



Appeal Decision

by Katie Peerless Dip Arch RIBA

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

Decision date: 13 September 2019

Appeal Ref: APP/G5750/C/17/3184083

10 Alfred Road, Stratford, London E15 1RJ

- 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 Herjit Kataria against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, ref. 17/00291/ENFC, was issued on 25 August 2017.
 - The breach of planning control alleged in the notice is the erection of an extension.
 - The requirements of the notice are to: 1. Demolish the extension (as shown edged blue on the plan attached to the notice, and as shown edged in yellow on the photograph attached to the notice at Appendix 1). 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
 - This decision supersedes that issued on 2 August 2018. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Main Issue

2. I consider the main issue in this case is whether the extension benefits from planning permission granted by the provisions of Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

Site and surroundings

3. The appeal property is a terrace house, originally of two-storeys, to which various alterations were carried out and subsequently enforced against by the Council. These consisted of a roof extension and a single storey rear extension. An enforcement notice relating to the roof extension was upheld at appeal at the same time as the original Decision against this appeal was issued.
4. The subject of this appeal is a rear extension which, at the time the enforcement notice was issued, included a boiler room. The boiler room has now been demolished but when it was combined with the length of the rest of the additions to the rear, this resulted in a total length of about 7.5m when measured from the main rear wall of the house (i.e. the rear wall of the 2 storey outrigger).

Reasons

5. The appellant argues that the rear extension is development permitted under the provisions of Class A of Part 1 to Schedule 2 of the GPDO which permits the enlargement, improvement or other alteration of a dwellinghouse.
6. Up until 30 May 2019, paragraph A.1(g) of Class A allowed rear single storey extensions provided that, in the case of a non-detached dwelling which is not on article 2(3) land nor on a site of special scientific interest, the extension would not extend beyond the original rear wall of the house by more than 6 metres or exceed 4 metres in height.
7. However, the development permitted by A.1(g) is subject to conditions and of particular relevance to this case is paragraph A4 – (1) which states:
'The following conditions apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).'
8. Paragraph A.1(f) limits the depth of a rear extension on a terraced house such as the appeal property to a maximum of 3 metres from the original rear wall. It has been suggested on drawing 8266/P01 submitted with the appeal documents, submitted with the appeal that there was a 3m single storey addition attached to the 2 storey outrigger which was original feature of the house. The implication is that this forms the point from which the new addition should be measured for the purposes of the GPDO.
9. If it is proposed to build an extension under Part 1, Class A, following the partial demolition of the original dwellinghouse, the part to be demolished should be considered as a part of the original dwelling. However, the plan 8266/P01 does not provide unambiguous evidence that, in this case, the previous addition was an original feature – and the appellant has submitted no other evidence to make that case on the balance of probabilities.
10. Moreover, even if there was a former single storey extension that was part of the original, the addition subject of the appeal represents an additional 4.7m beyond the rear point of any existing single storey extension, because of the 1.7m boiler room that was attached to it, as shown on drawing 8266/P02, the photographs attached to the Council's Statement of Case and on the photograph attached to the Enforcement Notice. Therefore, any permission granted by the GPDO would be covered by paragraph A4 – (1) and is consequently subject to the additional conditions (2) – (15).
11. These include a number of matters relevant to this case. Firstly, the developer is required to submit details of the proposed extension to the local planning authority (LPA) together with the addresses of any adjoining premises¹. The LPA must then inform the adjoining owners and occupiers of the proposal and, if there are any objections, prior approval from the LPA for the development is required². I note that this point was raised by a neighbouring occupier who objects to the development.
12. When prior approval is required, the LPA must take any representations from neighbouring occupiers into account and consider the the impact of the proposal on the amenity of all the adjoining premises, whether or not they have made representations³.

¹ Condition A4(2)

² Condition A4(7)

³ Condition A4(9)

13. The development must not begin until the LPA has informed the applicant that prior approval is not required or has granted that prior approval or until 42 days from the date of submission of the information has passed without a response from the LPA⁴.
14. In this case, the information required by condition A4(2) was not submitted by the appellant before the extension was erected and the Council has not been able to carry out its duties in respect of any requirement for prior approval. Consequently, the development does not benefit from any planning permission granted by paragraph A.1(g) of the GPDO and is therefore a breach of planning control.
15. Even though the extension may now be within permitted development limits that makes no difference to an appeal on ground (c) and, in any event, it is not possible to obtain planning permission through the GPDO in this way as the conditions have not been complied with and there has been no consideration of whether prior approval was required. The appeal on ground (c) consequently fails.

Conclusions

16. For the reasons given above I consider that the appeal should not succeed.

Katie Peerless

Inspector

⁴ Condition A4(10)