



Appeal Decisions

Site visit made on 7 November 2016

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 12 December 2016

Two appeals at 68 Rosedale Road, Forest Gate, London E7 8AT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against two enforcement notices issued by the Council of the London Borough of Newham.
 - The appeals are made by Mr Abdul Bari.
 - The enforcement notices, numbered 14/01531/ENFC, were issued on 15 January 2016.
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Appeal A Ref: APP/G5750/C/16/3145043

- The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding.
 - The requirements of the notice are to:
 - (1) Demolish the outbuilding.
 - (2) Remove from the site all debris.
 - The period for compliance with the requirements is three months.
 - 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 initial appeal on ground (a) and 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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Appeal B Ref: APP/G5750/C/16/3147732

- The breach of planning control as alleged in the notice is without planning permission the erection of an extension.
 - The requirements of the notice are to:
 - (1) Either demolish the extension and remove all materials and debris from the site, or
 - (2) Alter the extension so it is built in accordance with planning permission ref: 13/01418/HH and remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - 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 initial appeal on ground (a) and 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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Appeals A and B – decisions

1. Both appeals are dismissed and the enforcement notices upheld.

Procedural matters

2. Some representations focus, in part, on planning merits, for example, the quality of the design and materials used in the construction of the outbuilding and extension and the potential impact on neighbours' amenities. I am afraid that such matters inform only the merits of each alleged development rather than considerations related to those grounds of appeal chosen by the appellant; my decision is solely concerned with the latter. As
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there is no ground (a) appeal or deemed application for my consideration in Appeal A and B, I shall have no regard to planning merits arguments.

Appeals A and B – ground (c)

3. The onus of proof is firmly upon Mr Bari to show, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control.
4. The site description and history is set out in the representations made by the appeal parties, and I will refer to the most pertinent aspect of that history. No. 68 is a two-storey mid terraced property with a rear outrigger. In 2013, the Council granted planning permission for the erection of a single-storey side extension to rear of tunnel back (ref: 13/01418/HH). Amongst other things, condition 1) stipulates that the development shall be carried out in accordance with specified drawings. The approved plans show a side extension on the outrigger forming a reconfigured kitchen and side bathroom and an open courtyard.
5. The undisputed evidence is that the 'as built' extension is materially different in terms of its design and built form. This is because the courtyard is in-filled by a 3.85 m wide extension. The latter is not a standalone addition and, in fact, is physically attached and linked to the outrigger and side extension. Taken together, I consider that a single building operation has resulted in one continuous and rectangular shaped single-storey extension. The resultant extension is 4 m deep from the rear wall of the original outrigger, and 8.5 m deep from the main dwelling. I concur with the assessment that the as built extension, that is the subject of the notice, does not comply with terms of the 2013 permission.
6. Mr Bari's counter-argument is a simple one, namely, that the as built extension does not require express planning permission because it is permitted development (PD) by virtue of Schedule 2, Article 3, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)¹. Amongst other things, Class A of the GPDO provides subject to conditions and limitations deemed planning permission for the enlargement, improvement or other alteration of a dwellinghouse. For the following reasons, I profoundly disagree.
7. For the extension to benefit from PD rights, the entire structure needs to comply with all of the physical criteria in paragraph A.1. The single-storey extension extends beyond the rear of the original outrigger by more than 3 m and it is 8.5 m from the rear elevation to the main building. Therefore, the extension fails A.1(f)(i). My application of the relevant provision to the circumstances on the ground is consistent with guidance found in pages 17 to 19 of the Department's publication titled: *Permitted development for householders: technical guidance* April 2016.
8. Mr Bari relies upon the provision in paragraph A.1(g), which permit 6 m extension until 30 May 2019, but this is misplaced. In accordance with paragraph A.4 of Class A, these are subject to prior notification procedure, which has not been complied with. Additionally, the rear extension's overall projection exceeds the 6 m limitation. My finding is that development comprising erection of an extension constitutes a breach of planning controls.
9. Part 1, Class E of the GPDO permits, amongst other things, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Because of paragraph E.1 (e)(ii), development

¹ It seems that when the building work commenced, the Town and Country Planning (General Permitted Development) Order 1995 was in force. In terms of physical tolerances, there is no material difference.

is not permitted if the height of the building would exceed 2.5 m and it is within 2 m of the boundary of the curtilage of the dwellinghouse. In this case, Mr Bari admits the outbuilding's overall height is 3.03 m. The development offends this criterion because it is positioned within 2 m of the boundary of the curtilage of the dwellinghouse.

10. For all of the above reasons, express planning permission is required for the erection of the extension and outbuilding, which has not been obtained. On the balance of probabilities, the matters alleged in the notices constitute breach of planning controls. Therefore, ground (c) must fail.

Appeals A and B - ground (f)

11. In appealing on this ground, Mr Bari needs to show that the steps specified exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach.
12. The notice's requirements seek to remedy the breach by making the development comply with the terms, including conditions and limitations, of extant planning permission which has been granted in respect of the land, and by restoring the land to its condition before the breach took place. With regard to the extension, Mr Bari advances no lesser step that would remedy the breach.
13. Mr Bari claims that a reduction in the height of the outbuilding would remedy injury to amenity, although there is no ground (a) or deemed application before me to assess any merits arguments. Nevertheless, the contention is that reduction to 2.5 m would meet with the GPDO limitation. But the latter does not apply retrospectively; it grants deemed permission for prospective development. There is no explanation as to how the requirements can be framed with sufficient degree of precision given the nature and scale of building work required to reduce its height. Given the potential liability that comes with failure to comply, imprecision in the notice's terms is likely to create interpretative problems. I find that to be an unacceptable outcome.
14. I find that the remedial purpose behind the notice's terms requires full compliance. Consequently, the appeal on ground (f) must fail.

Conclusion

15. For the reasons given above and having regard to all other matters, my inescapable conclusion is that the appeal should not succeed.

A U Ghafoor

Inspector