

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: 31 October 2016

Appeal Ref: APP/G5750/C/16/3145438

Land at 88 Henniker Gardens, East Ham, London E6 3HS

- 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 Abdul Quayum against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 29 January 2016 under ref. 15/01084/ENFC.
 - The breach of planning control as alleged in the notice is "Without planning permission the erection of an extension and without planning permission the erection of an outbuilding."
 - The requirements of the notice are set out as follows:
 - "1. Demolish the extension (as shown edged in blue on the attached plan) and return the rear elevation of the property to its form prior to the unauthorised development taking place.
 - 2. Demolish the outbuilding (as shown edged green on the attached plan).
 - 3. On completion of steps 1 and 2 above, remove all materials and debris from the site."
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed and do not fall to be considered.
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Decision

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

Background and matters of clarification

2. The appeal property is a two-storey terraced dwelling house and is typical of the built form found along Henniker Gardens.
 3. The enforcement notice attacks a single-storey extension that has been added across the rear of the dwelling house to enlarge the kitchen/dining space and an outbuilding that has been built at the far end of the rear garden.
 4. The planning history for the property reveals that the Council gave notice under application ref. 14/02295/PREHH that prior approval was not required for a householder single-storey rear extension measuring 6 m in depth beyond the rear wall of the original house, 2.605 m high at the eaves and 3 m high at the
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highest point (or 2.95 m high to the top of the parapet wall according to the appellant).

5. I have paid closer attention to those stated measurements rather than to any submitted plans. The plans submitted by the Council at Appendix 3 of its statement carry date stamps from 2011 and may well relate to an application approved under ref. 11/01096/HH. The plans (as built, as approved and as pre-existing) submitted by the appellant all date from January 2016 so the "as approved" drawings must be an interpretation of what was approved under application ref. 14/02295/PREHH. I point these matters out for the sake of clarity; nothing turns in this appeal on the absence of the actual approved plans for application ref. 14/02295/PREHH.
6. No planning applications have been lodged in respect of the outbuilding according to the property history recorded in the Council's statement.

The appeal on ground (c)

7. Under this ground of appeal the onus of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The standard of proof is on the balance of probabilities. The development which has occurred is that which was alleged at the time the notice was issued.
8. The appellant offers no evidence for the flat-roofed outbuilding. The Council says that the outbuilding has been measured; it was found to be 2.7 m high. The side elevation (as built) drawings submitted by the appellant are annotated to show a height of 2.65 m. The outbuilding extends across virtually the full width of the plot and is clearly within 2 m of the boundary of the curtilage of the dwelling house.
9. Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO") sets out the permitted development rights and the accompanying limitations and conditions as they apply to the provision within the curtilage of the dwelling house of any building required for a purpose incidental to the enjoyment of the dwelling house as such.
10. The limitation at Class E.1 (e) (ii) indicates that development is not permitted by Class E if the height of the building would exceed 2.5 m in the case of a building within 2 m of the boundary of the curtilage of the dwelling house. Given the measurements in paragraph 8 above, I agree with the Council that the outbuilding breaches the limitation at Class E.1 (e) (ii). An express grant of planning permission by the local planning authority was needed for the outbuilding as it does not amount to permitted development under the GPDO. Since this has not been obtained, a breach of planning control has occurred.
11. Insofar as the single-storey rear extension is concerned, there is agreement between the parties that it has been built higher than what was shown in the details for application ref. 14/02295/PREHH, being 3.2 m high at eaves level and 3.5 m high at parapet level. The appellant explains how achieving a match in the ceiling height between the existing house and the extension led to an increase in the height of the extension. He believes that this should not be

considered as a major change in the development. However, the test under ground (c) is whether there has been a breach of planning control.

12. Article 3, Schedule 2, Part 1, Class A of the GPDO sets out the permitted development rights and the accompanying limitations and conditions as they apply to the enlargement, improvement or other alteration of a dwelling house.
13. The limitation at Class A.1 (i) indicates that development is not permitted by Class A if the enlarged part of the dwelling house would be within 2 m of the boundary of the curtilage of the dwelling house, and the height of the eaves of the enlarged part would exceed 3 m. This limitation has not been complied with. In addition, the development has not been carried out in accordance with the information provided to the local planning authority with respect to application ref. 14/02295/PREHH and there is no option to apply retrospectively under the GPDO for development that has already begun. Thus, the rear extension is also in breach of the limitation at Class A.1 (f) (i) of the GPDO because it extends beyond the rear wall of the original terraced dwelling house by more than 3 m. An express grant of planning permission by the local planning authority was needed for the extension as it does not amount to permitted development under the GPDO. Since this has not been obtained, a breach of planning control has occurred.
14. In summary, I find on the balance of probabilities that both of the operational developments alleged in the enforcement notice constitute a breach of planning control. I conclude that the appeal on ground (c) in respect of them must fail. The enforcement notice will therefore be upheld.

Andrew Dale

INSPECTOR