

Appeal Decision

Site visit made on 30 November 2016

by John Whalley

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

Decision date: 12 December 2016

Appeal ref: APP/Q5300/C/16/3149690
8 Church Road, Enfield EN3 4NT

- The appeal was made by Mrs Pembe Kemal under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Enfield Council.
- The notice was issued on 6 April 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the unauthorised erection of a single storey rear extension (outlined in blue for identification purposes on the plan attached to the notice), 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 to:
 - Remove the single storey rear extension (outlined in blue for identification purposes on the plan attached to the notice),
 - Remove all resulting materials from the premises
 - OR
 - Reduce the depth of the single storey rear extension (outlined in blue for identification purposes on the plan attached to the notice), in order to comply with Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - Remove all resulting materials from the premises.
- The period for compliance with the requirements is one calendar month.
- The appeal was made on ground (a), (c), (f) and (g). As the fees for the application for planning permission deemed to have been made were not paid, the appeal on ground (a) is not considered.

Summary of Decision: The enforcement notice is varied and upheld.

Appeal extension

1. The appeal property, No. 8 Church Road, Enfield, is a 2 storey mid-terrace house. The appeal concerns a single storey extension built on to the rear of the dwelling. The extension is a frail looking structure built of recovered timber and re-used uPVC fenestration. Its roof overlaps a more permanent rear extension.

The appeal on ground (c)

2. The appeal on ground (c) asserts that planning permission was not required for the works described in the enforcement notice. It was said to be development permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015. The burden of proof in a legal ground of appeal such as this lies with the appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position.
3. Article 3, Schedule 2, dealing with permitted development rights at Part 1, Class A – allows the enlargement, improvement or other alteration of a dwellinghouse, subject to limitations. Paragraph (g) allows the construction of a rear single storey extension to a dwellinghouse that is not detached provided it does not extend more than 3m beyond the rear wall of the original dwellinghouse.
4. For the Appellant, Mrs Pembe Kemal, it was said that next door at No. 6 had a building the same size as that enforced against. It was not thought to be larger than the size allowed by permitted development. However, Mrs Kemal, in her final comments on the appeal, said the rear extension, the subject of the enforcement notice allegation, was 3.3m deep. That is, it exceeds the 3m depth permitted limit. Also, Mrs Kemal, dealing with planning merits, said that as the appeal extension was only 0.3m more than the permitted 3m depth and less than the permitted 4m height, it would have a lesser adverse effect than that allowed.
5. The acceptance that the appeal extension is more than 3m deep effectively conceded that the appeal extension exceeds the permitted development allowance. Where any part of the development exceeds the permitted development limits, the whole of that development is unlawful. The appeal on ground (c) fails.
6. There was an implied ground (d) appeal. Mrs Kemal said that planning permission for the alleged breach should be granted as the single storey structure at the property had existed for more than 4 years.
7. Section 171B(1) of the Act, dealing with building operations, says no enforcement action may be taken after the end of a period of 4 years beginning with the date on which the operations were substantially completed. Again, as for the ground (c) appeal, the burden of proof of lies with the appellant. The standard of proof required is the balance of probabilities, (*Thrasyvoulou v SSE No. 1 [1984] JPL a732*). Mere assertion that the extension was built more than 4 years before the enforcement notice was issued is insufficient. More substantial evidence is required; for example, builders' invoices, Building Regulations' certifications and, possibly, sworn statements. If such evidence can be obtained, it could form the basis of an application to the Council for a certificate of lawfulness. On what has been provided to me in this instance, an appeal on ground (d) would not have succeeded.

The appeal on ground (f)

8. An appeal on ground (f) says that the requirements of the enforcement notice are too onerous and that something less would be appropriate. All that was said was that planning permission should be granted.

9. An enforcement notice should set out the steps required to be taken, or the activities which must cease, to achieve, wholly or partly, the purposes of either:
 - (a) remedying the breach of planning control. That is, making any development comply with the terms of any planning permission, discontinuing the use of any land, or restoring the land to its condition before the breach took place; or,
 - (b) remedying any injury to amenity caused by the breach.
10. An enforcement notice should clearly disclose exactly what the planning authority seek to achieve by their notice and whether the purposes of the requirements fall under s.173(4)(a) or (4)(b). However, the Courts have held that the "or" that separates s.173(4)(a) from (4)(b) is not entirely disjunctive, (*SSTLR v Wyatt Brothers (Oxford) Ltd and Oxfordshire CC [1997] QBD*).
11. In this instance, the Council, in the first part of the requirements of the notice, sought the removal of the unlawful extension so as to remedy the perceived harm to the amenities enjoyed by those at No. 10 next door. That comes under (b) purposes above. The alternative requirement, to make the development comply with the terms of a permitted development planning permission, comes under (a) purposes. It is not open to me, in the context of this ground (f) appeal, where the ground (a) appeal has lapsed, to consider the merits of the retention of the extension.
12. In this case, the Council set out an alternative to the requirement to demolish the entire extension. That is, to reduce the depth of the single storey rear extension such that it complies with permitted development Order limits. In that circumstance, I consider the requirements of the notice are apt, reasonable and not excessive. The appeal on ground (f) fails.

The appeal on ground (g)

13. An appeal on ground (g) asks that more time be given to meet the requirements of the notice. It was said that one month was an inadequate period in which to remove the extension.
14. Although the period for compliance with the enforcement notice should be enough to carry out its requirements, I consider that Mrs Kemal should be given more time to consider what options would be best for her. I increase the period for compliance to 3 months. To that extent, the appeal on ground (g) succeeds.

FORMAL DECISION

15. The enforcement notice is varied by the deletion of the words "One (1) calendar month" in line 2 of para. 6 on page 2 of the notice and the substitution thereof of the words "Three months". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR