

Appeal Decision

Site visit made on 20 October 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 27 October 2016

Appeal Ref: APP/G5750/C/16/3146352

Land at 29 Clova Road, Forest Gate, London E7 9AQ

- 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 Koisor Husain against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 12 February 2016 under ref. 15/00554/ENFC.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding.
 - The requirements of the notice are set out as follows:
 - "1. Demolish the outbuilding (as shown edged in blue on the attached plan).
 - 2. Remove from the site all debris arising from compliance with the above step."
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. I visited the site at the appointed time. The Council's representative was present. Neither the appellant nor his agent was there and there was no response at the front door of the appeal property. After waiting for a short while, I decided that the site visit should be aborted. Whilst the subject outbuilding was not visible from the street, an appeal has not been made on ground (a) – that planning permission ought to be granted for the outbuilding. The planning merits of the case are not therefore before me. Having studied the written representations of both parties, the plan submitted by the appellant and the photograph and aerial image submitted by the Council, I consider that I have sufficient information to determine this ground (f) appeal without a further site visit being arranged. I am satisfied that neither the appellant nor the Council would be prejudiced by this course of action.

Background and matters of clarification

3. No. 29 Clova Road is a residential building with two main storeys and further accommodation in the basement and the loft. It has been subdivided into
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three self-contained flats and a certificate of lawfulness for this existing use was granted under ref. 15/03310/CLE.

4. There appears to be no dispute between the parties that the subject outbuilding in the back garden has been built in the form of a double store to provide for external storage to the rear shared amenity space. The appellant was wrongly advised that the construction constituted permitted development.
5. The plan submitted by the appellant indicates that the storage shed has a maximum height of 2.89 m on the boundary with 31 Clova Road. The exterior walls have received a rendered finish. The roof is flat or nearly flat.
6. A retrospective planning application that sought permission to retain the existing storage shed was refused under ref. 15/03525/HH for reasons that are very similar to those included in paragraph 4 of the enforcement notice.

The appeal on ground (f)

7. The gist of the appellant's case under ground (f) is that requiring the total demolition of the structure is far too heavy-handed and that, instead, lowering the height of the roof to 2.5 m would bring the building in line with the current rules for residential outbuildings and achieve what is required to reduce the impact on the affected adjoining property.
8. Section 173 of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These purposes are to remedy the breach of planning control as specified in section 173(4) (a) or to remedy any injury to amenity which has been caused by the breach as specified in section 173(4) (b).
9. Section 173(4) (a) sets out three ways in which a breach can be remedied. These are by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
10. Paragraph 4 of the enforcement notice indicates that the Council wishes to return the land to its former state. Step 1 in paragraph 5 of the notice requires the demolition of the outbuilding. The purpose of this notice is clearly to remedy the breach in its entirety rather than to remedy the injury to amenity by requiring some lesser steps to be taken.
11. Where no appeal has been brought on ground (a) and consequently there is no deemed application for planning permission, the 1990 Act as amended cannot be interpreted as allowing arguments about the planning merits of the development on ground (f). Furthermore, where the purpose of the requirement is to be found wholly within section 173(4) (a), that Act cannot sensibly be interpreted as allowing any appeal submission under the second head of ground (f) arguing that the requirement exceeds what is necessary to remedy any injury to amenity.
12. The key matter in this appeal is therefore whether the requirements of the notice exceed what is necessary to achieve the purpose of remedying the breach of planning control.

13. A reduction in height as proposed by the appellant must be viewed as a lesser step designed to address the harm rather than providing a remedy to the breach of planning control that has occurred. In any event, as the Council points out altering the height of the development would not mitigate the harm caused by the inappropriate materials used in the construction of the outbuilding.
14. The enforcement regime is not meant to be punitive. Where there is a valid fallback, for example, by way of permitted development rights, it is necessary to consider whether complete removal of an unlawful structure would ultimately achieve anything. However, in this case, there is no prospect of permitted development rights being exercised in the future because for the purposes of the relevant part of the General Permitted Development Order a dwelling house does not include a building containing one or more flats, or a flat contained within such a building. The appeal property is divided into three self-contained flats and the appellant now understands that it does not benefit from the normal range of permitted development rights associated with development within the curtilages of dwelling houses. An outbuilding 2.5 m high would not amount to permitted development at this property.
15. Whether this outbuilding is close to complying with what occupiers of dwelling houses are allowed to do without approval, or is modest compared to other outbuildings hereabouts or elsewhere in the borough, or does not harm the outlook and amenity of any other property are all matters that could have been addressed under an appeal on ground (a).
16. As things stand, the steps specified in the notice do no more than is necessary to achieve the purpose of completely remedying the breach of planning control. The steps are not excessive for that purpose. The appeal on ground (f) fails.
17. Even though the appeal is dismissed, should any new information come to light, the Council has powers to waive or relax any requirement of the notice and to extend the compliance period, should it consider that this would be appropriate under section 173A (1) (b) of the 1990 Act as amended.

Andrew Dale

INSPECTOR