

Appeal Decision

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

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

Decision date: 2 November 2016

Appeal Ref: APP/U5360/C/16/3145475

Land at Top Flat, 10 Shushan Close, Northfield Road, London N16 5FB

- 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 Jacob Lieberman against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 2 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a lean to roof extension.
 - The requirements of the notice are to:
 - (1) Remove the lean-to extension at roof level
 - (2) Make good all damage to the property resulting from the compliance with the other requirements of the notice
 - (3) Remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements in paragraph (1) and (2) of the notice.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the initial appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

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

Procedural matter

2. The appeal is made on ground (b) only. It is unnecessary to conduct a site visit and the appeal parties have been notified. I shall determine this appeal on the submitted written representations.

Reasons

3. Ground (b)¹ is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The date of the notice's issue is the relevant date for the purposes of this appeal. The onus is firmly upon the appellant to make the case out, on the balance of probabilities.
4. The appellant claims that he has not built any extension but *has put wood panels on an existing balcony where the glass panels were too low and dangerous*². In a letter dated 12 May 2016, he says that *the building on top of the roof was part of the original building. There is a top floor smaller than the rest of the block which had an open porch surrounded with a low glass*

¹ Commonly known as legal ground of appeal.

² Taken from section e, grounds and facts, received 28 February 2016.

fence which I am using for a Succah (like a tent). Therefore, I never made an extension larger, as the original building was on top of the roof. For the following reasons, I reject these claims.

5. Section 55(1) of the Act defines the two limbs of development. The notice alleges the carrying out of operational development within the meaning of s.55(1). Building operations comprise activities which result in some physical alteration to the land which has some degree of permanence. There is a further definition of *building operations*, s.55 (1A), to include structural alterations or additions and other operations normally carried on by a person in business as a builder.
6. There is no dispute that the lean-to roof extension is a *building* for purposes of planning controls. The description of the building work presented by the appellant, subsequently verified by the Council, suggests a permanent building has been erected. The quantum of the evidence presented indicates that the scale of the work has resulted in physical alterations or additions. Explanation of the type of operations indicates to me that the building work has been carried on by someone with knowledge or expertise. The work involved in the erection of this lean-to roof extension was carried out during the period leading up to the issuing of the notice. On 2 February 2016, the lean-to roof extension existed as a matter of fact. On evidence, ground (b) must therefore fail.
7. For all of the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed and I have upheld the enforcement notice as stated above.

A U Ghafoor

Inspector