
Appeal Decision

Site visit made on 12 June 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/B0230/C/17/3169560

5 St Margarets Avenue, Luton, Bedfordshire LU3 1PG

- 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 Asma Yaqub against an enforcement notice issued by Luton Borough Council.
 - The enforcement notice was issued on 4 January 2017.
 - The breach of planning control as alleged in the notice is described as 'Without planning permission, the unauthorised erection of a single storey rear extension on the land in the approximate position shown edged and cross hatched green on plan referenced 14/00354/UBO ('the Extension')'.
 - The requirements of the notice are
 - (i) Demolish the extension including but not limited to its foundations and remove all resulting debris and materials from the land; and
 - (ii) Make good the roofs and all elevations and surfaces of the dwelling on the land affected by the removal of the Extension to match the existing and adjoining elevations and surfaces of the said dwelling.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words 'shown edged red on the attached plan reference 14/00354/UBO ('the Land')' after 'LU3 1PG' in paragraph 2 of the notice and the deletion of the words 'in the approximate position shown edged red and cross hatched green on the above mentioned plan reference 14/00354/UBO ('the Extension')' after 'Land' in paragraph 3 of the notice. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control and what they must do to put it right. In this case the Council allege, without planning permission, the unauthorised erection of a single storey rear extension and that it should be demolished.
 3. Within the notice the Council refer to a plan to show the location of the site and the extension. The boundary of the site has been outlined in red and the extension is shown on the plan and has been outlined in two colours. That nearest the house and around the side is outlined in blue and the portion of the extension furthest from the house is outlined and cross hatched in green. It
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also includes the words 'Extension to be removed'. The allegation makes reference to the green cross hatching in order to describe the extension but the requirement to remove the extension within the notice does not. The differentiation of the extension into two components is confusing and gives the impression that the allegation only relates to part of the extension and that possibly only part of the extension needs to be removed.

4. From the Council's photographs taken during construction, the planning history of the site¹ and the appellant's description of how the development took place, it would appear that the extension was built as one operation. Furthermore, both the Council's and the appellant's submissions refer to the whole extension.
5. There is no requirement for an enforcement notice to include a plan. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 says that an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. I am satisfied that the address of the property and postcode in the enforcement notice are adequate to identify the boundaries of the land and as such the plan is superfluous and the deletion of reference to any plan would provide clarity.
6. I consider that there would be no injustice or prejudice to either party by the deletion of the references to the plan in paragraphs 2 and 3 of the enforcement notice. I will therefore direct that the notice is corrected in this way.

Procedural Matters

7. It was pointed out to the appellant that her submissions largely related to ground (a), that planning permission should be granted for what is alleged. She was advised that if she wished for them to be considered as part of her appeal that she should plead ground (a) and pay the relevant fee by the appropriate date. However, ground (a) was not pleaded and no fee was received. I am therefore unable to have regard to these particular submissions.

The ground (d) appeal

8. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. She needs to show, on the balance of probabilities, that the erection of the extension was substantially complete more than four years before the notice was issued. The relevant date in this context is 4 January 2013.
9. The appellant states that she gave a deposit to Jamal Builders to start work on the extension in October 2014 and that it was partially finished by the middle of November 2014.
10. A Council officer visited the site on 25 September 2014, in connection with a prior approval application at the appeal site for a 6m deep rear extension. He saw that works had already begun and took photographs. These show that the side and rear walls had been erected and that some work had begun on the

¹ Paragraphs 1.4 and 1.5 of the Council's Statement of Case make reference to retrospective planning applications to retain a 6m deep extension

roof. However, there were no windows, floor or ceiling in place and the walls had not been plastered.

11. I find that the appellant's evidence unfortunately contradicts what she claims by lodging her appeal on ground (d). This is because in order to succeed on ground (d) she needed to show that the extension was substantially complete by the 4 January 2013. In reality it appears that building works did not start until the autumn of 2014. Therefore the extension was not substantially complete more than four years before the notice was issued.
12. The Planning Practice Guidance advises² that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probabilities. In this case, the appellant's own evidence demonstrates that the extension was not substantially complete on the relevant date. As such, the appeal on ground (d) fails.

Other Matters

13. Whilst ground (g), that the time given to comply with the notice is too short, has not been pleaded, the appellant nevertheless makes submissions that it would be difficult and costly to remove the extension. This is because the extension project went over budget and left the family in a 'difficult financial situation'. She therefore submits that to remove the extension would cause further hardship especially as she has young children. The appellant does not however state what additional period of time she might need. The Council have specified a period of three months within the notice as they have identified that the extension causes harm to the living conditions of the adjoining occupier, having regard to outlook.
14. Any appeal on ground (g) is limited in scope to a consideration of the actual time needed to carry out the physical work specified in the steps. The appellant's case though relates to the time before the works can commence when finance would be sorted and a builder appointed. Whilst the appellant's concerns are understandable, the extension is single storey and I consider its removal by a competent builder and the making good of the building could be achieved in the time specified. An extension of time has not been justified in any detail and I therefore consider the time period for compliance is reasonable and as such, I see no reason to vary it.

Conclusion

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

D Fleming

INSPECTOR

² Reference ID: 17c-006-20140306