



Appeal Decision

Site visit made on 29 August 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 8 October 2019

Appeal Ref: APP/G5750/C/18/3213191

49 Wolsey Avenue, East Ham, London E6 6AH

- 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 Iberar Ali against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 7 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a roof extension, and without planning permission the erection of a ground floor rear extension.
 - The requirements of the notice are to:
 - (1) Demolish the ground floor rear extension (as shown in the approximate location edged in blue on the attached plan, and as shown edged in blue on the photograph attached at Appendix 1).
 - (2) Demolish the roof extension (as shown edged in yellow on the photograph attached at Appendix 1).
 - (3) On completion of steps 1 and 2 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is twelve months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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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Formal decision

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

Background

2. Prior to the enforcement notice being issued two successful applications proposing householder development at the site were made. In January 2017, by way of the Prior Notification procedure, the Council confirmed that prior approval would not be required for the erection of both a rear extension and a side extension (ref 17/00155/PREHH). Then, in March 2017, the Council issued a Lawful Development Certificate (LDC) for proposed roof extensions and alterations (ref 17/00117/CLP).
3. The dwelling was subsequently extended with a single-storey addition which wraps around the rear of the dwelling. This development, in combining the two separate single-storey additions granted approval as a single entity, with the side addition extending beyond the flank wall of the dwelling's original

tunnel-back, meant that it fell outside the parameters of Schedule 2, Part 1, Class A.1 (j) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). A subsequent attempt to secure planning permission for what the Council refers to as a 'single storey infill extension', was unsuccessful with the Council refusing planning permission (ref 18/00375/HH).

4. Similarly, the roof extensions were built at variance with the drawings approved for the LDC. This is accepted by the appellant in his grounds of appeal. Although I have not been provided with copies of these drawings I must assume that the LDC proposal is consistent with the provisos of Schedule 2, Part 1, Class B of the GPDO. In contrast, at my site visit, I noted that the dormer extensions' rear walls drop to the roof's eaves thereby appearing as an extension to the dwelling's rear wall. This conflicts with Class B, Condition B.2(bb), and the dormers are not permitted development. Accordingly, they require the benefit of planning permission.
5. Following on from the above the enforcement notice, which covers both elements, was issued.

The Appeal on ground (f)

6. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
7. It is necessary to first establish what the Council is seeking to achieve by the notice. The enforcement notice refers to 'unneighbourly development' and 'an unacceptable sense of overbearing that the neighbouring properties receive as a result of the development on site.' However, the steps required by the notice, stipulating the complete removal of the extensions and restoration of the property to its original form, indicate that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act. In such circumstances what must be considered is whether the requirements exceed what is necessary to achieve that objective.
8. The appellant proposes that the rear dormers be altered to comply with the approved LDC drawings and the single storey extension be modified. New drawings have been supplied in an attempt to illustrate certain proposed changes but the annotations explaining the intended alterations lack clarity. Phrases such as 'dormers to be set back', 'dormers to be set away from chimney/parapet' and 'side extension to be altered and built in line with the existing out-rigger' are less than precise as to what is being proposed. Accordingly, the appellant has not put forward a sufficiently articulated scheme of remedial works that would provide a remedy to the breach that has occurred.
9. It does, though, remain open for the appellant to commence negotiations with the Council as to a remedial scheme of works and, in the circumstances, any modifications to this end must remain a matter between the two main parties.

10. The appeal on ground (f) therefore fails.

The Appeal on Ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a 12 month period is too short and it should be extended to 15 months.

12. I consider that the stated compliance period of 12 months is reasonable in the circumstances. Given the appellant's apparent willingness to make modifications to the extensions, this would be an adequate period for cogent plans to be prepared and would provide the appellant with the opportunity to explore alternative proposals with the Council. The appeal on ground (g) therefore fails accordingly.

Conclusion

13. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should not succeed.

Timothy C King

INSPECTOR