
Appeal Decision

by **R Satheesan BSc PGCert MSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal Ref: APP/A5270/C/19/3242606

78 Ennismore Avenue, Greenford, Middlesex UB6 0JW

- 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 Hussein Eldebs against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 31 October 2019.
- The breach of planning control as alleged in the notice is without planning permission: construction of a rear extension on an existing extension.
- The requirements of the notice are:
 - I. Remove the unauthorised additional rear extension
 - II. Remove all resultant debris.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 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 decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Procedural Matters

1. The Appeal has only been lodged under ground (f). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (g), in so far as they have requested additional time to comply with the notice and have referred to the current Covid-19 pandemic. Both parties have been given the opportunity to comment on this and therefore, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.
2. Arguments relating to the planning merits of the development that has been undertaken can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed, and the planning merits arguments put forward in the appellant's case have played no part in my decision.
3. The appellant has requested a site visit. However, due to the current restrictions on travel as a result of the COVID-19 pandemic, I have not undertaken a site visit, but instead made a desk-based assessment to determine the current appeal, which relates to the appeal on grounds (f) and (g) only. This is considered appropriate given that there is no ground (a) appeal. I have also noted the photographs and plans supplied by the appellant

and I am therefore satisfied that I have a full appreciation of the development and that I would not have gained any more knowledge by visiting the site.

The appeal on Ground (f)

4. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
5. The appellant states that the extension could be modified by changing the roof of the extension to a sloping roof, to follow the slope of the land, and changing the materials. However, no specific details of these modifications and lesser steps have been proposed, and I am not under a duty to search for solutions. Furthermore, the appellant states that the extension is for a playroom, constructed of wood and covered by artificial turf and plants, and that both immediate next door neighbours do not object. However, given that the ground (a) appeal has lapsed, I cannot assess the planning merits of the case. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not overcome the breach of planning control and planning permission would still be required.
6. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

7. This ground of appeal is that the time given to comply with the notice is too short. Given that there is no ground (a) appeal, I must take the notice at face value. The notice identifies harm in relation to: 1) the living conditions of neighbouring occupiers, with regards to loss of light and outlook, and overshadowing; 2) the character and appearance of the area.
8. The Council has given a 3 months compliance period. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In light of Government policy regarding Covid-19 and restriction of social contact, I consider that this period needs to be prolonged by a further 3 months to obtain quotations, appoint a contractor and carry out the demolition works.
9. In my opinion 6 months would strike a more reasonable and proportionate balance in light of the current pandemic. I also note that the current situation with the pandemic is fluid and it is unclear how long restrictions associated with this will last. In this respect I note that the Council have powers to extend the compliance period if necessary.
10. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

11. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (g) succeeds to that extent.

Formal Decision

12. It is directed that the enforcement notice is varied by:

- deleting the words “three (3) months from the date this notice takes effect” within section 5 (what you are required to do) and its replacement with “six (6) months from the date this notice takes effect”.

13. Subject to the variation, the enforcement notice is upheld.

R Satheesan

INSPECTOR