



Appeal Decision

Site visit made on 29 December 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 25 January 2018

Appeal Ref: APP/N5090/C/17/3178959

Land at 17 Esmar Crescent, London NW9 7BL

- 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 Ms Nita Patel against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 6 June 2017 under ref. ENF/00152/17.
 - The breach of planning control as alleged in the notice is: *"Without Planning Permission, the construction of an extension over an existing balcony creating a first floor front extension, within the last four years."*
 - The requirements of the notice are to:
 - "1 Demolish the first floor front extension.*
 - 2 Remove all material resulting from the works in 1 above from the property.*
 - 3 Return the property to the state in which it was prior to the breach occurring (sic)."*
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed and do not fall to be considered.
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Decision

1. It is directed that the enforcement notice be corrected at paragraph 5, requirement 3 by altering the word "occurring" to the word "occurring". Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. There is a misspelling in the third requirement of the enforcement notice. My decision above provides for a correction accordingly.
3. An appeal on ground (b) - that the breach of planning control alleged in the enforcement notice has not occurred - was withdrawn by the appellant in an email dated 13 September 2017. This was not properly reflected in the subsequent appeal start letter from the Planning Inspectorate dated 26 September 2017. Nonetheless, ground (b) could not have succeeded because all the evidence points to the first floor front extension being in existence when the notice was issued. My site visit revealed that this extension is still in place.
4. Whilst ground (a) - that planning permission ought to be granted for what is

alleged in the enforcement notice - was originally pleaded and much of the appellant's supporting information (including letters from local residents, ongoing changes in the wider area, the similar extension at 15 Esmar Crescent, the FENSA certificate and the Living Roofs and Walls Technical Report from 2008) addresses the planning merits of the unauthorised first floor front extension, I am afraid that the fee for the deemed planning application which accompanies ground (a) was not received by the Council within the specified period. As advised by letter dated 18 October 2017, the appeal on ground (a) and the deemed planning application have therefore lapsed. The planning merits of the development cannot therefore be considered in this appeal decision.

The appeal on ground (e)

5. Ground (e) arises where an appellant wishes to argue that copies of the enforcement notice were not served as required by section 172 of the 1990 Act as amended.
6. The key issue is whether the notice was served properly on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. If it was not served properly, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
7. Section 176(5) of the 1990 Act as amended gives the Secretary of State or the appointed Inspector power to disregard any failure to serve the notice on anyone as required, if neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve him or her.
8. The appellant claims that the notice was not served at her correct postal/correspondence address (Oakhurst, Barnet Lane, London N20 8AP).
9. The Council has not directly responded to this ground of appeal, which is not helpful, but I see from the certificate of service that the notice was served on: (i) owner/occupier, 17 Esmar Crescent, London NW9 7BL; (ii) Nita Patel, 139 Audley Road, London NW4 3EN; and (iii) Bank of Ireland, Bristol.
10. The appellant does not explain how she came to be aware of the enforcement notice or whether 139 Audley Road was ever her residence or not, or if it was, when she moved out to Oakhurst. The Council does not explain on what basis the notice was served at 139 Audley Road and there is no evidence of prior service by the Council of a planning contravention notice or other requisition for information as to the interests in the land.
11. However, the appellant clearly received a copy of the enforcement notice at some stage and it is a telling point that she was able to lodge an appeal against it about 2 weeks before the expiry of the relevant time period. Thus, even if there had been a failure to serve the notice on Ms Nita Patel at her correct postal address, this confirms to me that there is no evidence that the appellant has been substantially prejudiced. That being the case, the appeal on ground (e) fails.

The appeal on ground (c)

12. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate on the balance of probabilities that there has not been a breach of planning control.
13. The appellant indicates that as no part of the structure comes outside the balcony wall it does not project beyond the main elevation. The Council does not explain in specific terms why it considered the development to constitute a breach of planning control.
14. The enlargement, improvement or other alteration of a dwelling house is permitted by Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to various limitations and conditions.
15. Further to the appellant's evidence, development is not permitted by the limitation at Class A.1 (e) if the enlarged part of the dwelling house would extend beyond a wall which forms the principal elevation of the original dwelling house.
16. The front elevations of the 2-storey, semi-detached houses in Esmar Crescent, including No. 17, are characterized by 2-storey advanced bays, with subsidiary first floor windows in the upper walling between the bays. There are paired balconies in front of those windows. The front elevations are the principal elevations of the original dwelling houses here. They include more than one wall facing in the direction of the highway on account of the large advanced bays. All such walls will form the principal elevation and the line for determining what extends "beyond a wall" will follow these walls.
17. Whilst the first floor front extension does not extend beyond the low wall that formed the balcony, it still extends beyond the original upper or first floor walling (found in between the bays) which must form part of the principal elevation of the original dwelling house. The extension is thus specifically excluded by the terms of the limitation at Class A.1 (e).
18. It seems to me that the development would also be excluded by the terms of the limitation at Class A.1 (i) since the enlarged part is within 2 m of the boundary of the curtilage of the dwelling and the height of the eaves of the enlarged part exceeds 3 m above ground level.
19. Accordingly, the development is not permitted by the GPDO. It would need to gain planning permission through an express application to the local planning authority. No such planning permission has been obtained. I conclude on the balance of probabilities that a breach of planning control has occurred. The appeal on ground (c) fails.

The appeal on ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. It is essential to understand the purpose of the notice. In this

case, the notice is aimed at remedying the breach of planning control which has occurred by requiring the demolition of the extension and the restoration of the property to its condition before the breach took place.

21. The appellant's original representations under ground (f) address the planning merits of the development which are not before me. Later on, the appellant suggests, as an alternative to demolition, that the structure could be painted a similar colour to the background of the original house. I am not sure how this would be practicable given that the structure is predominantly glazed. In any event, this lesser step would neither remedy the breach of planning control, which is the erection of the first floor front extension, nor overcome the planning difficulties as expressed in the notice, which are to do with the siting and design of the structure rather than with any coloured finishes.
22. There will undoubtedly be some costs implications for the appellant in complying with the enforcement notice. However, I consider that the requirements of the notice go no further than are necessary to achieve the purpose of remedying the breach. They are not unreasonable or excessive. The appeal on ground (f) fails.

Andrew Dale

INSPECTOR