



Appeal Decision

Site visit made on 14 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 17 April 2020

Appeal Ref: APP/U5360/C/19/3228000

Land at 34 Powell Road, Hackney, London E5 8DJ

- 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 Mr Brian Barnett against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 25 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear/side extension.
 - The requirements of the notice are:
 1. Demolish the single storey rear/side extension;
 2. Upon completion of the above steps remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 (three) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and would fall to be considered.
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Procedural Matters

1. There is considerable planning history attached to this case, leading up to the Council issuing the enforcement notice. Despite a series of e-mail exchanges between the two main parties, as supplied by the appellant, it is obvious that there is significant ground between them. Unfortunately, in the event, it has apparently not proved possible to resolve matters by other means.
2. It seems to me from the evidence provided that the Prior Approval works, considered permitted development by the Council in May 2018 (ref 2017/4105), which allowed for two staggered, but separate, single-storey extensions to the side and at the rear of the dwelling was subsequently implemented. The narrower extension would have extended the dwelling, at ground floor level, up to the boundary with No 36 but, in the event, this element was only built to approximately half the depth and width permitted.
3. In May 2018 the appellant also secured a lawful development certificate for a 'single storey shed' (ref 2018/0915) which it was shown would effectively square-off the two extensions at their rear.
4. The development was then built out, but contrary to the approved plans which showed a small gap between these extensions. Instead, the two extensions were joined.

5. From my reading of the representations, although matters from both parties' evidence is less than precise, the Council then issued the enforcement notice requiring for the demolition of a 'single storey rear/side extension'. Following this, in the short period between the notice's service and its appeal, physical alterations were apparently then carried out to separate the two extensions, so as to accord with that previously approved by the Council, resulting in a narrow gap between. From my site visit it appeared that there is also a small gap between sections of the additions built towards the boundary with No 36, which seemingly defines the separate approvals for this part of the development.
6. In effect, although as mentioned, this appears not to have been the position when the enforcement notice was issued, there now exists three separate extensions providing considerable additional depth to the dwelling. However, although central to this was the successful Prior Approval application the Council, in its representations during the life of the appeal, now indicates that the application was wrongly assessed and considers that, as approval was actually required, the decision was issued in error. It is not my remit to revisit this application, and I do not therefore intend to explore this in any detail, although I note that the appellant has made further representations in this regard.
7. Nonetheless, it seems to me that these are two separate extensions, the wider rear addition and the narrower one being an addition to the side of the dwelling, but also projecting rearwards. From the evidence available to me, the Council has not fully explained its revised stance and, as such, I am not convinced that the development fails to meet the various relevant provisos.
8. The Council also cites case law in the form of *Evans v SSCLG [2014] EWHC 4111 (Admin)*, where it was held that if the building operations involved in the construction of any part of an existing building are unlawful, any permitted development rights granted in connection with the existing building do not apply. Given the appellant's reliance on the lawful development certificate issued for the 'single storey shed' this only serves to compound matters and I find the planning position at the site as not definitive.
9. The appellant has certainly contributed to the uncertainty by his approach to the site's development and the manner of its implementation. However, in such circumstances the Council needs to be precise and unambiguous in both the wording of the alleged breach and also the requirements for compliance. Here, the mere reference to a 'single storey rear/side extension' is insufficient. No diagrammatic representation of the dwelling's footprint as previously existed is provided, nor a description as to the extent of the development already permitted, nor that which was subsequently built. Instead, I note that the accompanying location plan merely shows the whole site as hatched. This does not assist matters in terms of ascertaining the exact breach of planning control.
10. Notwithstanding the Council's change of mind on the status of the Prior Approval application, as would have been the case at the time of its submission, the situation is further compounded by the Council's suggestion that I might consider varying the allegation to refer to that of a 'rear and side extension'. This was, though, essentially a matter for the Council to address when constructing the enforcement notice. I am reminded here of the judgement of *Miller Mead v MHLG [1963] 2 WLR 225* where reference was

made to a notice being hopelessly ambiguous or uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission, or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches.

11. In weighing up all the evidence provided in this case I am not convinced that the enforcement notice as issued provides the certainty necessary for it to have a reasonable chance of success. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice to provide an accurate description and to put the notice on a proper footing.
12. However, in this particular instance, I cannot be certain that no injustice would be caused if I were to make significant corrections necessary to the notice. Accordingly, I find that it is incapable of correction.
13. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, and it follows that its first requirement is similarly without precision. It is not open to me to correct the error in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so. The enforcement notice is thereby invalid and will be quashed.
14. Given my findings, neither the appeal under ground (f) as set out in s174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) fall to be considered.

Formal Decision

15. The enforcement notice is quashed for invalidity.

Timothy C King

INSPECTOR