



Appeal Decision

Site visit made on 30 June 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Appeal Ref: APP/A5270/C/19/3227106

61 Townholm Crescent, Hanwell, London W7 2LY

- 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 Malik Saeed against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 15 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission: The erection of a canopy extension to the front of the rear outbuilding.
 - The requirements of the notice are:
 1. Remove the canopy extension to the front of the rear outbuilding.
 2. Remove all resultant debris from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The ground (b) appeal

2. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. The burden of proof in a ground (b) appeal is on the appellant. The enforcement notice alleges the erection of a canopy extension to the front of a rear outbuilding. This reflects what I saw at my site visit and the appellant's case has not been substantiated in this regard. So I consider the alleged breach of planning control has occurred and the appeal on ground (b) fails.

The ground (c) appeal

3. An appeal on ground (c) is that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In general terms, this will be because the matters which have occurred do not constitute development for the purposes of section 55 of the 1990 Act, or because the development benefits from an express grant of planning permission from the

local planning authority or a grant of planning permission pursuant to a development order¹.

4. The burden of proof in a ground (c) appeal is on the appellant. The appellant states that the structure is temporary, that it is not inside the earth or ground and that no bricks or concrete are used. At my site visit I found that the structure is constructed with a timber frame clad in plastic sheeting on its elevations and with a plastic roof. These materials are screwed together and bolted to the existing outbuilding in a permanent manner.
5. The structure formed by the above materials is nearly as tall as the existing outbuilding and has sufficient floorspace to accommodate rabbit hutches and a dog. Considering the structure's size, permanence and its physical attachment to the land via the existing outbuilding, the structure is a building as defined by section 336 of the 1990 Act and so is development for the purposes of section 55 of the same Act.
6. The appellant suggests that planning permission has been granted for the development. But there is no evidence an express grant of planning permission exists for the development identified by the notice or that the works which have been carried out are permitted development pursuant to a development order. Considering all of the above points, the appeal on ground (c) fails.

The ground (d) appeal

7. An appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. Under section 171B(1) of the 1990 Act, where there has been a breach of planning control consisting in the carrying out without planning permission of building operations no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
8. The burden of proof in a ground (d) appeal is on the appellant. The appellant has indicated the structure has existed for almost four years. But there is no evidence this is the case. Moreover, other information submitted, including by the Council, clearly indicates the structure was substantially completed less than four years ago. As such, the appeal on ground (d) fails.

The ground (a) appeal

9. The main issue in the ground (a) appeal is the effect of the development on the character and appearance of the area. The area is characterised by blocks of terraced homes with long back gardens, some of which contain outbuildings. The appeal site is no exception in this respect. It contains two single storey, white painted outbuildings. The canopy extension referred to in the notice is physically attached to the entire front elevation of the rearmost outbuilding.
10. In this location the extension is clearly seen from the upper floors of homes in the same block as the appeal site as well as over the garden fence from the adjoining property to the right when looking rearward. The extension is significant in size. It is a poorly constructed rudimentary structure, formed of poor quality materials including plastic, which bears no resemblance to the

¹ Such as The Town and Country Planning (General Permitted Development) (England) Order 2015

materials used on either of the existing outbuildings or the main dwelling. In this respect the structure is incongruous and poorly designed.

11. My attention has been drawn to structures which are said to have been built without planning permission in neighbouring gardens. But the presence of such structures is not a good enough reason to allow the appeal development before me in light of the harm identified above. Whether enforcement action against those structures is taken is entirely a matter for the Council, taking into account the provisions of section 172 of the 1990 Act.
12. I have taken into account the personal circumstances of the appellant and the benefits he identifies in relation to the extension, including in relation to his health. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. But it does not follow from the PSED that the appeal should succeed. Dismissing the appeal would mean that the appellant would be likely to have to consider alternative options for meeting his needs and there is no evidence to demonstrate the development before me is the only means by which those needs may be met. Accordingly, dismissing the ground (a) appeal is a proportionate response given the harm identified above.
13. I realise the extension may be used to house pets looked after by the appellant. But I am not satisfied there are no alternative options available to the appellant in this regard and so this makes no difference to my conclusion. I conclude the development is harmful to the character and appearance of the area. This does not comply with Policies 7.1, 7.4 and 7.6 of the London Plan 2016 (as amended) or Policies 7B and 7.4 of the Ealing Development Management Development Plan Document 2013.

Conclusion

14. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR