



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/N5090/C/19/3229327

30 Selvage Lane, London NW7 3SP

- 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 E Levin against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 25 April 2019.
- The breach of planning control as alleged in the notice is the construction of a single storey rear extension with associated Sukka roof not in accordance with the approved plans of 17/7142/HSE.
- The requirements of the notice are:
 1. Demolish the Sukka roof;
 2. Rebuild the roof as shown in plan SL.30.PRO.05B of planning permission reference 17/7142/HSE dated 19/01/2018.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr E Levin against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Preliminary Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellant and the Council have agreed to the appeal proceeding on this basis.
3. The property originally comprised a two-storey, semi-detached house with a hipped roof and a two-storey outrigger to its detached side. There was a small single-storey rear addition, with a mono-pitched roof, between the outrigger and the shared boundary, which is replicated across the rear of the adjoining house. In addition, there was a single-storey infill extension attached to this structure.
4. Planning permission was granted for a part single, part two-storey side and rear extension and a front porch (Ref 17/7142/HSE, dated 19 January 2018). The development, as constructed, differs from the approved plans as follows - the first floor side extension and corresponding element of the first floor rear extension has not been built; the roof has been extended by a partial hip to

gable alteration and a rear dormer (pursuant to a Lawful Development Certificate, Ref 17/1493/192); the single-storey rear extension has been constructed with a flat roof and a 'Sukka' roof light has been inserted.

5. A retrospective planning application for the rear conservatory skylight (Sukka roof) was refused by the Council (Ref 19/0466/RCU, dated 11 April 2019). A subsequent appeal was allowed (Ref APP/N5090/D/19/3229326, dated 15 August 2019).
6. There is a dispute between the parties as to whether the matters stated in the notice constitute a breach of planning control, which is a ground (c) appeal. I sought the views of the Council on this additional ground of appeal, as this was not indicated on the appeal form, and I have taken the response into account.

The appeal on ground (c)

7. In order to succeed on an appeal on ground (c), the appellant must show on the balance of probability that the matters stated in the notice do not constitute a breach of planning control. Therefore, I must consider whether "the construction of a single storey rear extension with associated Sukka roof" is a breach of planning control. As there is no dispute that the works constitute development for the purposes of Section 55(1) of the 1990 Act as amended, the starting point is an assessment of the relevant planning permissions.
8. The enforcement delegated report reproduces the planning assessment used in refusing application ref 19/0466/RCU, which was subsequently allowed on appeal. It describes the built development as follows – *"the sloping roof as proposed on the ground floor rear extension has not been built and is a flat roof of 2.8m in height to the top of the flat roof from ground level"*. Hence, the single-storey rear extension, as constructed, differs from the approved plans only insofar as the small pre-existing, mono-pitched roof that was shown on the approved plan has not been retained.
9. It is clear from the appeal decision that the rear conservatory skylight (Sukka Roof) has permission, which is accepted by the Council. The situation regarding the single-storey rear extension is less clear. Although the Inspector indicates that the appeal related solely to the skylight and no other part of the developments that have occurred, it is important that I consider what was actually approved by that decision. The formal decision states – *"planning permission is granted for a rear conservatory sky light (Sukka roof) at 30 Selva Lane, Mill Hill, London NW7 3SP in accordance with the terms of the application, Ref 19/0466/RCU dated 28 January 2019 and the plans submitted with it"*.
10. When interpreting planning permissions, the basic rule is that the permission should stand by itself, and the meaning be clear within the four corners of the document. If the permission clearly incorporates the application and plans, as in this case, and there is something which is not clear, then the application and plan may be used as aids to interpretation to define the scope of what is permitted¹.
11. The plans considered by the Inspector, as submitted with the application (SL.30.AB 01/02/03), show the single-storey rear extension as built. Despite the Inspector's comments about the extent of the application, the plans have

¹ *Slough Estates v Slough BC* (No 2) [1970] 2WLR 1187.

approval under the terms of the decision - *the application, Ref 19/0466/RCU dated 28 January 2019 and the plans submitted with it*. Therefore, the single-storey rear extension has planning permission by virtue of the Inspector's decision. It would be perverse for a situation to arise whereby the skylight has permission, but not the roof on which it sits. The skylight is dependent on the single-storey rear extension, as shown on the plans submitted with the application. Moreover, the Council has not disputed that the single-storey rear extension has approval by virtue of planning permission Ref 17/7142/HSE in any event.

12. The Council argues that the Inspector's decision post-dated the notice and, therefore, the appeal should fail as consideration should be given to the structure on the date the notice was issued. However, this is incorrect. Section 174(2)(c) is written in the present tense – that the matters stated in the notice do not constitute a breach of planning control. Hence, the date of the notice relative to the permission is irrelevant.
13. My attention is drawn to the case of *Pilkington*². This established the principle that there can be any number of planning permissions covering the same area of land, but if one is implemented making it physically impossible to implement a further permission in the accordance with the terms of that permission, then the further permission cannot be implemented. This case is not wholly relevant to the matters before me. As explained, I have found that the single-storey rear extension has permission by virtue of the Inspector's decision. I am not dealing with two permissions, one of which prevents the other from being implemented in accordance with the terms of its approval.
14. Overall, I am satisfied that the appellant has shown on the balance of probability that the matters stated in the notice do not constitute a breach of planning control.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered. The planning merits of the development are not before me, therefore, and I am unable to consider the associated comments from interested people.

Formal Decision

16. The appeal is allowed and the enforcement notice is quashed.

Debbie Moore

Inspector

² *Pilkington v SSE & Lancashire CC* [1973] 1 WLR 1527.