
Appeal Decision

Site visit made on 24 May 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2018

Appeal Ref: APP/T5150/C/17/3178937

Esher, Uffington Road, London NW10 3TA

- 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 Surinder Kaur Bhaat against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 24 May 2017 under ref. E/17/0272.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of a single storey rear extension and associated patio to the rear of the premises."*
 - The requirements of the notice are set out as follows:
*"STEP 1 Demolish the single storey rear extension and associated patio to the rear of the premises.
STEP 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises."*
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be quashed.

Background and matters of clarification

2. The appeal property is a semi-detached house situated close to the junction between Uffington Road and Doyle Gardens. It has two storeys with further accommodation in the roof space.
3. The enforcement notice attacks a "single storey rear extension" and an "associated patio to the rear of the premises." I carried out an inspection of the appeal site and viewed it from an adjacent house on Doyle Gardens (Dunoon) at the written request of the neighbouring occupiers there.
4. From the planning history presented by the parties, it would appear that a tiled, pitched roof was added over a single-storey, flat-roofed rear extension pursuant to a planning permission issued under ref. 99/2401. The roof appears to have been completed in 2003. This first ground floor rear extension is about 3 m deep. A second ground floor rear extension in the form of a conservatory has been added to that first extension. The

conservatory measures about 5.2 m in depth. It has a solid roof which is punctuated by several roof lights. There is an overhang at the rear of about 0.8 m. There are therefore two single-storey rear extensions or one large one (if combined and taken together).

5. The appellant's representations also stray into ground (b) – that the matters stated in the notice have not occurred as a matter of fact and ground (d) – that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. More generally, I believe the appeal has had to be used as a vehicle to clarify and outline matters that would normally have been divulged or ascertained as a result of the Council's initial enforcement investigations. However, those investigations were short-lived to say the least.
6. The Council created an enforcement investigation on 10 May 2017. The site was visited the following day when photographs were taken (appendix 1 of the Council's statement). On 15 May 2017, a letter was sent to the owner alleging that a breach of planning control had occurred. I do not know if the appellant responded to that letter or whether a deadline was even given for a response. Be that as it may, assuming the letter was first seen by the appellant at some point on 16 May 2017, she had only five full working days to assess the situation before the enforcement notice was issued. In my experience, whilst prompt attention to alleged breaches of planning control is to be encouraged, diligent investigation is also a prerequisite for effective enforcement. It is not obligatory to serve a planning contravention notice but it might have been useful in this case.

Matters concerning the enforcement notice

7. It is always necessary to consider whether an enforcement notice is in good order because legal culpability arises from a failure to comply. I have powers to correct any defect, error or misdescription in an enforcement notice, provided that this can be done without causing any injustice to the parties. Some defects that are too fundamental or wide-ranging to be corrected without causing injustice make the notice invalid and lead to it being quashed.
8. Whilst it is good practice to set out the relevant time limits for taking enforcement action in an enforcement notice, the Council preferred on this occasion to refer to them in the notes attached to the notice. The appellant has not referred to any legislation which says that time limits must be part of the content of an enforcement notice. There is no basis to quash the notice because it does not contain the relevant time limit (four years) for enforcement action.
9. The appellant asserts that a raised platform (with surrounding brickwork and steps) was constructed in the rear garden at the same time as the addition of a tiled roof to the first single-storey rear extension. A similar structure was indicated on the excerpt from the 1999 plans provided by the Council in appendix 2. An undated photograph in paragraph 2.7 of the appellant's statement shows that this was an individual operational development. It is more probable than not that it existed well before 2011

when a conservatory with a plastic roof was erected upon it. Aerial imagery from September 2011 confirms that the erection of a large, full-width conservatory structure with a plastic roof had by then taken place. This is confirmed by a photograph taken on 18 January 2013 from a higher level rear window in the appeal property. Other photographs from 2013, 2014 and 2015 are also supplied.

10. It seems to be clear that a very sizeable conservatory was substantially completed more than four years before the notice was served. The appellant maintains and is adamant that the only changes made have been to the roof of the conservatory, while the rest of the structure has remained untouched. The first change in 2013 was a replacement plastic roof with an overhang at the rear as evident on aerial imagery from June 2015. The second change was the construction of the solid roof in May 2017. It is this operation which appears to have triggered the complaints.
11. The Council's site visit photographs from 11 May 2017 principally show builders erecting steel support structures to accommodate the new solid roof. They go around and over the retained walls and windows of the conservatory. If the whole conservatory had been constructed as new at this time, it would be very odd to find windows in place before such a substantial roof. Such a solid roof is likely to have appeared to neighbours bigger, more prominent and more permanent than the wood and perspex roof it replaced and may have led them to believe that an entirely new extension had been built.
12. The Building Regulations final certificate dated 30 August 2017 further confirms the appellant's version of events. It is based on an initial notice dated 3 March 2017 described as "New roof structure over the existing rear conservatory and associated works".
13. Next, there is serious confusion as to what is meant by "associated patio." According to the Oxford Dictionary of English Second Edition, Revised, a patio is a paved outdoor area adjoining a house. There is an outdoor paved area in the back garden below the level of and next to the conservatory. Rather, the Council considered that the patio is the base wall and floor surface of the conservatory. This may once have been a patio but as soon as the conservatory was placed on top, it ceased to be one. It could then be described as an associated plinth or base. The term "associated patio" is therefore insufficiently clear and in any event if the Council had meant to say the associated plinth or base, it was in all probability already constructed as a separate (rather than associated) building operation more than four years before the notice was issued.
14. The upshot of all this is that on the balance of the evidence currently available to me the enforcement notice:
 - a) Fails to describe or otherwise identify in clear terms the single-storey rear extension it is concerned with;
 - b) Should, in any event, have described the breach more correctly as "The erection of a new roof with roof lights over an existing single-storey rear conservatory", if indeed the Council is concerned about the second (conservatory-style) rear extension as seems most likely;

- c) Should have omitted the phrase “associated patio to the rear of the premises” entirely; and
 - d) Should have included specific requirements to reflect the amended breach of planning control set out in (b) above or a more general requirement to restore the land to its condition before that breach took place.
15. Had the notice been issued on the basis described in paragraph 14 above, I cannot be sure that the reasons for issuing it would have been identical and it could have had a significant bearing on the content of the appeal evidence from both sides. The appellant may well have wished to formally consider additional grounds of appeal. More generally, the corrections needed to the notice would also be very significant and the variations to the requirements would have been wholesale and perhaps unexpected.
16. Against this background, I am not satisfied that I could use my powers under section 176(1) of the 1990 Act as amended to correct and vary the notice without causing injustice to the appellant or the local planning authority. Consequently, I find that the enforcement notice is invalid and will be quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered. This does not prevent the local planning authority from issuing a further enforcement notice having taken account of the above and if it is expedient to do so. Furthermore, if information comes to light which directly and obviously conflicts with my interpretation of events, the local planning authority would be at liberty to enforce against the rear conservatory and the associated base or plinth on which it stands.

Andrew Dale

INSPECTOR