
Appeal Decisions

Site visit made on 10 July 2017

by K R Saward Solicitor

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

Decision date: 13 July 2017

115 Windsor Road, Forest Gate, London E7 0RA

Appeal Refs: APP/G5750/C/16/3165884 & 3172531

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Atif Masood (Appeal A) and Mrs Kashif Masood (Appeal B) against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement 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:-
 1. Demolish the extension (as shown edged in blue on the plan attached to the notice).
 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f)&(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Reasons

The appeals on ground (f)

1. The ground of appeal is that the steps required by the notice to be taken are excessive.
2. The appeal property is a large period property and the notice concerns a full width single storey rear extension with flat roof.
3. The scope of an enforcement notice is limited to achieve wholly or partly the purposes set out in section 173(4)(a) and (b) of the 1990 Act. In this case the requirement of the notice to demolish the extension is consistent with the purpose of remedying the breach under s173(4)(a). The reasons for issuing the notice concern the effect of the extension on the character and appearance of the area which indicates the purpose of remedying injury to amenity under s173(4)(b). The notice therefore aims to address both purposes.
4. Remedying the breach can only be achieved by demolition of the unauthorised extension. That said, the enforcement regime is not intended to be punitive and in this instance there is a valid fallback position.

5. Since the date of issue of the enforcement notice planning permission has been granted¹ on 16 March 2017 for the 'proposed demolition of the existing conservatory and construction of a rear extension'.
6. The planning application was based on the retention of part of the unauthorised extension. Instead of a full width single storey rear extension with flat roof, there would be a much smaller extension with part sloped and part hipped roof.
7. The Council acknowledges that the appellants are entitled to build out the recently approved development. There is no certainty that they would do so which is why the requirement to demolish the extension should not be deleted. However, there would be no reason for the appellants to have sought the planning permission if they did not intend to implement it. There is also every indication that they would do so having already demolished the 'conservatory' element of the extension. By the time of my site visit, the remainder of the extension had also been stripped back by removal of the outer brickwork.
8. Complete removal of the unauthorised extension would not ultimately achieve anything if the appellants were to subsequently implement the newly obtained planning permission. The notice can be varied with the required degree of precision to give the appellants the option of modifying the extension to accord with the approved scheme instead of demolition in its entirety. In that way the position would be no different from the outcome if the appellants were to implement the permission following compliance with the notice as originally drafted.
9. I shall therefore vary the requirements of the notice in line with section 173(4)(a) to require *either* demolition of the unauthorised extension or for it to be modified to comply with the terms and conditions of the extant planning permission.
10. To this extent the appeals on ground (f) succeed.

The appeals on ground (g)

11. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The appellants seek 6 months rather than the 3 months afforded by the notice. The reason given is the need to obtain retrospective building regulations approval for the revised and reconstructed extension for which planning permission has now been obtained. The appellants estimate this will take up to 8-10 weeks.
12. The Council considers that 3 months remains fair and reasonable and that no exceptional circumstances warrant an additional 3 months. The Council indicates that it will consider the exercise of its discretionary powers under section 173A to extend the period for compliance if the appellant presents credible evidence at a future date which establishes 3 months to be unfeasible.
13. That power provides a useful provision should insurmountable problems arise. However, it is no substitute for ensuring that the period afforded is reasonable in the first instance. That is the matter before me.
14. I have already decided under ground (f) that there is an alternative step which should be encompassed within the requirements to allow for partial demolition

¹ Pursuant to Council Ref: 17/00329/HH

and the reconstruction of an extension in accordance with the extant planning permission. Demolition of the extension in its entirety should reasonably be achieved within 3 months. Partial demolition and reconstruction works may be anticipated to take longer as more is clearly involved even though those works have already commenced with the removal of part of the structure enforced against.

15. The basis for the 8-10 weeks estimated for building control approval is unclear. Without further explanation, it appears to be speculative. Whilst acknowledging that longer than 3 months would be reasonable, there is insufficient information before me to justify the 6 months sought.
16. A period of 4 months would be more appropriate. It strikes the right balance between affording sufficient time for works to be undertaken and ensuring the harm arising is addressed in a timely manner so that the response is a proportionate one.
17. To that extent, the ground (g) appeals succeed.

Formal Decisions

Appeals A and B

18. It is directed that the enforcement notice is varied by:-

- (a) deleting the steps in paragraph 5. and substituting:

“EITHER

1. Demolish the extension (as shown edged in blue on the attached plan);

OR

2. Modify the development to comply with the terms of the planning permission (ref: 17/00329/HH) dated 16 March 2017 including the conditions subject to which that permission was granted.

AND

3. On completion of step 1 or 2 above, remove all materials and debris from the site.”

- (b) deleting 3 months from paragraph 6. and inserting 4 months as the period of compliance.

19. Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

KR Seward

INSPECTOR