

Appeal Decision

Site visit made on 13 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 14 March 2017

Appeal ref: APP/T5150/C/16/3163384

Land at 165 All Souls Avenue, London NW10 3AE

- 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 Raymond Patrick Kelly against an enforcement notice issued by the council of the London Borough of Brent.
 - The enforcement notice, numbered E/15/0619, was issued on 28 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to the side of the premises.
 - The requirements of the notice are to:
 - (1) Cease the use of the extension to the side of the premises.
 - (2) Demolish the extension to the side of the premises and remove all debris and materials arising from that demolition from the premises.
 - (3) Return the land back to its former condition prior to the development took [sic] place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) 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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Decision

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

Procedural matters

2. Mr Kelly made his s174 (2) (c) appeal however some of his arguments fall within an appeal on ground (b). The appeal parties have addressed these arguments. I shall deal with them in that context. The written representations focus, in part, on the planning merits of the alleged development. I am afraid such considerations inform only whether planning permission should be granted rather than whether planning permission was required for the matters stated in the notice when it was issued. My decision is concerned only with the latter and, accordingly, I have not had regard to the former in determining this appeal.

Ground (b)

3. This is directed to the consideration of whether the matters alleged in the notice have occurred in fact by the time when the notice was issued. In this context, the onus is firmly upon Mr Kelly, and the standard is on the balance of probabilities. The claim is that the description of the allegation is incorrect. The submission is that a timber outbuilding has been erected, which replaced a previous structure. It
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is contended that the outbuilding is not physically attached to the host dwelling. The assertion is that by describing the alleged breach as the erection of an extension, the Council misdirected itself. For the reasons given below, I disagree with those submissions.

4. Words like '*attached*', '*detached*' and '*outbuilding*' have no statutory definition and so in my view should be used on the basis of their ordinary parlance. The Oxford English Dictionary defines the verb '*attach*' as '*fasten*' '*join*' and the word '*attached*' as '*joined, fastened or connected to something*'. The definition of '*detached*' is '*separate*' or '*disconnected*' and the dictionary makes particular reference to a house or other building as '*not joined to another on either side*'. Among other things, the verb '*extend*' means to make something larger in area. The noun '*extension*' is the action of extending something or a part added to a building to make it bigger. It normally involves the creation of floor space and results in the enlargement of the footprint of the building being extended.
5. Confirmed measurements¹ of the subject building show it is 6.15 metres in length and 3.2 m wide. It is 3.1 m in overall height reducing to 2.69 m adjacent to the boundary; the overhanging rainwater goods add a further 130 millimetres. The building's roof overhangs a 1.5 m wide walkway, but the roof is physically attached to the side elevation of the host dwelling. It forms one continuous watertight roof covering over the walkway and building. The frame is physically fastened to the side elevation of the dwelling by means of bolts or other devices. The glazed roof practically provides a covered access. In practice, the whole structure forms an extension to the original building, given the substantial degree of attachment to its side elevation.
6. Additionally, photographs submitted by the Council show work in progress on 3 November 2015. It appears to me that the entire building was constructed at the same time. Mr Kelly provides no cogent evidence of his own to show that the building had actually been constructed in separate stages. As a matter of fact and degree, given the nature and scale of the operations a single building operation has taken place. The building operations fall within the meaning of subsections 55(1) and (1A) of the Act. Planning permission is therefore required for the erection of the extension unless, of course, Mr Kelly can demonstrate otherwise.
7. I find the description of the allegation apt and reflective of the reality on the ground. At the date of the notice's issue, the extension to the side of the dwelling existed in fact. For all of the above reasons, had there been an appeal on ground (b), it was doomed to fail.

Ground (c)

8. Mr Kelly's argument is a simple one, namely, that the operational development benefits from a deemed planning permission by virtue of permitted development ['PD'] rights in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ['GPDO']. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. For development to benefit by a deemed planning permission under these provisions, all parameters in Class A must be satisfied.

¹ Dimensions agreed with the appeal parties at my site visit.

9. No. 165 is located on the junction of All Souls Road and Phillimore Gardens. The principal elevation of the original dwelling faces the main road but its side elevation faces Phillimore Gardens. While the side extension does not project beyond the front elevation, it extends beyond the side elevation of the dwelling. In this circumstance, the exception in paragraph A.1 sub-section (e) is highly relevant. It reads:

Development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse.

I am afraid that the enlarged part of the dwelling protrudes beyond a wall that fronts Phillimore Gardens and forms the original dwelling's side elevation. It is therefore in breach of this exception and cannot amount to PD.

10. My application of the relevant part of Class A of the GPDO is consistent with guidance found on pages 14 – 16 of the Department's publication: *Permitted development rights for householders; technical guidance* (April 2016). It states that this restriction [A1.(e)] means that any development to enlarge a house that is in front of a principal elevation or in front of a side elevation that fronts a highway will require an application for planning permission. If a house sits on a corner plot where a side elevation fronts a highway, there will be an additional restriction on PD to the side of the house. Remarkably, the schematic illustrated on page 16 resembles the circumstance here.
11. What if Mr Kelly is correct and the subject building is an outbuilding, is it PD? To reply to that question, it is necessary to examine the dimensions of the as built structure. As I have observed above, the building's overall height is 3.1 m but it reduces to 2.69 m adjacent to the site's boundary along Phillimore Gardens. The building is set close to the boundary; actually, its gutter overhangs the adjacent footpath. Having considered the parameters in Class E, I find paragraph E.1 (e) sub-section (ii) highly relevant. The latter states that development is not permitted if the height of the building would exceed 2.5 m in the case of a building within 2 m of the boundary of the curtilage of the dwellinghouse. Even if an alternative view is to prevail on the attachment and extension points above, I am afraid the development does not benefit from Class E PD rights, because of the outbuilding's height and location.
12. On the balance of probabilities, the matters alleged in the notice constitute a breach of planning controls because express planning permission is required and it has not been obtained. I therefore find that ground (c) also must fail.

Conclusion

13. Having regard to all other matters, I conclude that the appeal should fail. I have therefore upheld the enforcement notice set out in paragraph (1) above.

A U Ghafoor

Inspector