
Appeal Decision

Site Inspection on 9 March 2020

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 16th March 2020

Appeal Reference: APP/T0355/C/19/3234518

Site at: 91 Kentons Lane, Windsor SL4 4JH

- The appeal is made by Mr Dajinder Goraya under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by the Royal Borough of Windsor and Maidenhead.
- The council's reference is 17/50230/ENF.
- The notice is dated 4 July 2019.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of a single storey rear extension and attached lean to".
- The requirements of the notice are:
 - I Amend the single storey rear extension so that it complies with Schedule 2, Part 1, Class A The Town and Country Planning (General Permitted Development) (England) Order 2015 and remove the lean to.
OR
 - ii Remove the single storey rear extension and lean to.
AND
 - iii Remove all associated materials from the land following compliance with either step (i) or step (ii).
- The period for compliance is three calendar months.
- The appeal is proceeding on ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal does not succeed.

Procedural Matters

1. When the appeal was initially lodged, ground (a) of Section 174(2) was pleaded (the "tick-box" for ground (a) was ticked on the appeal form). Later, in an email to the Planning Inspectorate dated 23 October 2019, the appellant's agent stated that there was a mistake in the grounds of appeal and asked that the appeal should proceed on ground (c). Ground (a) also lapsed anyway, as the fee payable for the application deemed to have been paid under Section 177(5) of the 1990 Act was not paid.

Ground (c)

2. Under this ground of appeal it is claimed that what is alleged in the enforcement notice does not constitute a breach of planning control. The basis of the appellant's case is that planning permission has been granted for the development enforced against.

3. It is necessary at this point to refer to some recent planning history. Two applications for planning permission (references 19/00036 and 19/00943) were evidently refused by the council in 2019. Then a part retrospective permission (reference 19/01961) was granted in October 2019 for a single storey rear extension at the appeal property, and it is apparently this permission which the appellant's agent relies on in arguing that the extension has been permitted.
4. I have used the word "apparently" in the previous sentence because no proper statement of case has been submitted by the appellant's agent (Mr Syed Naqvi). The appellant's case as put by his agent consists only of brief, unspecific statements in emails to the Planning Inspectorate.¹ At 1443 hours on 23 October 2019 Mr Naqvi stated in an email: "Planning permission has already been granted recently". The Inspectorate's administrative case officer replied at 1457 hours warning Mr Naqvi: "We have not received the supporting facts. In order to accept your appeal we do require a statement in support of each ground pleaded". Mr Naqvi's response at 1622 hours was simply: "Planning has already been granted to this site". No specific details have been supplied in support of the appellant's case, and I am left to assume that the planning permission referred to by the agent is the permission issued in October 2019.
5. The appellant and his agent seem to have a mistaken belief about the October 2019 permission, because what was permitted is not the same as what has been built. The most obvious difference is that the structure subject to the enforcement notice extends for the whole width of the house, with its north-eastern side wall standing on or virtually on the boundary with 89 Kentons Lane, whereas the permitted scheme would be much less wide and would leave a gap of about 1.5 metres between the extension and the side boundary with number 89. The difference in width means that the floor area and volume of the existing extension are materially different from what was permitted by the October 2019 permission.
6. Other differences include the presence of the lean-to structure which is attached partly to the south-west side of the rear extension and partly to the main house. As the council point out in their statement, the October 2019 planning permission does not cover this structure. There is no evidence about when it was built, but it is included in the enforcement notice and the appellant has not put forward any case for excluding it, so I assume that it was built together with the rest of the extension. When added to the rest of the extension, it makes the width of the structure as a whole much more than half the width of the original dwellinghouse and so is one reason why the development was not permitted under the General Permitted Development Order.²
7. Among the submitted documents is a note signed by two people who state that they live at 89 Kentons Lane and that they have no objection to the extension being built at number 91. This statement is dated 1 August 2017, so it apparently relates to one of the earlier applications listed in the council's statement. In any case it does not help the appellant as it has no bearing on the ground (c) appeal. As explained in paragraph 1 above, there is no ground (a) appeal or deemed application, so issues such as whether there are any objections to the development or whether planning permission should be granted are outside the scope of the appeal.

¹ The emails also dealt with the change from ground (a) to ground (c). I quote here the parts of the emails dealing with the ground (c) case and the Inspectorate's warning that a statement providing facts was required.

² This refers to the limit specified in paragraph A.1(j)(iii) of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

8. I conclude that the development enforced against is unauthorised, and constituted a breach of planning control. Therefore the appeal on ground (c) fails.

Formal Decision

9. I dismiss the appeal. The enforcement notice is upheld.

G F Self

Inspector