
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: 15 December 2016

Appeal Ref: APP/N5090/C/16/3146242

34 Lynton Avenue, London, NW9 6PD

- 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 Jeganathan Sellathurai against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/00080/16, was issued on 4 February 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey wooden canopy extension to existing extension.
- The requirements of the notice are:
 1. Demolish the single storey wooden canopy extension attached to the existing rear extension.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Decision.

Preliminary Matters

1. In his grounds of appeal the Appellant raised a number of matters including the extent of the canopy extension and its planning merits. With regard to the size of the canopy extension it was said by the Appellant that the total floor area of the extension and canopy area is less than 50% of the ground area; that its rear edge is only 6m from the original building; and that it is permissible to construct a rear extension of this depth. Any suggestion that the canopy extension was permitted development¹ would have been a ground (c) appeal but none has been made. Even if it had, a 6m extension would need to comply with the provisions of A.4, that is, the prior approval procedure and the Appellant has not followed any such procedure in this case. Therefore any appeal on ground (c) would have failed.
2. With regard to the planning merits, no appeal was made on ground (a) and no fee was paid and in those circumstances the planning merits, including support from the neighbour, do not fall to be considered in this appeal.

¹ Pursuant to Class A of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 2015 (as amended)

The appeal on ground (e)

3. In an appeal on ground (e) the Appellant is saying that the notice was not properly served on everyone with an interest in the land.
4. The only case put by the Appellant is that the notice was not served on Mrs T Jeganathan. No information was provided as to her interest in the land.
5. S.172(2) of the 1990 Act requires a copy of the notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority, is materially affected by the notice. S.329(1) of the 1990 Act provides that where the notice is required to be served on any person having an interest in premises it may be served in a number of ways including delivering it to the person on whom it is to be served or by leaving it at the usual or last know place of abode of that person and s.329(2) provides that if, the name of that person cannot be ascertained after reasonable inquiry, the notice shall be taken to be duly served if it is addressed to him either by name or by the description of 'the owner' or 'the occupier' and delivered as set out previously.
6. A certificate of service provided by the Council states that the notice in this case was served by hand on the Owner/Occupier of 34 Lynton Avenue, on Sellathurai Jeganathan and on Thigalmathy Jeganathan. The notice was therefore served in accordance with s.172 and s.329(1) and (2) in that it was served on, among others, the owner and the occupier.
7. Even if there had been failure to serve the notice on Mrs T Jeganathan she has not been not substantially prejudiced because Mr Jeganathan has made an appeal which protects the owner's/occupier's interests.
8. The appeal on ground (e) fails.

The appeal on ground (d)

9. In an appeal on ground (d) the Appellant has to prove on the balance of probability that the wooden canopy extension was substantially completed more than four years before the notice was issued, that is, before 4 February 2012.
10. The only information provided by the Appellant is that the canopy extension was built in March 2015. Therefore on his own case he is unable to prove that at the time the notice was issued it was too late to take enforcement action against the construction of the wooden canopy extension.
11. The appeal on ground (d) fails.

The appeal on ground (g)

12. In an appeal on ground (g) the Appellant is saying that the time given to comply with the notice is too short. The Appellant asks for one year because the canopy extension is used by his elderly mother who will be upset about its removal.
13. Whilst I have some sympathy with the personal circumstances of this case, the requirements of the notice fulfil the statutory purpose of remedying the breach

of planning control. The works required to remove the canopy do not appear to me to be excessive and the period of one month is not unreasonable.

14. I do, however, take into account the time of year when this decision is issued and the possibility of difficulty in finding builders/contractors to undertake the required work. I will therefore vary the time for compliance to three months.

15. The appeal on ground (g) succeeds to this extent.

Conclusions

16. For the reasons given above I conclude that a reasonable period for compliance would be three months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (g) succeeds to that extent.

Decision

17. It is directed that the appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector