

Appeal Decision

Site visit made on 7 November 2016

by K R Saward Solicitor

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

Decision date: 17 November 2016

Appeal Ref: APP/N5660/C/16/3155563 409 Wandsworth Road, London SW8 2JP

- 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 D Hanif (Keystone Holdings Ltd) against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 14 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a single storey, breeze block, full length/width extension at the rear of the premises.
 - The requirements of the notice are:-
 - a) Remove the unauthorised rear extension and reinstate the rear of the premises as existed prior to the breach of planning control; and
 - b) Remove all associated waste and debris resulting from compliance with the above step, from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) & (g) 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.

Application for costs

2. An application for costs was made by the Council against Mr D Hanif (Keystone Holdings Ltd). This application is the subject of a separate Decision.

Procedural Matters

3. It has been confirmed that there was a typographical error in the appellant's company name which should have read Keystone Holdings Ltd rather than Keystone Holdings Lts. I have utilised the correct name.
 4. The appellant's final comments stated that the extension attacked by the enforcement notice "has been in place for a number of years". Upon my seeking clarification, the appellant confirmed that no ground (d) appeal was being pursued.
 5. The appellant refers to the Council supplying photographs which are not of the appellant's property. It is clear from the appeal that the appellant knew
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which development the notice is directed and I was able to see the development myself at my site visit without the need to rely on photographs.

6. The appeal proceeds on grounds (f) and (g) only. Arguments concerning the presence of other unauthorised extensions in the vicinity do not fall to be considered under these grounds nor does any failure by the Council to initiate enforcement action against those developments. Equally, the efficient use of Council resources has no bearing on my consideration of the appeal.
7. Submissions have been made by the appellant on the basis of ground (f) being "the time issue" and ground (g) being "remedial action". In fact ground (f) is where it is argued that the steps required by the notice to be taken are excessive and ground (g) is that the time given to comply with the requirements of the notice is too short. I will deal with the arguments raised under the correct headings.

Reasons

Background

8. The appeal property is a three storey mid terrace period property located in the Wandsworth Road Conservation Area. At the front, there is a parade of shops at street level. The enforcement notice concerns a single storey flat roofed extension to the ground floor flat at No 409 which has been built at the rear of the property leaving no part of the plot undeveloped. A planning application for the extension was dismissed on appeal¹ on 20 June 2016 by which time the construction was already at an advanced stage. Building works have ceased without completion of the extension.

The appeal on ground (f)

9. The appellant suggests that it was not expedient for the Council to issue the enforcement notice and require demolition of the whole structure without full consideration of the options. It is not in dispute that a breach of planning control has occurred and a planning application for retention of the development has been dismissed. In such circumstances it was entirely appropriate for the Council to initiate enforcement action.
10. The appellant indicates that an alternative scheme was to be presented to the Council before the end of October 2016, but there was no certainty that any proposal for part of the development enforced against would be submitted or found to be acceptable. In quoting from the Council's Building Alterations and Extensions Supplementary Planning Document 2015, the previous Inspector noted the guidance accepting full width single storey extensions wrapping round a rear return and explained why the extension as built did not comply with that guidance. She was not intimating that a scheme retaining part of the development of reduced depth and alternative windows might attract success.
11. In any event, the prospect of another scheme coming forward does not help the appellant in the ground (f) appeal. It may be relevant to time, but does not explain why the steps in the notice are excessive. Planning merits

¹ Appeal Ref: APP/N5660/W/16/3142341

cannot be considered pursuant to a ground (f) appeal. There is no ground (a) appeal for discretion to be exercised in deciding whether permission should be granted for any part of the development. Most significantly, the appellant has not identified how the notice might be varied. In reality the only alternative being presented is that additional time should be given under ground (g).

12. Notwithstanding the above, consideration is required as to the purpose of the requirements. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). The notice identifies injury to amenity in the form of harm to the host and surrounding properties along with a failure to preserve or enhance the character or appearance of the Conservation Area.
13. In seeking removal of the unauthorised built development, the requirements are also consistent with the purpose, whether in whole or part, of remedying the breach of planning control. That being the case, remedy of the breach can only be achieved by the demolition of the extension. No lesser steps would satisfy the requirements of the notice. Therefore, they do not exceed what is necessary. The step is not punitive, but addresses the breach of control.
14. The appeal on ground (f) fails.

The appeal on ground (g)

15. The appellant contends that 6 months is too short to comply with the requirements of the notice and seeks 12 months instead.
16. The appellant considers that enforcement action was premature and more time is needed to design, apply for and, if necessary, appeal against either a refusal or failure of the Council to make a decision on an alternative scheme.
17. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision. Six months provides ample time for the actual demolition and reinstatement works. The unlawfulness of the development has not been challenged in this appeal and there is no deemed planning application. So, it must have been accepted that a revised planning application was required if there was to be any prospect of a replacement extension being allowed. Once the enforcement notice was issued the appellant should have known that time was of the essence for a revised scheme to be pursued. Over 3 months has elapsed since the appeal was lodged on 1 August 2016 affording plenty of time to progress an application. There still remains another 6 months provided by the notice.
18. Regardless of there being no adverse effect on privacy or overlooking, the extension is nevertheless harmful in terms of its effect on the host building, the terrace and the conservation area as identified in the previous appeal decision. Taking into account the harmful impact of the development, 6 months for compliance is commensurate with the level of harm and need for it to be addressed in a timely manner. At the same time, it allows sufficient

period in which to both demolish the extension and remove the materials whilst still affording reasonable opportunity to seek and implement any new planning permission. Therefore, 6 months strikes the right balance so that the response is a reasonable and proportionate one.

19. The appeal on ground (g) fails.

Conclusion

20. For the reasons given above I consider that the appeal should not succeed.

KR Seward

INSPECTOR