
Appeal Decision

Site visit made on 27 November 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/G5750/C/19/3222353

23 Partridge Close, West Beckton, London E16 3TB

- 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 Piotr Strawa against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 19/00105/ENFNOT, was issued on 11 January 2019.
 - The breach of planning control as alleged in the notice is: without planning permission the erection of an extension to a garage.
 - The requirements of the notice are to demolish the garage extension (as shown edged in blue on the attached plan, and as shown edged yellow on the photograph attached at Appendix 1), and then remove all materials and debris from the site.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (e), (f) and (g) of the Town and Country Planning Act 1990 (the Act) as amended.
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Decision

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

Preliminary Matters

2. The appellant initially submitted two appeals against the same enforcement notice – one on ground (b), the other under grounds (e), (f) and (g). After seeking clarification with the appellant, but getting no response, the Planning Inspectorate closed the separate appeal on ground (b) but continued to process the appeal under the current appeal reference.
3. The extension I saw on my site visit clearly differed from the one shown in the photograph attached as Appendix 1 to the enforcement notice (the 'notice'). In its report, the Council refers to the roof and remaining side of the structure being constructed from scrap timber and metal. On my visit, the roof had been removed and the side had been faced or replaced with vertical timber boarding. In addition, an extra side (the rear of the extension) had been erected using vertical timber boarding with a timber bolted door inserted.

The appeal on ground (e)

4. Ground (e) is that copies of the notice were not served as required by section 172 of the Act. The appellant alleges he got the notice from his mortgage company, not from 'Newham' (presumably meaning the Council).
5. The Act requires a copy of the enforcement notice to be served on the owner/occupiers and other persons having an interest in the land, including

mortgagees, tenants and any other persons the Council consider are materially affected. I must therefore consider whether there was good service of the notice, as set out in the Act.

6. The notice lists the parties on whom it was served, namely the appellant at the appeal property, on the appellant at another address in Beckton, on any owners/occupiers of the appeal property and on The Mortgage Works.
7. Section 329 of the Act prescribes a number of methods by which a notice may be served. The Council has not said that it has served a planning contravention notice or used its powers under section 330 of the Act to obtain information about the address of the owner. Neither party mentions if the notice was, or was not, served at the property by affixing it conspicuously to some object on the land, as provided for in section 329(2). Furthermore, the Council has not said that it served the notice by sending it in a registered letter or by recorded delivery service.
8. The Council's report seems to serve as the appeal statement. However, in light of the appellant's claim they have not supplemented it with any final comments on ground (e) or provided any evidence of how the notice was served. Therefore, the evidence available does not show that there was good service of the notice on the appellant.
9. Nevertheless, the appellant was able to appeal and make written representations, even though he said he was only made aware of the notice the week before he appealed. Because of this I find he was not substantially prejudiced. In which case the appeal on ground (e) must fail.

The appeal on ground (b)

10. Ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. There appears to be some discrepancy as to what was there previously. On the 'closed' appeal for just ground (b) the appellant says there was 'a fence at the rear of the garage with corrugated plastic sheets as roof (very poor condition)'. However, on the appeal form against grounds (e), (f) and (g) the appellant says there was already 'wooden fences', but makes no mention of the corrugated plastic roof.
11. The appellant has not submitted any substantive evidence to confirm this fact. I was not able to ascertain on my site visit what may, or may not, have been there 5 years ago.
12. In the absence of any substantive evidence, I cannot conclude that the breach has not occurred. Therefore, the appeal on ground (b) must fail.

The appeal on ground (f)

13. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. To determine this, it is essential to first understand the purpose of the notice. Section 173(4) provides that the purpose of the notice shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case, the purpose of the notice is to remedy the breach of planning control by demolishing the extension to the garage and removing all materials and debris from the site.

14. The appellant's proposed alternative is to revert to what was at the rear of the garage when he bought the property. But as already discussed for ground (b) above, this cannot be reliably ascertained.
15. Therefore, I find that no clear alternative or lesser steps have been put forward that would remedy the breach. Therefore, the appeal on ground (f) must fail.

The appeal on ground (g)

16. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The appellant says that the time period is too short because he was only made aware of the notice the week before he appealed.
17. However, from the date of this decision if the appeal is dismissed, the appellant would still have 1 month to demolish the garage and remove materials and debris from the site.
18. At the time the notice was issued, the extension had 1 side and a flat roof. It was a lightweight structure that would be straightforward to dismantle and the materials and debris relatively easy to remove without needing to employ or hire specialist equipment or labour. Therefore, I consider 1 month would be ample time to dismantle the garage extension and remove the materials and debris from the site.
19. Since the notice was issued, the appellant has altered the extension and removed the roof and instead installed a second side to the structure. Both sides are vertical timber boarding. As the structure is still of a lightweight nature, I consider the 1 month time period for compliance would still be appropriate and reasonable. The appellant has not suggested an alternative compliance period.
20. Therefore, the appeal on ground (g) must fail.

Overall conclusion

21. For the reasons given above, and having regard to all the matters raised, the appeal fails on all appealed grounds, namely (b), (e), (f) and (g). Therefore, I conclude that the appeal should be dismissed and the enforcement notice upheld.

K Stephens
INSPECTOR