



Appeal Decisions

Site visit made on 17 December 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Appeal A Ref: APP/G5750/C/19/3222321

Appeal B Ref: APP/G5750/C/19/3222323

Land at 422 Romford Road, Forest Gate, London E7 8DF

- The appeals are 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 Mohamed Vali Patel (Appeal A) and Mrs Aysha Mohamed Patel (Appeal B) against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice 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.
- The requirements of the notice are: 1. Demolish the extension; 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (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 appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Appeals A and B

1. The appeal site contains a semi-detached dwelling. The dwelling is in a row of four pairs of semi-detached properties of similar age, architectural style and external materials, which together make up the Romford Road Conservation Area (CA).
2. In 2017, the Council granted planning permission for the erection of a single storey side extension to the dwelling, linking with a previous rear extension¹. The permitted side extension was erected. However, the extension in the enforcement notice has also subsequently been erected alongside.
3. The design and materials of the extension, together with those of other alterations and extensions to properties in the CA, are relevant to whether planning permission should be granted. As there is no ground (a) appeal, I cannot take such matters into account.

Ground (c) appeals

4. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. The burden is on the appellants to

¹ Council Ref: 16/03777/HH.

show why their appeals should succeed, the relevant test to be applied to the evidence being on the balance of probability.

5. In July 1998, the Council made a Direction under Article 4 (2) of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) in relation to the CA. The effect of the Article 4 Direction was to require express planning permission to be obtained for development otherwise permitted by the GPDO Article 3, Schedule 2, Part 1 (development within the curtilage of a dwelling), including the enlargement, improvement or other alteration of a dwelling in Class A, where any part of the works fronted a highway and; erecting a porch in Class D outside an external door fronting a highway. In February 2018, the Council made a replacement Article 4 Direction under the 2015 version of the GPDO, containing similar restrictions. Permitted development rights for works within the curtilage of dwellings in the CA have therefore been restricted by an Article 4 Direction since 1998.
6. The extension has enlarged the dwelling and it has an elevation facing Romford Road. Therefore, it would not be unreasonable to conclude that the extension 'fronts' that road. Romford Road is a highway for the purposes of the GPDO. Consequently, the extension cannot have been permitted by the GPDO Article 3, Schedule 2, Part 1 Class A, as its erection is restricted by the Article 4 Direction. In any event, although the extension was erected outside an external door at the side of the dwelling, no firm evidence was provided to show that the size limitations on a porch set out in Part 1 Class D had not been exceeded.
7. Therefore, based on the available evidence and on the balance of probability I conclude that express planning permission should have been obtained for the extension, in the absence of which it is in breach of planning control. Accordingly, the ground (c) appeals fail.

Ground (d) appeals

8. The ground of appeal is that at the date the notice was issued, it was too late to take enforcement action. On this ground also, the burden rests with the appellants to show why their appeals should succeed and the relevant test of the evidence is on the balance of probability.
9. According to the appellants, the extension was erected in January 2018. Therefore, the extension was substantially completed less than four years before the date of the notice and having regard to s171B (1) of the Act, it was not too late to take enforcement action.
10. As a result, the ground (d) appeals also fail.

Ground (f) appeals

11. The ground of appeal is that the requirements of the notice are excessive for their purpose.
12. At s173, the Act sets out the two purposes which the notice can seek to achieve in its requirements. The first, (s173 (4)(a)) is to remedy the breach of planning control that has occurred. The second, (s173 (4)(b)) is to remedy any injury to amenity caused by the breach.

13. The Council did not specify which of the above purposes that it had sought to achieve by issuing the notice. However, the notice requires the extension to be demolished, as opposed to it being altered or modified in some specified way. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the site to its condition before the breach took place.
14. Installation of a screen fence would not remedy the breach, as the extension would remain in situ. Therefore, varying the notice to require such a fence to be erected would not fulfil the purpose of restoring the site to its condition before the breach took place. The appellants did not suggest any other lesser steps that might remedy the breach stopping short of demolishing the extension and, in my view, there are none.
15. Consequently, the requirements of the notice do not exceed what is necessary for the purpose of remedying the breach and the ground (f) appeals also fail.

Ground (g) appeals

16. The ground of appeal is that the time for complying with the notice requirements is unreasonably short.
17. The appellants' desire for added security and safety in terms of access to and egress from the dwelling is entirely understandable, having regard to their personal circumstances. I can sympathise with those circumstances. Nevertheless, twelve months affords ample time in which to have the extension, which is of modest size, demolished and to make alternative security arrangements, such as installing additional lockable doors in the dwelling. The specified period would also enable the remedial works to be undertaken in a way which minimised disruption to the daily life of occupiers of the dwelling.
18. Therefore, the time for compliance is reasonable and the ground (g) appeals also fail.

Conclusion

19. For the reasons given above I consider that the appeals should not succeed.

Formal Decisions

20. Appeals A and B are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR