The Planning Inspectorate

Appeal Decision

Site visit made on 11 March 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/U5930/C/19/3229632
113 Kitchener Road, Walthamstow, London E17 4LJ

- The appeal is made by James Clair under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 082270) issued by the Council of the London Borough of Waltham Forest on 26 April 2019.
- The breach of planning control alleged in the notice is the erection of a single-storey garage/side extension.
- The requirements of the notice are as follows: -
  "1) Demolish and remove the garage/side extension currently in situ (as shown in attached Photograph A);
  2) Make good any damage caused by the installation and/or removal of the garage/side extension in materials and detailing to match the existing fabric of the building; and
  3) Following compliance with Steps 1) and 2), remove from the Land all resulting materials, rubble and general detritus."
- The period for compliance with these requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(d).

Application for costs

1. The Council's application for costs against the appellant is dealt with by a separate decision.

Appeal decision

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

Reasons for the appeal decision

3. The purpose of the appeal on ground (d) is to demonstrate that when the notice was issued on 26 April 2019 it was too late to take enforcement action in respect of the development because of the lapse of time. In this instance, action cannot be taken after the end of the period of four years beginning with the date on which the building operations were "substantially completed".

4. There is no definition of the term "substantially completed" in the legislation nor in current Government guidance. The advice referred to by the Council in paragraph 2.80 of Department of the Environment Circular 10/97 is irrelevant, since the Circular was withdrawn in 2014 and the advice in this paragraph has not been replaced. I am not aware of any case law that directly assists in applying the term in the context of this particular appeal.

5. I have received several communications from neighbours who support the appeal. However, all of them relate just to the planning merits of the development and do not assist with the appeal on ground (d). Since there is no planning application before me, I am unable to consider the planning merits of the development.

6. The evidence presented under ground (d) includes mobile phone images, probably taken in March 2015, and a Google Street View image captured in May 2015. These show that in March 2015 construction work was well-advanced. By May 2015 it had not been finished externally since, although the roof joists had been installed, the development was otherwise roofless, the front entrance had no door and the top courses of bricks in the flank wall had not been laid. This evidence shows as a matter of fact that what existed here on 26 April 2015, four years before the notice was issued, was a single-storey garage or side extension that was in the final stages of construction but where there were outstanding building operations.

7. It is arguable that on 26 April 2015 the development could have functioned as a garage or extension without a front door but, because it had not been roofed over by then, it lacked a basic element of its construction without which it could not have served the purposes for which it was being built. For this reason, I have concluded that, as a matter of fact and degree, the building operations were not substantially completed four years before the date on which the notice was issued. The appeal has therefore failed.

D.A.Hainsworth

INSPECTOR