



Appeal Decision

Site visit made on 14 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 29 February 2020

Appeal Ref: APP/L5810/C/19/3226672

3 Ashdale Close, Twickenham TW2 7BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nibras Briam against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 11 March 2019.
- The breach of planning control as alleged in the notice is the unauthorised construction of a rear dormer extension.
- The requirements of the notice are:
 - i Remove the extension and return the Property to its condition prior to the breach of planning control; and
 - ii Remove from the Property all materials, rubble and debris resulting from the compliance with step 5(i) above; or
 - iii Alter the extension to comply with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The appeal on ground (e)

1. The main issue to consider is whether the appellant has shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, he has been substantially prejudiced.
2. The Council has provided a copy of a certificate of service for the enforcement notice, signed and dated 7th March 2019, confirming that the enforcement notice was served by recorded delivery on: (i) the owner/occupier of 3 Ashdale Close, Twickenham, TW2 7BE; (ii) the appellant [at a different address] and (iii) Barclays Bank. It is explained that the notice was not served on the other person named by the appellant as co-owner of the property, as investigations revealed that the named person is not registered as being a proprietor or having an interest in the land¹. I am satisfied from the Council's evidence that the notice has been properly served.

¹ Official Copy of Register of Title: HM Land Registry provided.

3. In any event, section 176(5) of the 1990 Act as amended provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
4. As the appellant was aware of the notice prior to the date that it would have taken effect, he has not been prevented from exercising his right to appeal. Under these circumstances, I consider that the appellant has not been substantially prejudiced. Therefore, the appeal on ground (e) fails.

The appeal on grounds (b) and (c)

5. The appellant indicated on his appeal form that he wished to appeal on ground (b), which would be that the matters stated in the notice have not occurred as a matter of fact. However, it is clear from the submissions that the appellant acknowledges a dormer extension has been built at the property. The argument advanced under ground (b) is that there has been no breach of planning control. This is more appropriately considered under ground (c).
6. To succeed on ground (c) the appellant must show, on the balance of probability, that the matters alleged do not constitute a breach of planning control. The appellant indicates that the dormer has been erected in compliance with 'permitted development' rights.
7. Under Article 3 and Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) deemed planning permission is granted for development consisting of additions to the roof of a dwellinghouse, subject to certain conditions and limitations. The Council states that the extension has resulted in the loss of the eaves of the original roof in breach of condition B.2(b)(i)(aa). Hence the extension, as built, is not permitted development. In addition, it is argued that the development has been finished with a smooth painted render that is of a materially different appearance to the original dwellinghouse. It is, therefore, in breach of condition B.2(a). The Council's analysis is consistent with what I saw on site and is not disputed by the appellant.
8. The appellant points out that he has sought to alter the loft to make it compliant with the relevant conditions of the GDPO, but there is no evidence that this has been achieved. I saw that other properties in the vicinity have similar extensions, as the appellant points out. However, there is no deemed planning application that would enable me to take this consideration into account. This argument is not relevant to the grounds of appeal pleaded.
9. To conclude on this matter, a dormer extension has been built at the property as a matter of fact. The development, as constructed, does not fall within the parameters of development permitted under Article 3 and Schedule 2, Part 1 Class B of the GPDO, hence, express planning permission would be required. There is no evidence of any such permission. Therefore, the matters stated in the notice constitute a breach of planning control and the appeal on ground (c) must fail.

The appeal on ground (d)

10. In order to succeed on ground (d), the appellant must show on the balance of probability that the matters alleged were substantially completed four years prior to the issue of the notice, such that it is too late for the Council to take action. The enforcement notice was issued 11th March 2019 and, therefore, the relevant date is 11 March 2015.
11. The appellant refers to an email dated 24 January 2019 in which the Council stated the development would soon be immune from enforcement action. However, the appellant has not provided any information to support his claim that the development was substantially complete on or before 11 March 2015.
12. The Council has sought to refute the appellant's argument through aerial photographs, dated 2015 and 2016, which apparently shows the property before and after the extension was built. This supports the Council's opinion that the extension was built between these dates. In the absence of any substantive evidence to the contrary, I find that it has not been shown that the development was substantially completed four years prior to the issue of the notice. Therefore, the appeal on ground (d) must fail.

The appeal on grounds (f) and (g)

13. The appellant has indicated on the appeal form that he wishes to appeal on ground (f), which is that the steps required by the notice to be taken exceed what is necessary to remedy the breach. However, the argument advanced is that the property has tenants and a longer compliance period is required. This is more appropriately considered under ground (g), that the time given for compliance falls short of what should reasonably be allowed. A period of 24 months is requested to evict the tenants and complete the works.
14. The tenants' rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, must be considered. Article 8 deals with the right to respect for family life and the home. Dismissal of this appeal may require the tenants to vacate their current home, with no immediate alternative accommodation. This would represent an interference with their home and family life. However, the conflict with national and local planning policy which would arise, in particular the fact that the development would be incompatible with the surrounding development, is considerable. I am satisfied that the legitimate aim of conforming with planning policy cannot be achieved by any means which are less interfering with the tenants' rights.
15. I appreciate that this decision will lead to stress and uncertainty for the tenants. Consequently, I accept the appellant's request that the time for compliance be extended. However, there is no information to support the claim that eviction would take 12-18 months, such as a long-term tenancy agreement. The works themselves are relatively minor and it would not be usual for such works to take three to six months as argued.
16. I consider that six months is an adequate length of time for the tenants to find somewhere else to live and for the works to be completed. As such, the interference with home and family life is proportionate and necessary in the circumstances and would not result in a violation of their rights under Article 8. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

17. For the reasons given above I conclude that a reasonable period for compliance would be six months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

18. The appeal is allowed on ground (g) only. It is directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Debbie Moore

Inspector