
Appeal Decision

Site visit made on 1 November 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 9 November 2016

Appeal Ref : APP/W5780/C/16/3147175

Land at 61 Vista Drive, Ilford, Essex, IG4 5JF

- 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 S. Mahendrarajah against an enforcement notice issued by the Council of the London Borough of Redbridge.
- The notice was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey side extension with gable roof, part first floor rear extension and rear dormer.
- The requirements of the notice are i. amendment to the two storey/single storey side extension and first floor rear extension to be built in accordance with approved planning application 0927/10 and ii. reduce the cumulative volume of enlargements to the roof of the dwelling (inclusive of those permitted by planning application 0927/10) to maximum volume of 40 cubic metres to comply with the limitation of Schedule 2 Class B of the General Permitted Development Order 2015 and iii. remove from the land all resulting building materials, rubble and debris arising from compliance with i. and ii.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (f) appeal

1. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
2. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice the subject of this appeal provide for amendments to the development. It therefore seems clear to me that the purpose of the notice is to remedy the injury to amenity caused by the breach of planning control.
3. The Appellant argues that the second requirement of the notice is excessive. He says that the reference in the notice to 40 cubic metres is excessive because the correct volume threshold is 50 cubic metres. Which threshold is correct turns upon whether or not the appeal site is a terrace house.

4. Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) provides permitted development rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to certain specified conditions and limitations. One of those limitations at B.1 (d) is that the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic metres in the case of a terrace house or (ii) 50 cubic metres in any other case. 'Terrace house' for the purposes of Part 1 is defined as 'a dwellinghouse situated in a row of three or more dwellinghouses used or designed for use as single dwellinghouses where if it not at the end of a row it shares a party wall with or has a main wall adjoining the main wall of the dwellinghouse on either side.
5. The appeal site is a dwellinghouse in a row of three or more dwellinghouses and it is not at the end of a row. It shares a two storey party wall with no 63. The extension at the appeal site extends to the boundary with no 59. It abuts the wall of the single storey side projection at no 59. As a matter of fact and degree I consider that the appeal site has a main wall adjoining a main wall of no 59. Whilst the wall is not two storey it is of a size substantial enough to prevent it being regarded as a trivial or insignificant feature. The gap between the properties at first floor level does not mean that the definition of 'terrace house' is not met. On that basis it follows that the definition of terrace house in Class B of the GPDO is met and therefore the 40 cubic metre threshold applies. The steps in the enforcement notice are therefore not excessive.
6. My attention is drawn to a previous appeal decision concerning the site. Whilst I note that the Inspector in that case stated that he had sympathy with the Appellant's view that the property was not a terrace house he expressly states that he does not reach a firm conclusion on that matter. There is therefore no inconsistency between that appeal decision and this decision.
7. For the reasons given above, I conclude that the appeal on ground (f) should not succeed.

Ground (g) appeal

8. This ground of appeal is that the period for compliance with the notice is unreasonably short. The period for compliance is six months.
9. The Appellant says that the required works are complex and will take time to plan and implement requiring the services of a competent builder. They will cause disruptions to the family home and a less constrained timetable will lessen the pressure on the family. He requests a period of 12 months.
10. The rights of the Appellant and family members under the Human Rights Act 1998 must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account conflicting considerations of public and private interest. I consider a period of eight months to be a reasonable period in which to expect the requirements to be undertaken. It would strike the appropriate balance between the conflicting private and public interests and be proportionate so as not to violate individuals' rights. To this extent the appeal on ground (g) succeeds and I am varying the notice accordingly prior to upholding it.

11. For the reasons given above I conclude that a reasonable period for compliance would be eight months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

12. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by substituting eight months as the period for compliance. Subject to this variation the enforcement notice is upheld.

S. Prail

Inspector