



Appeal Decision

Site visit made on 8 August 2019

by Simon Hand MA

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

Decision date: 21 August 2019

Appeal Ref: APP/E5900/C/18/3210294

Land at 51 Clinton Road, London, E3 4QY

- 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 Mrs E Butt against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The enforcement notice, numbered ENF/17/00058, was issued on 20 July 2018.
 - The breach of planning control as alleged in the notice is without planning permission:
1) The unauthorised erection of a rear extension at ground floor. 2) The erection of side infill extension not in accordance with approved drawings 3902 Rev C (Council ref: PA/16/02489) and 16060/4 (Council ref: PA/16/03492).
 - The requirements of the notice are 1) Remove the unauthorised side/rear extension erected to the property and all resultant debris; and 2) Amend the development such that is in accordance with either of the approved plans under planning refs PA/16/02489 (shown in Appendix 2 Plan F) or PA/16/03492 (shown in Appendix 2 Plan G); and 3) Make good any damage to the building caused by compliance with steps 1) and 2) above, and remove all resultant debris from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) 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.

Background to the Appeal

2. No 51 lies in the Clinton Road conservation area and is a typical Victorian mid-terrace dwelling, with a 2 storey rear outrigger that extended across roughly 2/3rds of the plot width and which contained a kitchen at ground floor. This left a relatively narrow passage down the side of the kitchen to provide light and a door to the dining room. No 53, is a mirror image. A plastic roof covered the side passage to no 51 and extended across the full width of the rear of the house. In October 2016 planning permission (PA/16/02489) was granted for a side/rear extension that partially infilled the side passage and removed the plastic roof. In January 2017 another planning permission was granted (PA/16/03492) for a larger side/rear extension which completely filled the side passage, so that the rear of the house filled the full width of the plot. The plans also showed the same extension for the neighbour at No 53, which would leave the back of both properties looking the same.

3. On the same date in 2017 planning permission (PA/16/03494) was refused for a larger side/rear extension at no 51, which would have added a further rear extension across the full width of the house, extending, for the first time, the rear wall of the kitchen further into the back garden. This was refused because of the excessive depth, which failed to respect the building lines, harmed the character and appearance of the terrace and the conservation area. Later in 2017 an application for an LDC for a rear extension was refused. This would have extended into the garden as in the refused 03494 but would have been narrower.
4. When the works to implement 03492 were begun a large full width conservatory was added to the back of the house, of roughly the same size as the refused extension in 03494. An application to regularise the situation was refused in June 2018, for essentially the same reasons as 03494 was refused. In July the enforcement notice was issued.
5. Although the enforcement notice is headed "*without planning permission the creation of a basement and the erection of a rear extension*", there is no mention of the basement in the allegation itself, which is restricted to the rear extension and the side infill extension. I am satisfied therefore the basement is not included within the scope of the notice. The Council explain in their statement their issue is with the rear extension (the full width conservatory), the side infill extension is only included because it has not been built in accordance with the approved plans (either 02489, or more likely, 03492). I shall treat the ground (a) appeal as for the rear full width conservatory.

The Planning Status of the Conservatory

6. The appellant appears to be labouring under the misapprehension that because the 'rear extension' is actually a conservatory, it is not an extension at all. This is clearly not the case. Conservatories may be treated differently from a bricks and mortar structure under the building regulations regime but that is irrelevant as far as planning is concerned. The conservatory is clearly development, no argument has been made that it is not, and so requires planning permission. Whether the Council chose to call it an extension or a conservatory is neither here nor there, it extends the house, and in planning terms it is reasonable to call it an extension.

Estoppel

7. In his ground (a) arguments the appellant says that plans of the conservatory were sent to the Council, who at no point suggested they were not permitted development. Works began on the conservatory in good faith. For that reason planning permission should be granted. The Council have treated this as an estoppel argument, that their silence could be construed as approval and so they are estopped from issuing the notice. This does not fall within any of the grounds of challenge but is a free-standing attack on the validity of the notice.
8. In March 2017 the Council advised that the ongoing works did not seem to be in accordance with the plans, and later e-mails warned against further works and suggested planning permission be obtained. There is an exchange of e-mails with the appellant's agent later in August 2017, where the Council suggest the conservatory requires planning permission. The agent responds that it is permitted development and provides scale drawings. There is a meeting on site and I do not know what happened there but the Council say

the agent explained a small, temporary conservatory would be erected that was permitted development. The next e-mail from the Council asks when will the conservatory be completed. It seems works began shortly after that in November 2017.

