
Appeal Decision

Site visit made on 4 April 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 10 April 2017

Appeal Ref: APP/R5510/C/16/3166220

Land at 5 Hyde Way, Hayes, Middlesex UB3 4PA

- 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 Mrs Anisa Parkar against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 8 December 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear extension to the dwellinghouse – the “Secondary Extension” without the benefit of planning permission.
 - The requirements of the notice are:
 - (i) Demolish the Secondary Extension and leave the resulting development in strict accordance with the approved planning permission reference 29488/APP/2006/2802.
 - (ii) Remove from the land all debris, items, appliances, fixtures and fitting, building materials, plant and machinery resulting from compliance with point (i) above
 - The period for compliance with the requirements is three (3) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

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

Preliminary and Procedural Matters

1. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer simply to the erection of a single storey rear extension to the dwellinghouse ‘without planning permission’ or ‘without the benefit of planning permission’ rather than ‘unauthorised’ as stated in the notice. No injustice would arise from correcting the notice in that respect. I shall therefore correct the notice accordingly.
 2. At the time of my site visit, the enforcement notice had already been substantially complied with. The ‘Secondary Extension’ had been mostly demolished, with only a section of the wall on the southern boundary remaining. This has, of course, greatly influenced my consideration of the appeals on grounds (f) and (g), although these still fall to be considered.
 3. Although the ‘Secondary Extension’ subject to the notice has been largely demolished, a smaller extension has been constructed at the rear of the property. This smaller extension was the subject of a planning application submitted to the Council in November 2016, but subsequently refused in January 2017 (Council Ref: 29488/APP/2016/4225).
-

The appeal on ground (f)

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are, in part, to demolish the Secondary Extension. The primary purpose of the notice must therefore be to remedy the breach.
5. The appellant's case on this ground of appeal was essentially that, for reasons relating to his health and wellbeing, the space provided by the 'Secondary Extension' was necessary to accommodate a wheelchair for the appellant's disabled son. However, because the 'Secondary Extension' subject to the notice has now been largely demolished, events have largely overtaken this ground of appeal.
6. The appellant has requested under this ground of appeal that I allow the smaller extension to be retained. However, in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act, the scope of an appeal on ground (f) is limited. Moreover, where an appellant has chosen not to pursue an appeal on ground (a), the Courts have held that an appeal on ground (f) is not an opportunity to introduce general planning considerations.
7. In this case, the smaller extension now constructed forms no part of the breach of planning control alleged in the enforcement notice subject to this appeal. The retention of the smaller extension would not remedy the breach of planning control that has occurred and therefore would not achieve the purpose of the notice. Consequently, there is no justification within the limited scope of an appeal on ground (f) to retain the smaller extension.
8. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

9. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three (3) calendar months. A period of six months is sought.
10. The essence of the appellant's case on this ground of appeal was that, because Mrs Parkar is a full-time carer for her disabled son, she has no spare time arrange for the demolition of the 'Secondary Extension' and submit a planning application for a smaller extension. However, given that the 'Secondary Extension' has already been substantially demolished and that the planning application for the smaller extension has already been submitted (and refused), the appellant's case on this ground has also been largely overtaken by events. I am satisfied that the period of three calendar months is sufficient to comply with the residual requirements of the notice now that the 'Secondary Extension' has been substantially demolished.
11. Accordingly, the appeal on ground (g) fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall dismiss the appeal and uphold the enforcement notice as corrected.

Formal Decision

13. It is directed that the enforcement notice be corrected by deleting the word "unauthorised" in paragraph (3)(i) of the notice.
14. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR