
Appeal Decision

Site visit made on 15 August 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 16 August 2017

Appeal Ref: APP/F5540/C/16/3165907
73 College Road, Isleworth TW7 5DP

- 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 Mr Dragan Tomic against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice, numbered BWR/2016/00332 was issued on 30 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a first floor extension.
 - The requirements of the notice are to demolish the first floor extension and remove all resultant debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

2. At the site visit it was pointed out that the hatched area shown on the enforcement notice plan does not reflect the area of the extension. I concur with that view as the extension abuts the flank of the adjacent property No 75. The hatched area does not.
3. Nevertheless S173(2) of the Act says that a notice complies with s173(1)(a) if it "enables any person on whom a copy of it is served to know what those matters, (the matters alleged to constitute the breach), are". It is clear from the appellant's grounds of appeal that he knows what the breach is and what he is required to do to remedy the breach. There has been no injustice caused. I will proceed on that basis.

The appeal on ground (e)

4. The appellant argues that the Council allowed 33 days from the 30 November to 2 January and this was a breach of the rules as the amount of days ought to be 28. No further explanation is given.
5. S172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and on any other person

having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Local Planning Authority, is materially affected. There is nothing before me to suggest the notice was not served in accordance with S172. In any event, Section 176(5) provides for non-service to be disregarded if no substantial prejudice has arisen. As the appellant has been able to lodge an appeal against the notice, I am unable to identify any substantial prejudice in this instance.

6. In light of the foregoing, the appeal on ground (e) fails.

The appeal on grounds (b) and (c)

7. Ground (b) is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact, and ground (c) that there has been no breach of planning control. Since the brief arguments presented are closely related, I have considered these grounds together.
8. In simple terms the appellant is of the opinion that the first floor extension is permitted development and is more than 4 years old. The age of the development is dealt with below under the ground (d) appeal. With regards to permitted development it was agreed on site that the extension is some 2.7m in depth when measured from the original rear building line and some 1.64m from the boundary with No 71 and approximately 3.05m to the rear boundary with 7 Musgrave Road when measured from the easternmost corner of the extension.
9. It is clear therefore that is within the 3m tolerances of the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). However the GPDO is also clear with regards to first floor extensions in that, not only should they not extend further than 3 metres beyond the rear wall of the original dwellinghouse¹, they should not be **be within 7 metres of any boundary of the curtilage of the dwellinghouse** (my emphasis) being enlarged which is opposite the rear wall of that dwellinghouse². It is clear, given the measurements agreed on site, that the extension falls well within 7 metres and is nowhere near meeting that requirement.
10. In that light the extension is not permitted development. It has been constructed as alleged and the appeal on grounds (b) and (c) fail.

The appeal on ground (d)

11. Under this ground of appeal the onus is upon the appellant to demonstrate, on the balance of probabilities, that the extension was constructed 4 years or more at or before the time the enforcement notice was served, the relevant date being 30 November 2012. A ground (d) appeal must be determined by reference to the submitted evidence and an appellant must take care to submit sufficient evidence to meet the balance of probabilities and to satisfy the burden of proof. An Inspector is entitled to reach a decision on the basis of the material put before him.
12. The appellant sets out that he has lived at the property for some 16 years and the doors for the extension were installed in June 2011 and he has witnesses to corroborate that. The appellant also points to the lack of photographic

¹ Schedule 2 Part 1 Class A, paragraph A.1. (h)(i)

² Schedule 2 Part 1 Class A, paragraph A.1. (h)(ii)

