
Appeal Decision

Site visit made on 12 April 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2018

Appeal Ref: APP/U5930/C/17/3180748

75 Leyton Park Road, Leyton, London E10 5RL

- 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 Mohammed Raza Ahmed Qureshi against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 15 June 2017 under ref. 070992.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the erection of an unauthorised single storey rear side infill extension [hatched in black on the attached plan]."*
 - The requirements of the notice are to:
 - "i) Carry out the necessary works to the single storey rear side infill extension in order for it to accord with all the requirements and conditions in Class A of schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (sic)*
 - OR**
 - ii) Demolish the unauthorised single storey rear side infill extension in its entirety.*
 - iii) Reinstall the rear elevation of the house and side wall of the outrigger as existed prior to the breach of planning control*
 - iv) Make good any damage caused to the rear elevation of the house and side wall of the outrigger as a result of the above requirement (ii) using materials of a similar appearance to those used in the exterior of the existing house.*
 - v) Remove from the premises all resultant debris as a result of the above requirements i), ii), iii) & iv)".*
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) 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 by inserting the text "(England)" before the word "Order" in paragraph 5 i) and, following the limited success of the appeal on ground (g), be varied by replacing the text "a compliance period of three month (sic)" with the text "a compliance period of five months after this notice takes effect" in paragraph 6. Subject to this correction and variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

The enforcement notice

2. The legislation covering permitted development rights is not quoted by its exact

title in paragraph 5 i) of the notice. In the decision above I have made a minor correction accordingly; this would not result in any injustice to the parties.

Background and matters of clarification

3. The appeal property is a two-storey terraced house. Like the other terraced residential properties hereabouts, it has a two-storey, rear-projecting outrigger. The enforcement notice attacks a single-storey extension which has been built adjacent to that outrigger up to the boundary with 77 Leyton Park Road.
4. At my site visit, I was able to inspect the development from the ground floor flat (Flat 1) in that neighbouring property. The maximum depth of the extension (at roof level) was found to be about 6 m. The side of the extension facing no. 77 is 2.5 m high, 0.68 m higher than the boundary fence. The walling material used in the construction of the extension is mainly plain plywood. It has a shallow sloping roof covered in translucent polycarbonate sheeting.
5. Internally, the extension functions as an adjunct to the adjoining kitchen, offering additional space and cupboards for storage and a place to keep a fridge-freezer, a freezer and a spin dryer.
6. The enforcement notice appeal form included an appeal on ground (a) – that planning permission ought to be granted for what is alleged in the notice – and some facts in support of that ground. However, since the relevant fee was not paid, ground (a) and the associated deemed planning application have lapsed. There is no planning application before me and it is therefore not appropriate for me to consider arguments about the planning merits of the extension.

The appeal on ground (f)

7. The appeal on ground (f) is that the requirements of the enforcement notice exceed what is necessary to achieve its purpose. The alternative requirements in paragraphs 5 i) and 5 ii) of the notice appear to reflect the purpose set out in section 173(4) (a) of the 1990 Act as amended, that is to remedy the breach of planning control. The first step requires the development to be modified such that it would become the equivalent of what could be built under the terms of the general planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), whilst, as an alternative, the second, third and fourth steps, when read together, require the land to be restored to its condition before the breach took place.
8. The appellant recognizes the first alternative requirement as a legitimate fallback but says that the second one, requiring full demolition, is excessive. He suggests a lesser step of cladding the extension in bricks to match the host building so as to remedy any injury to amenity which has been caused by its construction.
9. However, simply just cladding the extension with matching bricks would not remedy the breach of planning control. This is because the breach of planning control is the action of erecting the 6 m deep extension. Cladding it in brick

would not undo that initial action and would not address all of the harm caused by the development as set out in the reasons for issuing the notice. There, one also finds reference to its size and location, the description of it being a dominant and overbearing addition and mention of its adverse effects upon the amenities of neighbours “...by reason of visual intrusion, outlook, overshadowing, loss of light and sense of enclosure...”. In the absence of ground (a) and the deemed planning application, it is not for me to determine otherwise. However, the use of matching walling materials would not overcome the stated planning difficulties, derived from the fundamental size and location of the extension, which are also reflected in the written response to this appeal from the third party occupying the ground floor flat at no. 77.

10. The lesser step advanced by the appellant would not achieve the Council’s purpose in issuing the notice. The notice gives the appellant a simple choice as to how to remedy the breach of planning control. The requirements are not excessive and the appeal on ground (f) fails.

The appeal on ground (g)

11. This ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. A period of three months is given by the notice. The appellant requests 12 months.
12. The gist of the appellant’s case is that this request would allow time for him to have a kidney transplant, the new kidney being donated by his wife, and for a period of recuperation afterwards for both of them of at least nine months. At the site visit I understood that they were both in the early phase of that recuperation. The Council considers that the works involved in either of the alternatives are relatively minor in nature and points to its powers to extend the compliance period if unforeseen difficulties are encountered.
13. Determining the time needed to comply with the requirements of an enforcement notice will always be a case-specific exercise. In my opinion, the main factors to weigh in the balance here are: the health issues mentioned; the implications for the appellant of finding alternative space for the array of items and equipment in the extension; the possibility that the appellant may wish to check over matters with the Council if the option of following the GPDO is chosen, particularly with regard to walling and roofing materials, so that one breach is not replaced by another; the need to secure quotes, appoint a contractor and get the work fitted into that contractor’s schedule of work; the desirability of remedying the breach in a reasonable timescale and avoiding a situation whereby a compliance period is so long that it would be tantamount to the grant of a temporary planning permission; and the need to avoid unduly prolonging the harm being caused, particularly to neighbouring residents.
14. In all, I judge that whilst 12 months would be excessive, a period of five months would be a more reasonable period for the appellant than the current three. An extension of the compliance period in this way would represent a proportionate response that strikes a fair balance between the conflicting public and private interests in this case. As such, compliance with the enforcement notice would not

have a disproportionate impact upon the appellant. The appeal on ground (g) succeeds to this limited extent. The compliance period in the notice will be varied accordingly. I have made it clear in that variation that the compliance period of five months starts from after this notice takes effect which is now the date of this appeal decision.

Andrew Dale

INSPECTOR