



Appeal Decision

Site visit made on 17 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal Ref: APP/C5690//C/19/3236196

13A Winterbourne Road, London SE6 4UG

- 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 Ms Jordan OBrien against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice, numbered 16/00372/ENF, was issued on 23 July 2019.
 - The breach of planning control as alleged in the notice is the construction of a single storey extension at the rear of 13A Winterbourne Road, London SE6 4UG.
 - The requirements of the notice are:
 - (1) Remove the ground floor extension from the property identified in photo 1 and photo 2.
 - (2) Remove all materials, debris, waste and equipment resulting from the compliance with the above requirement of the notice from the land and its premises.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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 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.
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of 4 months and the substitution of 6 months as the period for compliance. Subject to the variation, the enforcement notice is upheld.

Reasons - Appeal on ground (f)

2. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the extension is removed, and specific steps are taken to restore the land. The purpose of the notice is to remedy the breach of planning control.
3. It is the appellant's case that the enforcement notice requires the demolition of all the extension. They have provided evidence in the form of aerial photographs and plans previously submitted to the Council under planning application reference DC/16/099630. These indicate that there was a previous extension to the rear of the property. This extension was purportedly built by previous owners of the property.

4. The scope of the notice is limited by s173(4)(a) and (b). Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. I have not been provided with any specified steps that the appellant considers would be more appropriate. It is therefore necessary to consider the previous condition of the land and whether there are any alternative lesser steps that would still achieve the purpose of the notice.
5. The undated aerial photograph provided by the appellant shows a previous flat roof wrap around single storey extension to the rear of the property. The roof treatments seem to be different, so it is not clear whether this was a single or two joined extensions. The plans that have been provided in the appellants statement give an indication of the size and layout of the original property. However, there is no evidence of when this extension was constructed, or indeed whether it was lawful. Moreover, there is no evidence to determine how the current extension was constructed. In particular, whether the older extension has been incorporated in such a manner that it is now capable of being separated, or whether it was demolished as part of the later works. I have no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision.
6. Drawing the above points together, On the evidence I have before me, I find that the remedial nature of the notice requires full compliance and the requirements are not excessive. Consequently, the appeal on ground (f) therefore fails.

Ground (g)

7. It is necessary to consider whether the compliance period of four months is too short. The appellant has not suggested an alternative timescale that is considered to be more reasonable.
8. I am mindful that the building is currently residentially occupied, and the works required to comply with the notice are likely to cause disturbance. Whilst, I have no information about the personal circumstances of the occupiers, I consider that sufficient time needs to be given to allow the occupant to find suitable alternative accommodation.
9. The appellant also indicates that it is their intention to submit a further planning application to try to overcome the Council's concerns.
10. Accordingly, I consider that a period of 6 months would be a more reasonable timescale for the requirements of the notice to be complied with. The appeal on ground (g) therefore succeeds in this regard.

Conclusion

11. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Hilary Orr

INSPECTOR