
Appeal Decision

Site visit made on 11 September 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 17 September 2019

Appeal Ref: APP/G5750/C/18/3213383

Land South of 80 Neville Road, London E7 9QX

- 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 Eldon McDonald against an enforcement notice issued by the London Borough of Newham.
 - The enforcement notice, reference 16/01199/ENFC, was issued on 7 August 2018.
 - The breach of planning control as alleged in the notice is 'the extension of a building'.
 - The requirements of the notice are as follows:
 1. Demolish the extension (as shown in the approximate location edged blue on the plan attached and as shown edged yellow 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 3 months
 - The appeal is proceeding on grounds (b), (c), (d) and (f) as set out in section 174(2) 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 Act as amended have lapsed.
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Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal building forms a single storey extension to a pre-existing two-storey outbuilding located to the rear of Nos 80 and 80A, on the south side of Neville Road, Forest Gate. This is not within a conservation area and there are no affected listed buildings nearby. The appeal extension is on the east side of the outbuilding and is constructed from timber, grey blockwork, barbed wire and corrugated metal. It is approximately 1m higher than the original boundary wall and is 2.5m in depth and around 4m in length.
3. To the west, Neville Road joins Upton Lane, the A114, and to the rear it backs on to No 61 Plashet Road which forms the B165. To the north-west lies West Ham Park and Sports Ground. Access to this backland site is via a narrow alleyway between Nos 80/80A and 82/84 Neville Road. There is a metal fence and bolted gate entrance to the alleyway. The surrounding area is characterised by similar two-storey terraced and other dwellings.
4. The larger two-storey outbuilding is used as a workshop. From aerial imagery the Council has concluded that it has been in position since at least 2013 and is, therefore, lawful for planning purposes. However, other aerial imagery has led the Council to conclude that the small extension the subject of this appeal, which has been added to the eastern side of the outbuilding has been constructed within the last 4 years and, therefore, constitutes unauthorised development.

The appeal on ground (b)

5. To succeed on this ground, it must be shown that what is alleged in the notice has not occurred as a matter of fact. The merits of the case do not fall to be considered. Clearly the small extension, which has been added to the eastern side of the larger two-storey outbuilding, has in fact been built. It is evident for all to see, protruding most noticeably against the brick boundary wall.

6. It has been enforced against by the LPA and I saw it during the course of my site visit. Furthermore there are photographs submitted by the Council to show what has been built. Despite the point made by the appellant, the Council is not obliged to '*provide photographic evidence demonstrating the extension to be unlawful*'. But it can produce photographic evidence to support its arguments under this ground of appeal

7. In section E (b) of the Appeal Form, it is stated that '*the extension referred to has been in existence since purchase in 1979*'. However, this misses the point in relation to an appeal under ground (b). It is not a question of when it might have been built. What must be assessed under ground (b) is whether or not it has been built at all. It is evident that what is alleged in the notice: the small extension to the east of the larger two-storey outbuilding at the property, has indeed been built and there can be no denying that this has occurred as a matter of fact.

8. It follows, therefore, that the appeal cannot succeed on ground (b). However, I have taken the appellant's arguments forward as part of the ground (d) appeal where the onus is upon him to show that the small extension to the larger building has been in place for a four year period prior to the issuing of the notice.

The appeal on ground (c)

9. To be successful on this ground the onus is on the appellant to show that there has not been a breach of planning control. Usually this would be because there might be a planning permission in place for the works carried out, or that one is not required because, for example, the works constitute permitted development. Again the merits of the case do not fall to be considered under this ground and, neither is the question of when it might have been built, directly relevant.

10. In Section E (c) of the Appeal form the appellant sets out the same argument about the extension having been in existence since 1979 and again refers to the LPA's failure to provide photographic evidence. The onus for providing such evidence does not lie with the LPA and the appellant has not provided any photographs or other evidence to show that the extension to the larger lawful outbuilding was present in 1979. Even if such a photograph exists it would be a factor relating to a ground (d) appeal, as opposed to this ground (c) argument.

11. Clearly there is no planning permission in place for the small appeal extension which has been attached to the east side of the larger two-storey outbuilding. The larger outbuilding itself is lawful for planning purposes and this has been accepted by the Council. The smaller appeal extension, on the other hand, does not have planning permission. Furthermore it does not constitute permitted development under the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

12. It is evident, therefore, that the erection of this extension constitutes a breach of planning control. The appellant has failed to demonstrate that this is not the case and so the appeal must also fail on ground (c).

The appeal on ground (d)

13. In order to be immune from enforcement action the small appeal extension (not the larger outbuilding to which it is attached) must have been constructed on or before 7 August 2014. That is, four years or more prior to the notice being issued. The onus is again on the appellant who must provide clear and unambiguous evidence that this is the case. The appellant contends that the extension was built more than 10 years ago and that the LPA is '*unable to state or establish that the extension is a recent occurrence*'.

14. However, from the evidence provided it seems clear to me that the LPA has established that the smaller extension could not have been in place four years before the notice was issued. The evidence is in the form of aerial imagery showing that in July 2013 and June 2015 the smaller appeal extension was not in place. The main larger outbuilding was clearly in place in July 2013 and it may be the case that the appellant is referring to this building being there since 1979. Two further aerial photographs dated April 2017 and August 2018 clearly show the original outbuilding, first with a partial extension in place without a roof and then the extension seemingly as built.

15. There is no clear and unambiguous evidence that the timber, grey blockwork, barbed wire and corrugated metal extension which is shown in Appendix 1 to the notice and which I saw on site, had been built 4 years or more prior to the enforcement notice being issued. I conclude, therefore, that this structure was not immune from enforcement action and the appeal must also fail on ground (d).

The appeal on ground (f)

16. An appeal on this ground must be made on the basis that the steps required to comply with the notice are excessive and that lesser steps would overcome the objections. The appellant considers that demolition is disproportionate having regard to the circumstances and in particular to the fact that '*the extension has stood without issue for in excess of 40 years*'.

17. The demolition only relates to the smaller extended part of the outbuilding which is the subject of the notice. I do not consider that the steps required exceed what is necessary to overcome the objections. The Council has issued the notice because of its poor quality design, disproportionate bulk, substandard materials and unfinished appearance.

18. I agree with their conclusions about its harmful physical impact in this part of the Borough. Basically the appeal extension is an 'eyesore' and I do not consider that lesser steps would overcome the objections. In any case the appellant has not suggested any lesser steps and I cannot consider the merits of the proposal under ground (f). I conclude, therefore, that the appeal should also fail on ground (f).

Other Matters

19. In reaching my conclusions I have taken into account all of the submissions made by the Council, the appellant and an interested party. However, none of these carries sufficient weight to alter my conclusion on any of the grounds pleaded. Nor is any other factor of such significance so as to change my decision.

Formal Decision

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

Anthony J Wharton

Inspector