The Planning Inspectorate

Appeal Decision

Site visit made on 4 July 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 September 2019

Appeal Ref: APP/G5750/C/18/3209156
55 Chesterford Road, London E12 6LD

- 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 Samad Khan against an enforcement notice issued by the Council of the London Borough of Newham
- The enforcement notice was issued on 13 July 2018.
- The breach of planning control as alleged in the notice is:
  The erection of a single storey rear extension.
- The requirements of the notice are:
  1. Demolish the single storey rear extension (as shown in the approximate position edged blue on the attached plan and as shown edged yellow on the photograph attached 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 was initially made on grounds (a), (b), (c) and (d) 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.

Costs Application: A partial application for costs has been made by the Council against Mr Samad Khan. This is the subject of a separate decision.

Decision

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

Matters of clarification

2. On the submitted appeal form, dated 12/08/2018, in Section E (Grounds and Facts) boxes (a), (b), (c) and (d) have been ticked. Ground (a) has lapsed because the relevant fee was not paid. The appellant was given additional time to submit the grounds of appeal and on 4 December 2018 confirmed that these were grounds (c) and (d). It is on this basis that I have dealt with the appeal. An appeal on ground (b), as initially pleaded, would in any case have failed since the breach of control as alleged in the notice has occurred as a matter of fact.

3. The initial site visit in April 2019 had to be postponed because of the unavailability of the appellant. This was rearranged for 4 July 2019. However, again the visit had to be postponed due to the appellant's unavailability. It was rearranged for 11 September 2019. A few days prior to that date the appellant had contacted the Planning Inspectorate Case Officer (CO) to indicate that he had difficulty arranging access on that date. The appellant was urged by the CO to find someone to be present on that date since the visit would not be postponed.

4. On 11 September 2019 I visited the site but again no one was present to allow access. However, there is no dispute that the UPVC conservatory structure is in place and there is clear photographic evidence to indicate its appearance. In any case the merits of the case do not fall to be considered since the grounds of appeal are now restricted to (c) and (d). Under both of these grounds the onus is upon the appellant to make his case. I have, therefore dealt with the appeal on the basis of the written representations and I am satisfied that, in doing so, no injustice will be caused.

5. In response (by e-mail dated 16 September 2019) to the CO's invitation for comment on the Council's costs application, the appellant referred to an e-mail to the Council relating to another prior approval application for a smaller extension. The appellant indicated that he had not received a reply. However, this is not a matter which I can consider, either in relation to a different scheme being put forward, or the fact that the Council did not reply. Nor can I deal with any late costs application.

Background information

6. The appeal building is a two-storey terraced dwelling house located on the north side of Chesterford Road which lies to the south west of Little Ilford Park. To the north and south (on the opposite side of the railway line) the area is characterised by residential developments of a similar age and style to the houses in Chesterford Road. The site has no specific designation is not in a conservation area.

7. The dwelling has been extended in the past by the addition of a rear extension 3.2m deep, 4.8m wide and 3m high. The 'rear extension' which is the subject of the notice is a UPVC conservatory and has been constructed across the full 4.8m width of the front of the earlier extension and attached to the previous extension. The conservatory is 3.5m in depth and 2.5m high. In April 2013 the Council had served an enforcement notice against another extension in the same location as this appeal conservatory. This was appealed and the appeal (APP/G5750/C/13/2198901) was dismissed on 8 April 2014. The notice was complied with, the unauthorised structure was removed and the enforcement case was closed on 30 June 2015.

8. On 4 November 2015 a prior approval householder application for an extension was submitted. This was refused on 4 December 2015. On 4 January 2016 a revised prior approval householder application was submitted and refused on 18 February 2016. The two applications were refused because they did not comply with the conditions, limitations or restrictions relating to development permitted by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) and exceeded the limits set out in paragraph A.1(b).

9. The UPVC conservatory appeal building was then constructed on the same footprint as the previously demolished unauthorised extension. On 4 December 2017 the appellant submitted a retrospective planning application to retain the unauthorised structure and this too was refused permission on 24 January 2018. Subsequently the enforcement notice, the subject of this appeal, was issued on 13 July 2018.

The appeal on ground (c)

10. To be successful on this ground it must be shown that, either there is a planning permission in place for the UPVC conservatory extension, or that one is not required because the works constitute permitted development. Clearly there is no planning permission in place for the works. The appellant applied retrospectively to retain the appeal UPVC conservatory and the Council refused the application.

11. The appellant states that there has not been a breach of planning control and that *'the structure is lawful under Permitted Development Planning rules'*. To be lawful under the GPDO, the extension must be considered against the limitations, conditions

and restrictions of Schedule 2, Part 1, Class A (*enlargement, improvement or alteration* of a dwellinghouse).

12. Development is not permitted by Class A if, amongst other things, *'the enlarged part of the house would have a single storey and, (i) extend beyond the rear wall of the original dwellinghouse by more than 6 metres in the case of a detached dwellinghouse or 3m in the case of any other dwellinghouse'.*

13. In this case the previous extension had already extended 3.2m from the rear of the original dwelling and the UPVC conservatory extension extends this further. Thus the extension does not comply with, and is not permitted by, Class A (f) of the GPDO. The Council also contends that the UPVC materials used for the extension do not comply with the condition which requires materials used to be of a similar appearance. However, under condition A.3(a) the materials used in the construction of a conservatory are specifically excluded from having to be of similar appearance (or materials) to those used in the construction of the existing dwellinghouse. I do not accept the Council's argument therefore in respect of this part of their case.

14. However, although finding in the appellant's favour on this point, it does not alter the fact that the extension does not comply with the above restriction relating to the depth of the extension. Thus the UPVC extension does not constitute permitted development and because there is no planning permission in place there has been a breach of planning control. It follows that the appeal must fail on ground (c).

The appeal on ground (d)

15. To be successful on this ground the onus is upon the appellant to conclusively show that the UPVC conservatory extension, the subject of this notice, was completed 4 years prior to the issue of the notice. That means it must be shown to have been substantially completed on or before 13 July 2014.

16. Having considered all of the written representations in this case including photographic submissions and having referred above to the planning history, it is difficult to understand how the appellant can categorically state that '*4 yrs of lawful period has passed since the structure was erected'.*

17. There is clear photographic evidence that the extension, which was subject to the previous appeal was demolished. This photograph is dated 26 May 2015 and there is no sign of the UPVC appeal conservatory. The UPVC conservatory is clearly in place now and again there is photographic evidence that this is the case. It could not, therefore have possibly been in place for the required 4 year period and the appeal must also fail, therefore on ground (d). Furthermore, the appellant failed to provide any other evidence in relation to his appeal on ground (d).

Other Matters

18. In reaching my conclusions on the grounds of appeal I have taken into account all of the submissions made including the full planning history, the statements and the photographic evidence. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

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

Anthony J Wharton Inspector