The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th January 2020

Appeal Ref: APP/U5930/C/19/3223396
Ground-floor flat, 62 Palmerston Road, Walthamstow, London E17 6PG

- The appeal is made by Ansar Mahmood under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 080843) issued by the Council of the London Borough of Waltham Forest on 15 January 2019.
- The breach of planning control alleged in the notice is "the erection of a timber framed single storey rear and side wrap around canopy extension".
- The requirements of the notice are as follows: -
  "i) Demolish the unauthorised timber framed single storey rear and side wrap around canopy extension.
  ii) Make good any damage caused to the rear elevation of the flat and side wall of the outrigger as a result of the above requirement
  iii) Remove from the premises all resultant debris and detritus as a result of the requirements outlined i) & ii)".
- The period for compliance with these requirements is two months.
- Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) of section 174(2) and the application for planning permission deemed to be made by section 177(5) have both lapsed. The appeal is therefore proceeding only on the grounds set out in section 174(2)(b), (f) and (g).

Decision

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

Reasons for the decision

Ground (b)

2. Although the appeal has been made on ground (b) (that the alleged breach of planning control has not occurred as a matter of fact), the representations put forward in support of this ground mainly relate to ground (d) (that it is too late to take enforcement action).

3. There has been some confusion about the development to which the notice relates. This has been caused by the Council referring to it sometimes simply as 'the extension', rather than as 'the canopy extension', which has led to it being confused with the extension to which the canopy extension was attached.

4. The breach of planning control that has been alleged is clearly identified, however, in paragraph 3 of the notice as "the erection of a timber framed single storey rear and side wrap around canopy extension". This clearly

distinguishes it from the brick-built single-storey rear and side wrap-around extension to which the canopy extension was attached and which is not the subject of the notice. Both extensions can be seen in the images supplied by the neighbour at No 60.

5. The requirements of the notice are clear, since they require the demolition of the "timber framed single storey rear and side wrap around canopy extension", followed by the making good of any damage and the clearance of the site. By the time of my visit, the required demolition work had already taken place.

6. The appellant acknowledges in paragraph 5.2 of his appeal statement that the notice relates to the canopy that he built in 2018. He was not in my opinion in any reasonable doubt about the allegation and the requirements, in spite of the element of confusion.

7. I have therefore concluded that the appeal cannot succeed on ground (b), since the breach identified in the notice had occurred as a matter of fact, or on ground (d), because it was not too late to take enforcement action in relation to this breach.

Ground (f)

8. Under ground (f), the appellant maintains that the canopy would be acceptable if only part of it were removed and parts of it were painted. These are arguments about the planning merits of the canopy which I do not consider should be taken into account following the lapse of the ground (a) appeal and the deemed planning application.

9. The purpose of an appeal on ground (f) is to maintain that the requirements of the notice exceed what is necessary to remedy the breach of planning control and any injury to amenity caused by it. In this instance, the requirements of the notice are ones that are normally stipulated in a case where building operations have been carried out in breach of planning control. Their purpose is to remedy the breach by restoring the land to its condition before the breach took place.

10. The appeal on ground (f) has therefore failed.

Ground (g)

11. The circumstances have changed since the appellant made his representations under ground (g), since by the time of my visit the canopy had been demolished. The two-month period specified in the notice is a reasonable time to allow for the remaining requirements of the notice to be complied with. The appeal on ground (g) has therefore failed.

D.A.Hainsworth

INSPECTOR