- evidence from the Council showing the sides or back of the extension and submits a number of photographs to corroborate his position.
13. However, it is not clear from those photographs whether or not the extension was completed more than four years ago. I accept that the photographs show some construction materials of some age and cracking which could be associated with those parts shown being in situ for a number of years. However the dates of them are uncorroborated and they do not show the extension as a whole, or what predated the structure that exists today and at the time the enforcement notice was served.
 14. Furthermore, whilst I saw some parts of the extension appeared to be of some age, as also shown on a number of photographs submitted by residents, there is no clarity as to how it was constructed or over what timeframe. I cannot be sure that the extension reflects that which was there before, if that were the case. To that end the appellant has submitted no sworn statements or evidence of what was previously on site to add any weight to his assertion that the works carried out more recently were to repair an older first floor structure which had been in situ for many years. There is simply nothing before me to add weight to that argument.
 15. In addition representations and photographs from neighbours along with aerial and other photographs submitted by the Council, indicate a more recent development. Whilst I accept the Council photographs are not particularly clear, and recognise this evidence has also not been tested, there are discrepancies between the appellant's assertions in terms of when the extension was completed. In particular the aerial photographs which indicate a disparity in what was on site in July 2013 and what exists today. I saw from my site visit that the base of a previous ground floor structure remains. That would corroborate the 2013 aerial photograph purporting to show a ground floor extension with roof light which is unexplained. That is further borne out by the photographs submitted by local residents indicating extensive construction work being carried out more recently.
 16. The Planning Practice Guidance (PPG) is clear and sets out that in cases such as these, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
 17. On the information currently before me I am unable to say that the appellant's evidence is sufficiently precise or unambiguous to show on the balance of probabilities that the extension was completed four or more years prior to the salient date. Moreover, the Council has submitted evidence to contradict the appellant's arguments. Thus, as a matter of fact and degree, the appeal on ground (d) must fail.

The appeal on ground (a)

Main Issues and Reasons

18. There are two main issues to consider under this ground: the effect of the extension upon the character and appearance of the host property and wider area and the effect upon the living conditions of occupiers of nearby dwellings.

19. The extension can be seen at first floor level from several vantage points in College Road and Musgrave Road, it is also visible from a number of nearby dwellings. It is an odd addition to the block of five terraced townhouses and whilst some effort has been made regarding its appearance, such as the cladding, and the fact that it does not extend beyond the rear building line of No 75, there can be no doubt that it is not part of the original dwelling.
20. I say that given it has been constructed from different materials and takes no architectural lead from the building to which it is attached, appearing as a disparate, box-like, addition leading the viewer to question how it came to be. It also has no relationship to the mix of housing in the locality which are generally traditionally laid out with regular built forms. I saw no comparable extensions and none have been brought to my attention.
21. It is the combination of these factors that leads me to find the extension has led to unacceptable harm to the character and appearance of the host building and the locality contrary to London Borough of Hounslow Local Plan Policies CC1, CC2 and SC7 insofar as they seek quality developments that reflect the character of the area and host building.
22. Turning to the second issue it is clear there would have been some overlooking of adjacent properties from the existing rear windows of the dwelling. However the extension has brought those views, from a habitable room, into habitable rooms, further forward towards the properties in College Road and over the garden area of No 71 where none previously existed, through the side window. I am in no doubt that has led to increased overlooking opportunities to those properties.
23. Furthermore the extension is an overbearing addition when viewed from 7 College Road bringing the built form closer to No 7 and increasing the sense of enclosure to occupiers of that property. The combination of these factors leads me to find that the development has resulted in unacceptable harm to the living conditions of occupiers of adjacent dwellings contrary to the planning policies set out above, insofar as they seek to protect the amenities of local residents. In coming to that view I have considered all matters raised including the lack of objection from one of the neighbours but I must consider all future occupiers.
24. For these reasons the appeal on ground (a) fails.

The appeal on ground (f)

25. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the restoration of the land to its condition before the breach took place.
26. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. In my view the requirements are entirely appropriate to achieve the objective of restoring the land to its condition before the breach took place and there are, in my assessment, no lesser steps that could be taken to achieve that objective.
27. Furthermore no good reason is advanced by the appellant as to why the requirements of the Notice exceed what is necessary to restore the land to its

condition before the breach took place and, no alternative lesser steps have been suggested by the appellant. Indeed the planning merit arguments put forward under this ground are best dealt with under the ground (a) as I have done. Matters concerning how the Council has dealt with the appellant do not go to the heart of a ground (f) appeal.

28. Inevitably this ground of appeal must therefore also fail.

Other matters

29. I accept that the Council may have been difficult to contact regarding this case. However the way the Council have dealt with the appellant is a matter for them and whilst I have some sympathy with the appellant's circumstances this is a matter for the Council and has not formed part of my deliberations.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Richard Perrins

Inspector