



Appeal Decisions

Site visit made on 8 October 2019

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 10 October 2019

Appeal A Ref: APP/G5750/C/19/3222741

Appeal B Ref: APP/G5750/C/19/3222742

46 Knox Road, Forest Gate, London, E7 9HP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Ms Vilma Alexandra Collins and Appeal B by Ms R L Collins against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00396/ENFC, was issued on 18 January 2019.
 - The breach of planning control as alleged in the notice is:
 - i) the erection of an extension to an outbuilding; and
 - ii) the undertaking of alterations to an outbuilding comprising the removal of cladding, the replacement, modification and insertion of windows and doors, the application of render and the installation of a new roof;both representing a breach of Condition 7 attached to planning permission 15/02485/VARDWG (dated 10.11.15) which states that "7. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 [or amendment or re-enactment thereof] no extension, enlargement or other alteration of the outbuilding on the land shall be carried out without the prior written approval of the Local Planning Authority to whom a planning application must be made."
 - The requirements of the notice are:
 - 1 Demolish the extension to the outbuilding (in the approximate location shown edged in green on the plan attached to the notice, and as shown edged in yellow on the photograph attached at Appendix 1 to the notice.
 - 2 Return the outbuilding to its form prior to the unauthorised works (as shown in the photographs attached at appendix 2 of the notice by reverting those modifications undertaken to the outbuilding which comprise removal of the cladding, the replacement, modification and insertion of windows and doors, the application of render and the installation of a new roof.
 - 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 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision:** Appeals allowed, notice quashed and planning permission granted.
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Procedural Matter

1. The allegation is in two parts. One part refers to the erection of an extension to the outbuilding and the second to alterations to the outbuilding. At the site inspection the appellant was clearly of the view that the notice only applied to the extension to the outbuilding and referred to the area edged yellow on the

photo attached to the notice. The Council's case officer agreed with this interpretation of the notice.

2. However, the appellant and the Case Officer are clearly wrong as it is evident that from a simple reading of the notice, both the extension to the outbuilding and the outbuilding are subject to the allegation and to the requirements of the notice. I have therefore considered the allegation as it is written.

The site and relevant planning history

3. The outbuilding is of two-storey construction with a single-storey lean-to on one side. It has been in situ for many years. It is sited at the rear of the garden of No 46, an end of terrace two-storey dwelling. The works alleged in the notice have been carried out but works are still required to complete the renovation/repair of the building. I noted at the site inspection that works to the interior of the two-storey part of the outbuilding were at an advanced stage with plastered walls and sanitary ware had been installed, but the single-storey extension had not yet been roofed.
4. The allegation specifically ties the development to a breach of condition 7 attached to planning permission 15/02485/VARDWG. That permission varies Condition 1 (Drawings) attached to planning permission 13/01933/EXTANT dated 17/10/2013 to remove the demolition and existing outbuilding in approved plans. This permits the development of a two-storey dwelling between 40 and 46 Knox Road in accordance with drawings 612/003/812B (proposed plans), revised 10/11/15; and SC/H/KNOX/01 (existing plans of outbuilding). The reason given on the decision notice for the imposition of Condition 7 was to protect the amenity of the locality. Condition 8 restricts the use of the outbuilding for storage which was also imposed for the same reason.
5. Following the dismissal of an unsuccessful appeal against a refusal of an application to extend the original outbuilding in March 2018 (APP/G5750/D/17/3192373) the appellants advised the Council of proposed works to the outbuilding indicating that these represented renovations not requiring planning permission. The appellants were advised to obtain a certificate of lawfulness to determine whether any part would constitute development (requiring planning permission) but chose not to do so. I note that the appellants have not appealed on ground (c).
6. Condition 7 of planning permission 15/02485/VARDWG is clear in that the prior written approval of the Council is required to any extension, enlargement or other alteration to the outbuilding (although the reference to the making of a planning application is unusual), and that the breach has occurred.

The appeal on ground (a)

7. The main issue is the effect of the works on the character and appearance of the area and on the living conditions of local residents.
8. The original building appeared to have been in a poor state of repair with boarded up windows and plastic cladding at upper levels. The original single storey lean-to structure had timber walls now replaced with blockwork which gives the lean-to a more solidly built appearance. The footprint of the lean-to was accepted by the Council's case officer at the site inspection to be the same as originally constructed. The mass of the building is largely similar to the original.

9. The building has been rendered although this has not been completed and the original corrugated roof has been replaced with grey fibre glass. The roof is not visible from public viewpoints. No new openings have been created on the first floor and the timber window frames have been replaced with uPVC. On the ground floor, a wider door opening has been installed together with a window on the single storey element. I note that the Council considers that these changes alter the character of the outbuilding making it visually akin to a building that would serve a residential function.
10. The Council in its statement refers to 'an already oversized building' but such an approach appears to ignore the fact that the outbuilding in its original state was lawful.
11. Bearing in mind that the building has existed for many years, and more recently in a dilapidated state, and that the extent of the building in terms of its size, height and massing has not changed, the works that have been carried out are beneficial to the appearance of the building and, subject to the completion of the works, will enhance the appearance of the building further. Although brick is the primary external material of buildings in the area, there are examples of buildings being painted or clad. Subject to an appropriate condition to secure the satisfactory completion of the works the development causes no harm to the character and appearance of the area.
12. Representations made express concerns about overlooking from the upper floor windows over private gardens. However, the building is located well away from other dwellings in an established residential area where mutual overlooking of rear gardens and windows exist. I am therefore satisfied that the work would not lead to an unacceptable degree of harm to the living conditions of neighbouring occupiers. I note also one neighbour considers that the work has led to an improvement to the building.
13. Further concern has been expressed that the appellants are seeking to create separate self-contained primary living accommodation. As the use of the building is restricted by Condition 8 of planning permission 15/02485/VARDWG to storage, any change to such a use would require permission.
14. I therefore conclude that the development would accord with relevant policies of The London Plan and of the Newham Local Plan 2018, in particular Policy SP8 in respect of ensuring neighbourly development.

Conclusion

15. For the reasons given above I conclude that the appeals should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Condition

16. The purpose of the condition below is to require the appellant to comply with a strict timetable for dealing with the external appearance of the outbuilding which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place.

The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Decisions

17. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an extension to an outbuilding and the undertaking of alterations to an outbuilding comprising the removal of cladding, the replacement, modification and insertion of windows and doors, the application of render and the installation of a new roof on land at 46 Knox Road, Forest Gate, London, E7 9HP referred to in the notice, subject to the following condition:

The single-storey part of the outbuilding hereby permitted shall be demolished to ground level and all equipment and materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a scheme for the completion of external works to the whole of the outbuilding, including the single-storey part and proposals for its roof, and for the completion of the render and its painting or for the use of other external facing materials shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

P N Jarratt

Inspector