
Appeal Decision

Site visit made on 29 November 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 14 December 2016

Appeal Ref: APP/N5090/C/16/3149057

46 Ashbourne Avenue, London, NW11 0DS

- 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 Steve Roland Roos against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/00283/16, was issued on 21 March 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a flat roof outbuilding in the rear garden.
- The requirements of the notice are to:
 1. Demolish the flat roof outbuilding constructed in the rear garden.
 2. Permanently remove from the property all constituent materials resulting from the works in 1. above.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

1. The relevant date for the purposes of the appeal is the date the notice was issued. At my visit the Appellant said that he had been using the outbuilding for his hobby of keeping tropical fish but these had been removed by the time of my visit and the outbuilding was in the process of being demolished. The Appellant was also concerned about the expense he had incurred in constructing the out-building but this is not a matter I can take into account in this decision.

The appeal on ground (c)

2. In an appeal on ground (c) the Appellant is saying that there has not been a breach of planning control because, in this case, the development is permitted development.
3. From the information given by the Appellant¹ the outbuilding is some 4.5m wide, 3.6m deep, 2.47 m high at the back and 2.37m high at the front. It has a mono-pitch poly-carbonate roof sloping to the front. The walls are of pine timber and marine ply. It has a door but no windows.

¹ Plan and detail submitted by the Appellant with the appeal

4. Class E of Part 1 of Schedule 2 to the Town and Country (General Permitted Development) Order 2015 as amended permits the provision within the curtilage of a dwelling house of any building required for a purpose incidental to the enjoyment of the dwellinghouse subject to a number of specified conditions, limitations and tolerances.
5. For the purposes of Part 1 of Schedule 2 a dwellinghouse does not include a building containing one or more flats or a flat contained within such a building². Therefore, whilst the dimensions of the outbuilding comply with the permitted limitations and tolerances, the property at 46 Ashbourne Road comprises three flats and permitted development rights do not apply.
6. The outbuilding does not benefit from permitted development rights and no planning permission has been granted in respect of it. The appeal on ground (c) fails.

The appeal on ground (f)

7. An appeal on ground (f) is on the basis that the steps required by the notice exceed what is necessary to remedy the breach. The Appellant has said that he would make any reasonable changes to the appearance of the outbuilding to 'make it more appealing to the neighbourhood'.
8. The purposes of the requirements of a notice are to remedy the breach by restoring the land to its condition before the breach took place and may require the removal of any building³.
9. The Appellant has not made any appeal on ground (a) and planning merits cannot be taken into account in a ground (f) appeal. The Appellant's suggestion would, in any event, not remedy the breach of planning control and would not therefore fulfil the statutory purpose of the requirements.
10. In the circumstances I consider that the requirements are not excessive and the appeal on ground (f) fails.

Conclusions

11. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

Decision

12. The appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector

² Article 2 (1) of the GPDO

³ S.173 (4) and (5) of the 1990 Act