



Appeal Decision

by **Richard S Jones BA (Hons), BTP, MRTPI**

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

Decision date: 25 June 2020

Appeal Ref: APP/U5930/C/19/3230400

Land at 59 Blenheim Road, Walthamstow, London, E17 6HS

- 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 Mrs Lokambikai Pathmanathan against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 082483, was issued on 8 May 2019.
 - The breaches of planning control as alleged in the notice are:
 - 1) The insertion of an access door in the first floor rear elevation;
 - 2) The erection of a rear metal external staircase and gangway, including associated railings and balustrades.
 - The requirements of the notice are:
 - 1) Demolish and remove the metal staircase and associated gangway, together with the railings and balustrades;
 - 2) Remove the door and block the doorway on the first floor rear elevation and restore the window to its original configuration;
 - 3) Remove all resulting materials, rubble and general detritus from the Land following compliance with step 1 - 2 above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. I wrote to the parties to advise that, having reviewed the representation and evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision. The parties did not object, and I am satisfied that neither has been prejudiced in my making a decision on the papers.
3. The appeal concerns a two storey, mid-terraced building with a flat roofed single storey rear extension. The property is in use as two flats, and the Council is concerned that the alleged access door, metal staircase, gangway, railings and balustrades cause harm to the living conditions of the occupiers of the neighbouring property through a loss of light, outlook and privacy. The appellant's statement is that the development provides only a fire escape from the first floor of the building.
4. The appeal was originally made on grounds (c), (d), (e) and (f); ground (b) was subsequently added. With the exception of (f), these are all legal grounds where the onus is on the appellant to make her case on the balance of probabilities.

The appeal on Ground (e)

5. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land.
6. The appellant notes that her name was misspelled on the enforcement notice, an unfortunate error which the Council has fairly apologised for. While I can understand the appellant's upset, the Council's mistake does not amount to a failure to properly serve everyone with an interest in the land – and moreover s176(5) of the Act provides that any failure to serve may be disregarded if the appellant has not been substantially prejudiced.
7. There is no dispute that the appellant was served with a copy of the notice at the correct address, and she was able to make an appeal against the notice, under her name, before it came into effect. The appellant does not claim that any other person was not served with a copy of the notice, when they ought to have been. I conclude that the appellant has not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeal on ground (e) fails.

The Appeal on Grounds (b) and (c)

8. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control.
9. The appellant's arguments under both of these grounds is that the alleged structures had become immune from enforcement action by the time that the notice was issued so there could not have been any breach of planning control. However, this is a ground (d) argument, which I have considered below.
10. For the purposes of ground (b) the appellant's argument essentially confirms that the development was in place when the enforcement notice was issued. Indeed, the photograph on the front page of the appellant's grounds of appeal document show an external staircase at the appeal site.
11. I therefore conclude, on the balance of probability, that the alleged breach of planning control comprising the insertion of an access door in the first floor rear elevation and the erection of a rear metal external staircase with associated features, has occurred. The appeal on ground (b) fails.
12. For ground (c) the appellant has not sought to argue that the matters alleged in the notice do not constitute development requiring planning permission or that those matters already benefit from a grant of planning permission. It therefore follows that the appeal on (c) also fails.

The Appeal on Ground (d)

13. An appeal under ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action. In order to succeed on ground (d), it is for the appellant to demonstrate, on the balance of probabilities, that the operational development was substantially completed four years before the date of the enforcement notice. The material date in this case is 8 May 2015¹.

¹ s171B(1) of the Town and Country Planning Act 1990

14. The appellant has provided an advice note from Square Glazing Ltd, dated 10 December 2014, which describes works comprising the supply and installation of a first-floor rear combined fire exit door and window at the appeal site. Similarly, an invoice from FH Brothers Ltd, addressed to the appellant at the appeal site, has also been provided confirming that a fire exit staircase, via first floor rear bedroom, was supplied and fitted on 15 December 2014.
15. A signed statement is also produced from the builder who carried out works in December 2014 comprising the removal of a window, opening up of a wall and the creation of a concrete base for the steps. The builder goes on to confirm that he carried out further tidying up works, following the installation of the door and staircase, before Christmas 2014. Moreover, a signed letter from Century 21 estate agency states that it was aware that the homeowner got permission from the tenants to install the staircase and fire safety door in December 2014.
16. All of the above documents are referenced and marked as exhibits in the signed affidavit provided by the appellant, which is written on oath before a solicitor and confirms that the works were completed in December 2014. The affidavit and each of the exhibits are also signed and dated by the solicitor.
17. Although the date given in the appeal form is at odds with the rest of the appellant's evidence, the contradiction is not fatal to her case because she explains on the form that the date would be confirmed by affidavits and receipts. It appears that she retrieved the contemporaneous documents after submitting the appeal and I find them to be reliable. Moreover, the affidavit, as a sworn statement, carries significant weight.
18. Further submissions and evidence have been provided by the appellant dating from 27 October 2015 to May 2017. This includes a calling card from the Council dated 16 October 2015 and correspondence from the Council dated 27 October 2015 and 27 January 2016 - all relating to a doorway and staircase at the rear of the appeal site. Although these are more recent than the above identified material date, they do not undermine the appellant's case.
19. In support of its position the Council has provided a Google Earth image, which it states shows the rear of the appeal property before the staircase was added, in June 2015. Although I agree that the staircase does not appear to be in place, I have concerns over the clarity of the photograph because of the angle it was taken and the rear elevation is shown partly in shadow. Moreover, unlike the image provided from 2018, the aerial photograph is undated other than that annotated by the Council. Being unverified, further undermines this evidence.
20. The Council has given no further evidence of its own to indicate the appellants' version of events is less than likely. I therefore find that the cumulative weight of evidence provided by the appellant clearly outweighs that provided by the Council such that on the balance of probabilities, the matters alleged in the notice were substantially completed four years before the date of the enforcement notice.
21. Consequently, at the time the notice was issued it was too late to take action against those matters. The appeal on ground (d) succeeds and the enforcement notice will be quashed.

22. In these circumstances the appeal under ground (f) does need to be considered.

Other matters

23. The appellant was told by a duty planning officer at the Council that planning permission was not required for the development – but this appears to have been informal advice which would not have prevented the Council from taking enforcement action.

24. I have also noted the concerns over the effects of the staircase on the occupant of the neighbouring property. However, my decision turns on whether it has gained immunity from enforcement action through the passage of time. In these circumstances the merits of the works do not fall within the scope of my consideration.

Richard S Jones

INSPECTOR