



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/F5540/C/19/3240640

64 Dene Avenue, Hounslow, Middlesex TW3 3AH

- 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 Ijaz Khan of Power It Up Ltd against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 9 October 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a side extension.
- The requirements of the notice are:
 - i. Demolish the side extension;
 - ii. Removal [sic] all resultant debris.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (b) of the 1990 Act 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. 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 not objected to the appeal proceeding on this basis.
2. I understand that the development was not complete at the date the notice was issued. It is contended that an enforcement notice can only be issued once a roof has been completed and so the appellant indicates that the notice is invalid. I am not directed to relevant parts of any legislation or caselaw to support this claim. Section 172 of the 1990 Act as amended states that the local planning authority may issue a notice where it appears to them (a) that there has been a breach of planning control and (b) it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The notice issued by the Council defines the alleged breach and sets out the reasons for serving the notice. Therefore, I do not consider the notice to be invalid.
3. The appellant refers to Policies CC1, CC2 and SC7 of the Local Plan (2015-2030), which are cited in the notice, arguing that they are not relevant. I am not required to make a planning assessment of the development against relevant development plan policy, as there is no ground (a) appeal and associated deemed planning application.

4. Hence, the planning merits of the proposal are not before me. Similarly, I am unable to take other considerations into account, such as the need to park a vehicle off road for security reasons, or the design ethos of the development. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
5. It is also indicated that part of the structure was already in existence and is thus immune from enforcement action. There is no evidence to support this claim and, therefore, I have not considered a further appeal on ground (d) – that, at the date when the notice was issued, no action could be taken in respect of the matters alleged.

The appeal on ground (b)

6. In order to succeed on an appeal on ground (b), the appellant must show on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
7. The appeal property is a two-storey, semi-detached house, which is located on the corner of Dene Avenue and Bulstrode Gardens. The appellant claims that the development, as built, is a detached garage and not a side extension as alleged in the notice. A photograph provided by the Council shows that a structure has been erected, which is single-storey and attached to the side of the house. Moreover, the floor plans and elevations provided by the appellant show a single-storey structure, sited to the side of the house and connected to it via a front wall. As such, the development constitutes a side extension, as alleged. The use of the building, as a garage, does not alter this fact.
8. While there appears to be an access walkway between the main house and the garage, the structure remains linked to the house. In any event, whether or not the development is detached is not relevant as the allegation simply refers to a side extension, which is what has been built. I find that the matters alleged in the notice have occurred as a matter of fact and, hence, the appeal on ground (b) must fail.

The appeal on ground (c)

9. In order to succeed on an appeal on ground (c), the appellant must show on the balance of probability that the matters alleged do not constitute a breach of planning control.
10. The appellant claims that the development falls within that permitted under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), which concerns the enlargement, improvement or other alteration of a dwellinghouse.
11. The GPDO grants deemed planning for certain types of development, subject to conditions and limitations. Under A.1 development is not permitted if – (e) *the enlarged part of the dwellinghouse would extend beyond a wall which (ii) fronts a highway and forms a side elevation of the original dwellinghouse*. As the appeal site is located on a corner plot, the side elevation of the original house fronts the highway, Bulstrode Avenue. The extension extends beyond this side elevation and hence the development is not permitted by virtue of the limitations in A.1 (e) of the GPDO.

12. The Council also refers to the limitations of A.1(j) – *the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (iii) have a width greater than half the width of the original dwellinghouse*. The Council states that the extension measures 5.48m in width whereas the original dwellinghouse has a width of 6.57m. The appellant has not provided any evidence to the contrary. Therefore, the development would not be permitted by virtue of the limitations in A.1 (j) of the GPDO either.
13. The appellant argues that the development meets Building Control requirements but this does not show that it does not constitute a breach of planning control, which is governed by separate legislation.

Conclusion

14. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

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

Debbie Moore

Inspector