that allowing this appeal could make it difficult for the Council to reasonably refuse similar proposals. That could be an unfortunate precedent in terms of the need to protect the street scene and this part of the Conservation Area from further harmful developments.

30. I conclude the bike and bin store has an unacceptably harmful effect on this part of the Mansfield Conservation Area, which is to be protected from development that adversely affects its character and appearance.

31. The appeal on ground (a) fails.

The appeal on ground (f)

32. An appeal on ground (f) asserts that the requirements of the notice are too onerous. The requirement of this notice is that the bike and bin store be

entirely removed. Most of what was said in support of the ground (f) appeal went to justifying the retention of the store structure. The appeal on ground (a) failed and I do not rehearse matters of planning merit.

33. No lesser requirement was suggested. Even if the bike and bin store could be reduced in size without losing most of its utility, it would remain an unhappily incongruous feature, as would any extension of any otherwise suitable screening. The appropriate remedy for the breach of planning control is to require the complete removal of the bike and bin store as set out in the enforcement notice. The appeal on ground (f) fails.

FORMAL DECISION

34. The enforcement notice is upheld. Planning permission is not granted to retain the bike and bin store enforced against.

John Whalley

INSPECTOR