The Planning Inspectorate

Appeal Decision

Site visit made on 3 October 2016

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/16/3146229
Land at 137-139A Church Walk, London N16 8QW

- 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 John Allman against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice, numbered 2015/0084/ENF, was issued on 9 February 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a first floor extension.
- The requirements of the notice are:
  (1) Remove the first floor extension
  (2) Make good all damage to the property resulting from compliance with the other requirements of the notice, and
  (3) Remove all waste, materials, equipment, and debris from the property resulting from compliance with the requirements above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds 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 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.

Decision

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

Procedural matters

2. The appellant's grounds of appeal, as well as representations submitted by an interested party, go to the planning merits of the alleged development. For example, the need for the first floor extension and its impact on the host building and street scene. All of these matters firmly fall within ground (a). I shall have no regard to them in my assessment of this ground (c) appeal.

Reasons

3. The meaning of the word *development* includes the carrying out of building operations in, on, over or under land. A *building* includes any structure or erection and any part of a building.

4. There is no dispute that at the date of the notice the first floor extension existed. Essentially, the argument is a simple one, namely, that the matters do not constitute a breach of planning control. The claim is that express planning permission is not required as the first floor extension is a temporary storage box. The appellant says it is not permanent and is made from plywood. For the following reasons, I profoundly disagree with these claims.

5. It is apparent to me that the structure has been erected on the site because of its size and scale. It is physically attached to the roof of the host building by its own weight. It is a structure of substantial size with its own roof covering and elevation openings. Indeed, it does not possess a fleeting or ephemeral character. I have seen nothing to suggest that the extension is a moveable structure without being substantially dismantled. Given its design and external appearance, the building work has resulted in the erection of a permanent extension to the host building. A significant building operation has taken place, because of the nature of the building. Express planning permission is required for the operational development unless the appellant can show it benefits from a deemed permission.

6. The appellant refers to a planning permission[1] granted in 2014 by the Council (the *2014 permission*). He readily admits that the appeal extension is not part of the development permitted in 2014. The claim is that it is required to store items in connection with development approved in 2014. The inference drawn is that it is permitted development (PD) by virtue of provisions found in part 4 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). I am not persuaded by this line of argument.

7. Among other things, part 4 permits the provision on land of buildings or moveable structures required temporarily in connection with and for the duration of operations being or to be carried out on the land. Planning permission granted for the carrying out of operational development on land conveys permission for the carrying out of all necessary operations. The GPDO extends that right to include permission for the provision of buildings that are required temporarily for such operations. The principal effect of this class is in relation to structures whose provision would itself amount to a building operation, which do not fall part of the development granted planning permission. Whether a structure really is required *temporarily* in connection with operations on the same or adjoining land is a matter of fact and degree.

8. Factors like size and means of construction of the building in question will be highly relevant. Whilst it is possible that a landowner would wish to erect a permanent building to serve a temporary purpose, as a matter of common sense, absent any other explanation, the larger and more permanent the building in question the less likely it is to be *genuinely required temporarily* [my emphasis] in connection with the carrying out of the authorised development. It is reasonable to assume that a landowner will not usually erect a permanent building if it is required temporarily[2].

9. To benefit from these PD rights, the appellant should show that the first floor extension is required temporarily in connection with, and for the duration of, operations carried out on the site. I have reviewed all of the evidence but it is unclear when the building work is likely to commence and for how long. There is no information showing that the size and scale of the extension is required in connection with that development approved by the 2014 permission. As I have already said elsewhere, the first floor extension is not temporary in nature.

10. Pulling all of the above points together, on the balance of probabilities, express planning permission is required for the first floor extension and it has not been

[1] Planning permission ref: 2014/0547 – erection of a single-storey extension at first floor level to existing building to provide 4 x office units (B1) (180 square metres).
[2] See the case of *R (oao Wilsdon) v First Secretary of State and Tewkesbury BC* [2006] EWHC JPL 1063.

obtained. Therefore, the alleged matters constitute a breach of planning control.

11. Ground (c) must fail.

12. My inescapable conclusion is that, having regard to all other matters, this appeal should not succeed.

A U Ghafoor

Inspector