



Appeal Decision

Site visits made on 5 and 26 June 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/G5750/C/16/3166208

Land at 50 Morris Avenue, Manor Park, London E12 6EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Charanjit Singh against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 9 December 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of an extension.
- The requirements of the notice are to: (1) Demolish the extension (as shown edged in blue on the *[plan attached to the enforcement notice]*, and as shown edged in yellow on the photograph at Appendix 1 *[to the enforcement notice]*). (2) On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with these requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2) (c) of the Act. As the requisite fees have not been paid the deemed application does not fall to be considered.

Formal Decision

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

Procedural and factual matters

2. The Appellant said on the appeal form that the Inspector could see the relevant parts of the appeal site sufficiently to judge the development from public land and did not need to enter the site to check measurements. On that basis the start date letter from The Planning Inspectorate [PINS], dated 14 March 2017, said that the inspection would be made on an unaccompanied basis. However the Council's questionnaire gave contrary answers and whilst the extension can be seen from the access serving 1-6 Mallards Court and 54A Morris Avenue, it is unclear whether that is public land. Even from this position the extension is seen across 2 gardens and it is only possible to estimate its length. Given the single ground of appeal that has been lodged in this case it was appropriate to convene an accompanied inspection so that a measurement could be agreed.
3. For the above reasons an accompanied site inspection was then arranged¹, during which the main parties agreed that an existing single storey extension², measured 3.6 m from the rear of the rear wall of the outrigger of the original dwelling house. Beyond this the single storey extension that is the subject of this notice has been erected, which extends a further 4.14 m from the outside face of the first extension. Cumulatively the single storey extensions therefore extend 7.74 m from the rear of the rear wall of the original dwelling house.

¹ At the second attempt; with apologies to the Appellant for cancelling the first time because no confirmation had been received and it was at such short notice that I could not be certain that access could be obtained.

² Not the subject of the current enforcement action but presumably that subject of building regulation approval 03/01313/DEXBN, as described in paragraph 3.4 of the Council's statement, taking account of paragraph 3.1 of the Council's statement, which strongly suggests that first extension was permitted development.

4. The extension that is the subject of this notice is of standard cavity wall construction. However, as is evident from the photograph at Appendix 1 to the notice, it has not been finished and there is a large gap where presumably a rear door and windows are proposed. It would appear that the Appellant has not undertaken further significant works since that photograph was taken.

Ground (c)

5. Under this ground of appeal the Appellant needs to show that: "...*there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. The Guidance makes clear³ that in an enforcement appeal the onus of proof in respect of matters of fact is on the Appellant.
6. It appears to be common ground that the extension, the subject of this notice, has involved a building operation, which is within the definition of development in section 55 of the Act. The Appellant has made no case to the contrary and instead asserts that the extension is permitted development.
7. On the limited information before me the precise date on which the extension was erected is unclear, but it was plainly prior to 16 May 2016, which is the date of the Council's photographs. The Town and Country Planning (General Permitted Development) (England) (Order) 2015 [the 2015 Order] came into force on 15 April 2015. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations began. The Council has referred to the 2015 Order in its statement and the Appellant has not disputed it is the relevant Statutory Instrument. Given the stage of construction evident in the Council's photographs, the fact that they were taken around 11 months after the 2015 Order came into force and noting that the onus of proof has not been discharged to show that work started before 15 April 2015, I shall assess the extension against the 2015 Order.
8. Article 3 and Class A of Part 1 to Schedule 2 of the 2015 Order permits: "*The enlargement, improvement or other alteration of a dwellinghouse*". However A.1 says development is not permitted by Class A if "(f)...*the enlarged part of the dwellinghouse would have a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse*". These provisions were set out in the Council's statement and the Appellant has given me no explanation as to why these provisions are not material. Given the agreed length of the extension that is the subject of this notice, when considered cumulatively with the first extension, it is plain that (f) is not met.
9. The only caveat to the above is that A.1 (g) does permit a single storey extension of up to 6 metres beyond the rear wall of a terraced dwellinghouse subject to conditions. These include providing specified information to the Local Planning Authority. The Council's unchallenged statement is that no notification was given in this case and I agree that since it cannot be applied retrospectively this provision cannot legitimise the extension that was built. In reaching this view I have noted the quote from an appeal decision⁴ relied on by the Council and I consider that my finding is consistent with it. My view

³ See for example paragraph: 053, Reference ID: 16-053-20140306.

⁴ Appeal Ref APP/G5750/C/13/2204320.

that these provisions do not apply in this case are confirmed by the fact that it is agreed this terraced house has been extended well in excess of 6 metres.

10. Since the extension the subject of this notice exceeds the tolerances in the 2015 Order, I must inevitably conclude that the extension is not permitted development. In these circumstances the ground (c) fails.

Other matters

11. I have noted the reference to: "...*constructing a glass room*" in the grounds of appeal. The Planning Portal does confirm that in certain circumstances⁵ a conservatory is exempt from building regulations and, whilst I might be wrong, it could be that the Appellant is confusing the respective regimes. However in this case the extension appears to include significant components of blockwork and render and so even if the "*front side*", which I take to be a reference to the rear, was fitted with glass, the extension might still not be exempt from the building regulations. In any event planning control and building regulations are parallel regimes in which, in essence, the latter is primarily concerned with the quality of the build and ensuring it is safe to occupy. In these circumstances, whilst I have taken account of the grounds of appeal in reaching my decision, no material considerations have been advanced that outweigh my findings in the only ground of appeal that falls to be considered.

Conclusion

12. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice.

Pete Drew

INSPECTOR

⁵ https://www.planningportal.co.uk/info/200130/common_projects/10/conservatories/3