

Appeal Decision

Site visit made on 15 June 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 17 July 2017

Appeal Ref: APP/G5750/C/16/3162766

Land at 167 Sherrard Road, Forest Gate, London E7 8DY

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr K Patel against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice 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.
 - The requirements of the notice are:
 1. Demolish the extension (as shown edged in blue on the attached plan).
 2. On completion of step 1 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 s174(2)(b), (c) and (f) of the Act. Since the prescribed fee has not been paid within the specified period, the application for planning permission deemed to have been made under s177(5) of the Act has lapsed.
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Decision

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

Costs

2. An application for an award of costs has been made by the Council against the appellant. This application is the subject of a separate decision letter.

The appeal on ground (b)

3. On ground (b) the decisive matter is whether the alleged development has taken place as a matter of fact.
4. The development as alleged in the notice is "an extension". At my site visit I saw that there was, indeed, an extension on the land. The appellant comments on the measurement of its depth (a matter to which I shall return) but does not dispute the existence of the extension per se.
5. I conclude that the alleged development has occurred as a matter of fact. The appeal on ground (b) fails.

The appeal on ground (c)

6. In an appeal on ground (c) the decisive issue is whether the matter alleged amounts to a breach of planning control.
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7. The appellant argues that the enforcement notice stems from the Council having refused a prior notification application submitted in 2015. The appellant says there was no objection from the neighbour. Had the Council allowed the prior notification application to run its course the appellant would (it is argued) have been able to erect a 6 metre extension under permitted development rights.
8. The provisions to which the appellant refers are those set out in Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "the GPDO"]. The GPDO provides for the erection of a rear extension of 6 metre depth (at a terraced property) as permitted development subject to limitations and conditions.
9. One of the conditions (A.4(2)) is that, before the beginning of the development, notification shall be given to the Local Planning Authority. Under condition A.4(3) the Local Planning Authority can refuse an application where it considers the proposal does not comply with the applicable conditions, limitations and restrictions of Class A.
10. According to the appellant, the Council refused his notification on the basis that works had already started. In other words, on the basis that there was failure to comply with condition A.4(2). The appellant argues that this was an incorrect assumption as the only work being undertaken was the "chasing" of a manhole. The Council, on the other hand, says that a site visit was carried out which established that development works had commenced.
11. On the face of it, I cannot see that the Council erred in its approach. If the Council thought that the proposal did not comply with the conditions, limitations and restrictions of Class A because work had started then it was entitled to refuse the application. Had the appellant been aggrieved by the decision there would have been a right of appeal open to him at the time. However, I am not aware that any appeal was pursued.
12. It is not for me, now, to re-open that earlier issue bearing in mind the previous opportunity to appeal. In any event, the development as built (which is the matter I am concerned with) differs from that which could have benefitted from permitted development rights in two significant respects. Firstly, the "as built" extension projects beyond the rear wall of the original dwellinghouse by more than 6 metres whereas a permitted development extension would have been limited to a maximum projection of 6 metres. Secondly, the "as built" extension is of rendered finish whereas a permitted development extension would have been constructed in materials of similar appearance to the brickwork of the existing dwellinghouse.¹
13. The extension as built falls outside of the limitations and conditions for permitted development. I cannot see that the prior notification application, even if it had run its course, would have had any bearing upon the legitimacy of the built extension.
14. I find, on ground (c) that the works amount to a breach of planning control. The appeal on ground (c) fails.

¹ Condition A.3(a) of Class A, Part 1 to Schedule 2 of the GPDO requires that the materials used in any exterior work must be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

The appeal on ground (f)

15. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity caused by the breach. The words "as the case may be" indicate that the purpose of the notice should fall primarily within one or the other category. In this case the main purpose of the notice (which requires complete removal of the extension) is to remedy the breach.
16. I do not find this requirement to be excessive. As the breach alleged is the "erection of an extension" it simply follows that the breach is remedied by the demolition of the extension. That is what is needed to achieve the purpose of the notice. There are no alternative lesser steps that have been put forward and no obvious alternative(s) which I can identify.
17. Whilst there is no complaint from the neighbour this has no bearing upon what can be considered within the scope of the appeal on ground (f) which, in this case, does not include a consideration of the development on its planning merits.
18. For these reasons the appeal on ground (f) fails.

Other matters

19. I am told that the extension is for use by the appellant's disabled mother who lives with the family. This is not a matter which I can take into account in considering the grounds of appeal that are before me.
20. The appellant has suggested that the Council incorrectly described the extension as being of 6.2 metre depth when the plans (submitted with application 16/00088/HH) showed a 6 metre extension. An appeal against the refusal of planning permission was subsequently dismissed. It has not been explained how this alleged discrepancy is relevant to the matter that is before me. From the measurements taken and from what I saw at my site visit, I am satisfied that the "as built" extension has a depth exceeding 6 metres and I have dealt with this appeal accordingly.

Conclusion

21. For all the reasons given above I conclude that the appeal should not succeed.

Susan Wraith

Inspector