
Appeal Decision

Site visit made on 10 April 2017

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: 21 April 2017

Appeal Ref: APP/G5750/C/16/3164583

12 Tant Avenue, Canning Town, London, E16 1JF

- 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 Giffy Osse-Berkoh against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, reference 15/00904/ENFC was issued on 14 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an extension and the erection of an outbuilding.
- The requirements of the notice are:
 1. Demolish the extension (as shown edged in blue on the plan attached to the notice).
 2. Demolish the outbuilding (as shown edged green on the plan attached to the notice).
 3. On completion of steps 1 and 2 above, 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 (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Procedural Matters

1. The Appellant's original appeal was made on grounds (f) and (g). The only case for the ground (f) put by the Appellant was that both the extension and the outbuilding were permitted development and to require their removal only for them to re-built would be unreasonable. The question of whether the extension and the outbuilding were permitted development was a ground (c) appeal and the Appellant agreed in writing that the ground (f) appeal should read as a ground (c) appeal¹.

The appeal on ground (c)

2. In a ground (c) appeal the Appellant is saying that the matters alleged in the notice do not constitute a breach of planning control. In an appeal on this ground the planning merits of the development do not fall to be considered. The Appellant submits that the extension and the outbuilding are permitted development.

¹ Letter dated 22 February 2017 from the Appellant's Agent to the Inspectorate

3. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land². One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
4. Class A of Part 1 of Schedule 2 to the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse subject to a number of specified tolerances, limitations and conditions, all of which have to be satisfied. Development is not permitted by virtue of A.1(f)(i) if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4m in the case of a detached dwellinghouse, or 3m in the case of any other dwellinghouse.
5. The appeal property comprises a two storey terraced dwellinghouse and the rear extension is 3.5m deep and it is therefore not permitted development³.
6. In addition, condition A.3(a) requires that 'the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'. I noted on my visit that the rear facing wall of the extension is rendered whereas the rear elevation of the house is red brick and the extension therefore is not of a similar appearance and it therefore does not comply with condition A.3(a).
7. Class E of Part 1 of Schedule 2 to the GPDO permits the provision with in the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to a number of specified tolerances, limitations and conditions, all of which have to be satisfied. Development is not permitted by E.1(e)(ii) if the height of the outbuilding exceeds 2.5m in the case of a building within 2m of the boundary of the curtilage of the dwellinghouse.
8. The outbuilding at the appeal property has been built up to the rear boundary of the property and it is 2.7m high. It is therefore not permitted development.
9. The rear extension and the outbuilding at the appeal property are not permitted development. There has not been any application for planning permission for them and no planning permission has thus been granted. The erection of the extension and the erection of the outbuilding therefore constitute breaches of planning control as alleged in the notice and the appeal on ground (c) fails.

The appeal on ground (f)

10. Although this appeal was, in effect, withdrawn with its amendment to a ground (c) appeal, I note that the issuance of a notice, once the requirements have been complied with, do not prevent the owner/occupier of a property doing what she is lawfully entitled to do. The steps required are those that satisfy

² S.57 of the 1990 Act

³ By virtue of A.1(g)(i) a single storey rear extension could extend for 6m but this is subject to condition A.4 which sets out the procedure to be followed (prior approval) which has not been complied with in this case

the statutory provisions and I have not been provided with any lesser steps by the Appellant. But, given the circumstances of this appeal, I draw the Council's attention to s.173A(1)(b) of the 1990 Act and its powers to waive or relax any requirement of the notice.

The appeal on ground (g)

11. In an appeal on this ground the Appellant is saying that the three month period for compliance specified in the notice falls short of what should reasonably be allowed and she seeks a period of nine months in which to raise finance for the building works; identify contractors to carry out the work; and physically carry out the works.
12. The period for compliance is the period required to undertake the requirements and the majority of the matters raised by the Appellant do not fall within those requirements. The works required, in effect, the demolition of the extension and the outbuilding and the removal of materials are not excessive and the period of three months appears to me to be reasonable.
13. In this ground of appeal I also remind the Council of its powers in s.173A(1)(b) of the 1990 Act to extend the period for compliance should it prove necessary to do so.
14. The appeal on ground (g) fails.

Conclusions

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

Decision

16. It is directed that the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane
Inspector