9. In this case it seems no advice was ever given that the full width conservatory was permitted development, but even if it was, as the Council point out, informal advice from an officer (which this would seem to have been) cannot later prevent the issue of an enforcement notice if it is found the development does require planning permission. This is a well known aspect of planning law and requires no further elucidation here. No application was made for a formal decision as to whether planning permission was required or not and the Council are not estopped from issuing the notice, which is not therefore invalid.

The Appeal on Ground (b)

10. This ground is that the matters alleged in the notice have not occurred. As noted above the basement is not included within the scope of the notice and I shall not deal with it further.
11. The rear infill extension has clearly not been built in accordance with 02489, but it is equally clear the appellant was not intending to implement this smaller extension, and the infill should have looked like that in 03492. I agree the internal re-arrangements of the kitchen and utility do not amount to development and can be ignored. The infill extension would have been subsumed into the larger kitchen and the new full width rear wall would have had full width bi-fold doors across it. Now, because these full width bi-fold doors have been incorporated into the new conservatory, a rear wall has been created across the back of the infill extension and a pair of double doors put into the back of the kitchen to allow access to the conservatory. These changes are significant and it is clear to me the rear infill extension has not been built in accordance with the plans for 03492.
12. Obviously, the conservatory has been built – the ground floor rear extension as it is described in the notice - so the matters alleged have happened and the appeal on ground (b) fails.

The Appeal on Ground (c)

13. This ground is that planning permission exists for the alleged development. The appellant does not mention the conservatory in the ground (c) argument and the Council refer mainly to the estoppel argument. Nevertheless I shall consider the conservatory on the basis of the evidence I have. Because the house is in a conservation area, a rear extension can extend beyond the original rear wall of the house by up to 3m in the case of a terraced property, (Schedule 2 Part 1 Class A.1(f) of the General Permitted Development (England) Order 2015 refers).
14. The Council's officer in their report states that the original rear wall of the property, before the works were begun, was stepped. The dining room wall, referred to above, forms one rear wall, and the kitchen wall forms another. Clearly, the total length of extensions from the rear wall of the dining room exceeds 3m, so the conservatory as a whole is not permitted development. However, the officer's report also says the kitchen rear wall is not original, as planning permission was granted in 1992 for a single storey rear extension, so

the whole conservatory is likely to be more than 3m from the 'original' rear wall of the house. This is not refuted by the appellant. Consequently, the conservatory is not permitted development. The side extension has not been constructed in accordance with the plans of either planning permission and so is also not lawful. The appeal on ground (c) fails.

The Appeal on Ground (a)

15. The appellant's sole argument on ground (a) is that the conservatory is permitted development. This is a ground (c) argument and is not the case as discussed above. The enforcement notice does not contain any reasons for issuing the notice other than that it is expedient to do so, however, reasons are given in the officer's report and these are similar to those given for refusing the regularisation application and the LDC application. The Council argue that extending beyond the building line disrupts the uniformity of the backs of the houses which are an important part of the character of the conservation area.
16. I note the backs of the houses are not easily seen from public vantage points and are even well hidden from the park behind due to a thick tree screen and high rear walls but nevertheless they are in full view from many windows in the backs of houses in Clinton Road. As I saw on my site visit, there would appear to be very little variation to the rear of the properties on this side of the road, which exhibit a similar degree of uniformity as the front does. The survival of original rear building lines is, in my experience, quite unusual, and is clearly an important feature of the properties and of the conservation area.
17. I note that an extension was allowed at No 88 Clinton Road, but the Council explain this utilised a former rear scullery that seems to have been in place for many years, most likely since before 1948, the relevant date for determining what is 'original' in the GPDO. This does not set a precedent to allow further extensions beyond the building line.
18. In my view, extending beyond the well established rear building line, especially with such a large extension that fills the full width of the garden looks out of place and harms the surviving historic integrity of the conservation area. This is contrary to policies 24 and 27 of the Tower Hamlets local plan, which seek to conserve the historic environment and support place sensitive design. I shall dismiss the appeal on all grounds and uphold the notice.

Simon Hand

Inspector