
Appeal Decision

Site visit made on 16 December 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/F5540/C/19/3227887
43 Victoria Avenue, Hounslow, TW3 3SU

- 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 Mrs Patel against an enforcement notice issued by London Borough of Hounslow.
 - The enforcement notice was issued on 11 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an added second single storey rear canopy extension.
 - The requirements of the notice are
 - i. Demolish the added second single storey rear canopy extension.
 - ii. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended
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Decision

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

Procedural Matter

2. The appellant has appealed on ground (f) only. However, the appellant has also referred to the canopy existing on site since 2012 which is evidence that should be properly considered as if an appeal had been made under s174(2)(d) of the 1990 Act. As the Council has also addressed this matter, I do consider that I can address this 'hidden' ground of appeal without prejudice to either party.

The appeal under ground (d)

3. This ground alleges that at the time of the issue of the enforcement notice, no enforcement action could be taken in respect of any breach of planning control. With this ground, the onus is on the appellant to make out their case. The description of the breach in the enforcement notice is "the added second single storey rear canopy extension". There is an existing single storey rear brick extension which is not part of the notice and the open sided canopy structure with poles and a perspex roof is attached to it, is the subject of the notice.
4. Section 171B(1) of the Act states that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, the appellant needs to show, on the balance of probability, that the canopy attacked in the enforcement notice was substantially complete by at least four years prior to the notice being issued. As such, the material date is 10 April 2015.

5. Whilst, the appellant has referred to having a rear fixed canopy structure constructed of a metal frame and roof for over a decade, she also refers to a major renovation in 2012 with new metal poles and clear perspex and an increase in the footprint from the original structure. The appellant has also referred to the "original canopy/extension/awning" being signed off by the Council's planning officer in spring 2012. However, no documentation has been supplied by the appellant to support this assertion. The Council has, though, supplied a planning history of the appeal site which includes planning permission being granted in 2011 for a new roof including increase in ridge height, rear and side roof extensions and roof lights. There is no evidence to show that the existing canopy structure has ever received planning permission or was included in the 2011 permission.
6. Moreover, the photograph referred to by the appellant taken in 2012 shows a canopy which is significantly different in terms of size and structure and use of materials to what is there now which is the subject of the notice. The 2012 photograph cannot therefore be relied upon to show that the current canopy has been there for the required four years.
7. In contrast, the Council has provided aerial photographs taken in 2013, 2015 and September 2016. Only the last photograph taken in September 2016 shows a structure which extends across the width of the appeal dwelling which appears to resemble the current structure. There is no evidence to show that the canopy was there any earlier than this. The date of the last aerial photograph is of course less than four years from the date of the issue of the notice.
8. Taking all of the above in the round, the appellant has not established, on a balance of probabilities, that the existing canopy structure was substantially completed for the required four years. As such, the Council was able to take enforcement action. The ground (d) appeal therefore fails.

The appeal under ground (f)

9. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. With regard to ground (f), it is essential to understand the purpose of the notice. Under s173(4)(a) of the 1990 Act, one of those purposes is to remedy the breach of planning control by restoring the land to its condition before the breach took place.
10. In the notice, the matters which constitute the breach of control is "the erection of an added single storey rear canopy extension." The steps required to be taken are to demolish the said canopy structure and to remove any materials and debris following the demolition. The purpose of the notice is therefore clearly to remedy the breach of planning control by restoring the land back to its condition before the breach took place. As the steps require no more and no less, they are not excessive requirements.
11. The appellant has asked that she be able to reduce the footprint of the structure back to what it was originally, or to have around 1.5 metres of an extension to cover the back gate area as she is predisposed to skin cancer and would be housebound without shade. Whilst I note these personal circumstances, in the absence of a ground (a) appeal which would have

considered the planning merits of the canopy or any alternative proposal, these matters are beyond the scope of this appeal which is brought on limited grounds. Also, such a lesser scheme would not remedy the breach of planning control. In view of the above, the ground (f) appeal must fail.

Conclusion

12. I therefore conclude that the appeal should not succeed and the enforcement notice should be upheld.

E. Griffin

INSPECTOR