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# Appeal Decision

Site visit made on 8 March 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 12 April 2016

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**Appeal Ref: APP/X5210/C/15/3133473**

**Flat 1, April House, 45 Maresfield Gardens, London NW3 5TE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Kfir Chevinski against an enforcement notice issued by the Council of the London Borough of Camden.
  - The notice was issued on 28 July 2015.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of metal gates and brick gate piers on the front boundary of the property.
  - The requirements of the notice are to remove the gate piers and gates from the front boundary of the property and return the front garden/driveway area back to the original layout with left and central car parking spaces.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (e), (a) and (f) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The appeal is allowed and the enforcement notice is quashed.

## Ground (e)

2. In the legal grounds of appeal, the burden of proof is upon the Appellant, with the standard of proof being the balance of probabilities.
3. April House is situated to the west of Maresfield Gardens and comprises Flat A and B. The adjoining property is also known as April House, Flats A to F. The allegation relates to the erection of metal gates and brick gate piers on the front boundary to Flat 1, April House. The whole of the boundary has been substantially altered. The frontage has been physically subdivided in two separate parking spaces and there is frontage access in to Flat 1 and 2.
4. Section 172 of the Act, paragraph (2)(a)(b), states a copy of an Enforcement Notice shall be served on the owner, occupier and on any other person having an interest in the land. An *owner* is defined in s.336(1) of the Act<sup>1</sup>. A person may be an *occupier* because of a lease, a licence or oral permission. An *interest in the land* connotes a legal or equitable interest. A person entitled to appeal under s.174(2) is specifically defined as a *relevant occupier*. There is a distinction between occupiers with an interest who must be served, and persons with an interest, which entitles them to make an appeal.

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<sup>1</sup> Basically, a person entitled to receive the rack-rent of the person who would be in that position if the land were so let.

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5. Given the potential liability with failure to comply with the terms of a Notice, all reasonable steps should be taken to identify all persons entitled to be served with a Notice and they should be served. It is for the Council to decide who is materially affected by the Notice, but it risks an appeal on ground (e) if it exercises its discretion wrongly.
6. While discretionary, it appears a planning contravention notice or requisition request under s.171C and 329 of the Act has not been issued. That might have shed some light on the exact ownership and occupation of the land during the period leading up to the issuing of the Notice, and assisted in determining who to serve<sup>2</sup>. From the written submissions it appears that the Council examined HM Land Registry documents and found the Appellant and a Mr Paul Humphreys have a legal interest in the land.
7. There are two off-street parking spaces along the frontage to Flat 1 and 2 April House. One of the parking bays, referred to as the *southern parking space*, has a long-term lease in favour of Mr Ian Green at Flat E April House, which he confirms in his representation. The other parking space belongs to the Appellant. In practice, the frontage to April House is actually used by occupiers of Flat 1 and 2 as well as Flat E. Clearly, all of these individuals have sufficient interest, control and use of the land. I find that the owner(s) and occupier(s) of Flat 1, 2 and E are likely to be materially affected by the Notice, due to the location and positioning of the subject metal gates and brick gate piers.
8. At the time when the Notice was issued, the Appellant claims he was away on holiday and did not personally receive a copy. I give little credence to this line of argument. This is because a valid appeal has been made on his behalf. His interest in the land has been protected.
9. Flat 2 April House's owner and occupier is Mr Paul Humphreys. On the title deeds his address is given as Flat 1 April House. The Council argue that Mr Humphreys has been served with a copy of the Notice at Flat 1 by recorded mail, and no mail has been returned as undelivered. The assumption is that he has received a copy. On the other hand, the Appellant states that Mr Humphreys does not actually live at Flat 1 April House and the details given on the title deed are incorrect. The Council provide no evidence to make that assertion less than credible. In my mind, there is considerable doubt as to whether Mr Humphreys has actually been served with a copy of the Notice yet he has an interest in the land.
10. Mr Ian Green lives at Flat E April House and the Council confirm that he has not been served with a copy of the Notice. Although an e-mail communication from Mr Green to the Council purports to confirm his awareness of the Notice, it has not been submitted for my detailed consideration. Mr Green has made representation on planning merits but, given his apparent interest in the land, he should have been properly served with a copy together with the explanatory notes.
11. I consider that had Mr Paul Humphreys and Mr Ian Green been properly served with a copy of the Notice together with explanatory notes, there is a realistic possibility they might have wanted to pursue their separate appeals, or make substantial submissions if they were aware of the potential consequences. I am

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<sup>2</sup> See paragraph 008 reference ID: 17b-008-20140306, paragraph 014 ref. ID 17b-014-20140306 and paragraph 015 ref. ID 17b-015-20140306 to the Department's National Planning Practice for good practice.

not satisfied that the Council's approach to the service of the Notice meets with the legal provisions set out in s.172 of the Act. Natural justice dictates that a copy of the Notice should have been served upon Mr Paul Humphreys and Mr Ian Green, because of their material interest in the land.

12. Section 176 (5) of the Act states that where it would otherwise be a ground for determining an appeal under s.174 in favour of the Appellant that a person required to be served with a copy of the Notice was not served, the Secretary of State may disregard that fact if neither the Appellant nor that person has been *substantially prejudiced* by the failure to serve him [my emphasis].
13. I recognise that a copy of the Notice was placed on the planning register and is electronically available on the Internet. Local residents were made aware of its existence. However, it appears to me that those with an interest in the land, and who needed to be served with a copy, have not been properly served thereby depriving them of their right of appeal.
14. On the available evidence, I am not satisfied that Mr Paul Humphreys or Mr Ian Green would not be substantially prejudiced. On the balance of probabilities, I find that Mr Paul Humphreys and Mr Ian Green have been substantially prejudiced by this non-service of the Notice. This is not a case when I can exercise the power to disregard that non-service in accordance with s.176 (5) of the Act.
15. Pulling all of the above points together, I find that the Council has exercised its discretion deficiently, because those with an interest in the land have not been served with a copy of the Notice. Therefore, I conclude that ground (e) succeeds.
16. I have exercised powers transferred to me accordingly and the Notice is quashed. In these circumstances the appeals made on ground (a) and (f), as set out in s.174 (2) of the Act, do not fall to be considered.

*A U Ghafoor*

Inspector