
Appeal Decision

Site visit made on 1 November 2016

by Nigel Burrows BA MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/W5780/C/16/3148218

45 Babbacombe Gardens, Ilford, Essex, IG4 5LZ

- 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 Arfan Yousaf against an enforcement notice issued by the Council of the London Borough of Redbridge.
- The enforcement notice, ref: E0093/15, was issued on 9 March 2016.
- The breach of planning control as alleged in the notice is the erection of additional rear extension attached to existing single storey rear extension.
- The requirements of the notice are (i) remove the additional rear extension attached to existing single storey rear extension (ii) Remove from the land all resulting building materials, rubble and debris arising from compliance with (i) leaving the land in a tidy condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed

Procedural Matters

1. The breach of planning control alleged in the enforcement notice is described as '*... the erection of additional rear extension attached to existing single storey rear extension*', as recited in the fourth bullet point above. However the submissions for the appellant allege the notice is a nullity. The appellant's stance is the notice is so badly worded that the recipient would not know what works it refers to, or what should be done to comply with it.
2. Defects in enforcement notices fall into two main categories. The first is where the defect makes the notice a nullity. A notice is a nullity if it is missing some vital element (e.g. a date for compliance) and is 'defective on its face'.¹ The Council's notice contains the matters required under section 173 of the Act. As such, it does not appear to be a nullity.
3. The second category is where the defect renders it invalid. The appellant's criticism of the notice is made in the context of the ground (b) appeal. However, in effect, it raises doubts about the validity of the notice. I must consider whether the allegation in the notice is defective and, if so, whether it is correctable using my powers under section 176 of the Act. In reaching a conclusion on this matter, the planning history of the site is highly relevant.
4. There is a complex planning history on the site. This includes the grant of planning permission in August 2013 for a 'two storey and single storey rear extension' (ref: 0956/13). During March 2014 the Council determined that prior approval was not required for works described as 'single storey rear extension with a depth of 6 metres, highest point of 3.245m ...' (ref: 0192/14). However, the decision notice also indicated the scheme was not permitted development due to its height. The height of the structure was amended and in May 2014 the Council issued a Lawful Development Certificate (LDC) for a works described as 'single storey rear extension' (ref: 0927/14).

¹ *R v Wicks* [1996] JPL 743, *CA* [1997] JPL 1049

5. In September 2015 the Council refused permission for a 'two storey rear extension' (ref: 2874/15). An appeal was dismissed in February 2016.² Significantly, the Inspector observed that 'a part single, part 2-storey rear extension' similar in overall height and massing to that shown on the application drawings had been substantially completed.
6. According to the submissions for the appellant, the 2015 application sought retrospective permission for the works to the property, which had been carried out as a single building project. Apparently, the appellant had assumed that he was allowed to erect the part single, part 2-storey rear extension in its entirety. The appellant indicates the works incorporate the 2013 planning permission, the 2014 prior approval and the proposal subject of the LDC in 2014. The appellant acknowledges that the development as a whole is unauthorised.
7. The ground floor range extends across the full width of the rear elevation of the house, although its overall floor plan is 'L'-shaped. The first floor range is inset from the side boundaries and rises centrally above the ground floor. The construction works appear seamless in nature, which tends to corroborate the appellant's stance that they were carried out as a single building project. In any event, there is no evidence to suggest the works have been carried out in accordance with the terms of a planning permission, prior approval or LDC granted by the Council. It is also important to bear in mind that if the development was not undertaken in accordance with the terms of a planning permission or prior approval, then any associated planning conditions are of no effect.
8. As matters stand, I conclude the breach of planning control which has taken place on the land has not been accurately described in the enforcement notice. In this respect, the notice is defective. Furthermore, the requirement to 'remove the additional rear extension attached to existing single storey rear extension' is vague and uncertain, particularly in circumstances where the enforcement notice has not correctly identified the breach of control.³ The Council's appeal submissions do not shed any further light on the matter.
9. I have wide powers to correct the notice. However, in this instance I conclude that it would not be possible to do so using my powers under section 176 of the Act without the risk of causing injustice to the parties. For example, if the Council had intended to enforce against a departure from drawings approved under the terms of a planning permission or prior approval, then the notice would need to identify the relevant permission and, logically, its requirements would be framed in order to secure compliance with those drawings. However, having regard to the complex planning history of the site, it is not obvious to me which permission or approval, if any, has been implemented. There is also a clear risk that such a correction to the notice might deprive the appellant of the opportunity to revisit his arguments or review his grounds of appeal.
10. Alternatively, if the Council had intended to under-enforce by requiring only part of the works to be removed, it is not clear whether the implications of allowing the remainder to be retained without planning permission (or planning conditions) had been fully considered.
11. Overall, I conclude the notice is void for uncertainty in the matters that it seeks to address. I further conclude the defects in the notice are not capable of correction without causing potential injustice to the main parties. It will therefore be quashed. In the circumstances, grounds (b), (f) and (g) of the appeal do not fall to be considered.
12. I have taken into account all the other matters raised in the written representations, but I find they do not outweigh the main considerations that have led to my decision.

Formal Decision

13. The enforcement notice is quashed.

Nigel Burrows INSPECTOR

² Appeal ref: APP/W5780/D/15/3138679, dismissed on 29 February 2016

³ Which appears to be the erection of a part single, part 2-storey rear extension without planning permission