
Appeal Decision

Site visit made on 22 November 2016

by David Richards B Soc Sci DipTP MRTPI

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

Decision date: 7 December 2016

Appeal Ref: APP/Q5300/C/16/3149551

1 Lathkill Close, Enfield, EN1 1HA

- 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 Mrs Cheryl Teekerram against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice, numbered CON/6869, was issued on 6 April 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a single storey canopy structure (outline in blue on the attached plan for identification purposes) to the rear of the Premises, in excess of the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The requirements of the notice are: 5.1 Remove the single storey rear canopy structure (outlined in blue on the plan for identification purposes). 5.2 Remove all resulting materials from the premises.
 - The period for compliance with the requirements is 1 calendar month after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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.

Background

2. The Appellant submitted a retrospective planning application for the development which is the subject of the notice on 28 August 2013 (Council's reference P13-02605PLA). Planning permission was refused on 13 October 2013 for reasons which are similar to those cited in the current Enforcement Notice, although they refer to the Policies of a Unitary Development Plan that has now been replaced by the Enfield Core Strategy (CS). No appeal against the refusal of permission was made within the 6 week period. The appellant made a complaint against the Council's handling of the application during which time the canopy remained in place. The Council's response in 2014 was that the complaint was not justified. There was no further correspondence until the Council proceeded with issuing the enforcement notice in 2016.

Main Issues

3. The main issues are whether planning permission is required for the development which has occurred, and whether lesser steps than those specified in the notice are capable of overcoming the objections.

Reasons

4. The appeal site comprises an end of terrace house on the eastern side of Lathkill Close, a short cul-de-sac extending southwards from the junction of Dimsdale Drive and Chatsworth Drive. The properties in this area are generally two-storey with no original rear extensions and limited separation between the terraced rows. The terraced row to the north of the property is aligned at an angle of approximately 22 degrees to the appeal property.
5. There has been a previous extension to the rear of the appeal dwelling, consisting of a single-storey flat-roofed rear extension with an approximate depth of 2.7 metres.

Appeal on Ground (c)

6. The Appellant considers that the works undertaken should be treated as permitted development and therefore as not needing planning permission. It is argued that the canopy is not enclosed, does not provide any living accommodation, and should not therefore be regarded as an extension.
7. I am satisfied that the canopy structure that has been erected constitutes an 'enlargement, alteration or other alteration of a dwelling house', with which Schedule 2, part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 is concerned (GPDO). Class A sets out permitted development rights in respect of such development. Paragraph A.1(f) permits single storey rear extensions to a depth of three metres beyond the rear wall of the original dwelling house. In this case, the combined depth of the original extension and the canopy which is the subject of this appeal is some 5.6 metres, and so the Council was correct in my judgement to determine that planning permission was required.
8. I note that, for a temporary period until 30 May 2019, the GPDO 2015 allows for single-storey rear extensions of up to 6 metres on non-detached houses. However this requires prior notification of the Council and a neighbour notification scheme, which cannot be undertaken retrospectively. As the disputed change has already taken place, the Appellant cannot now rely on this amendment of the GPDO.
9. Accordingly planning permission is required for the development, and the appeal on ground (c) fails.

Appeal on ground (f)

10. An appeal on ground (f) seeks to show that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
11. It is clear from the enforcement notice and the Council's statement that the purpose of the notice is to remedy the breach of planning control which it has correctly identified. While the reasons given in the notice set out the Council's

concern with injury to the amenity of the area and of neighbours, it is also clear that the requirement to remove the unauthorised development is concerned with remedying the breach of control that has occurred.

12. In these circumstances it is well established in law¹ that, in the absence of a ground (a) appeal, it is not open to me to consider the planning merits of the case. The power to allow an appeal on ground (f) is not a power to grant planning permission, and an appeal on ground (f) cannot be turned into something else by arguing that the amenity of neighbours is not harmed, or that the character and appearance of the area is not damaged. The Appellant has not suggested any lesser steps short of allowing the extension to remain in place. However, it is clear that nothing less than the removal of the extension as described in the notice would remedy the identified breach of control.
13. In the circumstances the appeal on ground (f) fails.

Other matters

14. The Appellant has not been professionally represented in this appeal and I can well understand the bewilderment that might be felt as to the purpose of the enforcement action, particularly in the absence of any objection at all from the neighbours either side on the grounds of any injury to their amenity. Although it virtually touches the neighbouring boundaries, the extension has a translucent roof, is not enclosed at the sides and in any event is less than 3.0 metres in height. The dwelling lies in an attractive residential area but the limited impact of the development on the character and appearance of the surroundings is entirely confined to what can be seen from the rear gardens of adjoining properties. The materials used do not appear to me to be so out of keeping with the dwelling or the surroundings so as to give rise to material concern over the impact on character and appearance.
15. To my mind this is not a case where the Appellant has sought to gain any advantage by avoiding payment of the fee for a ground (a) appeal. It is perhaps unfortunate that the opportunity of appealing the 2013 refusal was not taken, whereby the merits could have been considered without the requirement to pay a double fee at this stage. However, in my view, no blame should be attached for inexperience of a complex system of planning control.
16. I acknowledge that it is not now open to the Appellant to go down the route of prior notification with neighbour consultation. Nevertheless, having regard to what might have been found acceptable were paragraph A.1 (g) of Schedule 2, Part 1, Class A of the GPDO (as amended) to be applicable, the local planning authority may wish to re-consider the expediency of pursuing the requirement to demolish and remove the extension, and whether such action is required to serve the public interest in the specific circumstances of this case.

Conclusion

17. For the reasons given above, and notwithstanding my comments under the heading 'other matters', the appeal is dismissed and the notice upheld.

David Richards
INSPECTOR

¹ Most recently in the Court of Appeal Decision in *Miaris v Secretary of State for Communities and Local Government and Bath and North East Somerset District Council* C1/2015/1971