



Appeal Decisions

Site visit made on 19 February 2019

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 March 2019

Appeal A Ref: APP/X5210/C/18/3204832

Appeal B Ref: APP/X5210/C/18/3204833

Flat B, 52 Sarre Road, London NW2 3SL

- 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 appeals are made by Mr Emmanuel Brandariz (Appeal A) and Ms Kate Eardley (Appeal B) against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 2 May 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the flat roof of the dormer has been built flush with the ridge of the existing roof rather than set down from the ridge by 0.5m as shown on the approved plans.
- The requirements of the notice are:
 1. Remove unauthorised rear dormer and reinstate the roof to match the original; or
 2. Rebuild dormer window in line with approved scheme 2017/0169/P.
- The period for compliance with the requirements is 12 months.
- Appeal A 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed and the enforcement notice is quashed.

Appeals A and B on ground (e)

1. For the appeals to succeed on ground (e), it is necessary for the appellants to demonstrate, on the balance of probabilities, that the notice was not properly served on everyone with an interest in the land as required by section 172 of the 1990 Act. Section 172(2) states that a copy of the notice shall be served on (a) the owner and the occupier of the land to which the notice relates and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
2. The appellants indicate that the notice was not served on the leaseholder of Flat A, 52 Sarre Road. However, the notice is clear on its face that the land to which it relates is Flat B, 52 Sarre Road. There is no indication that the leaseholder of Flat A has any interest in Flat B. The fact that the leaseholder of Flat A was not served with a copy of the notice does not therefore amount to a failure to comply with section 172.

3. The appellants indicate, however, that the notice was not served on the freehold owner of the building as a whole. That is said to be 52 Sarre Road Limited. The notice indicates that it was served on both appellants, as well as the occupier of the property and the mortgagee. However, there is no indication it was served on the freeholder. The Council has not responded to the point or provided any contrary evidence regarding ownership of the building. Moreover, there is no explanation from the Council as to why it considered the freeholder was not materially affected by the notice, having regard to section 172(2)(b) of the 1990 Act.
4. Section 176(5) of the 1990 Act allows me to disregard any failure to serve the notice provided that neither the appellant nor the person concerned (including a company) has been substantially prejudiced by the failure.
5. However, I have no evidence to suggest the appellants represent the freeholder or that their interests are necessarily the same. Nor can I conclude that the freeholder was aware of the notice and its right of appeal. It may well have been that the freeholder would wish to appeal separately with different arguments or grounds.
6. Clearly, the freeholder is directly affected by the notice and natural justice dictates that it should be afforded an opportunity to respond. In the absence of service upon the freeholder, it seems to me that, on the balance of probabilities, substantial prejudice has been caused by the failure to serve it with a copy of the notice.

Conclusion

7. I conclude that the freeholder of the land has been substantially prejudiced by the non-service of the enforcement notice and this is not a case when I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeals on ground (e) succeed and the enforcement notice will be quashed.
8. In these circumstances, the appeals on the grounds set out in section 174(2)(a) and (f) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decisions

Appeal A

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

Appeal B

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

J Whitfield

INSPECTOR