



Appeal Decision

Site visit made on 25 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2020

Appeal Ref: APP/F5540/C/19/3235221

2 Cardington Square, Hounslow, Middlesex TW4 6AH

- 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 Anthony Jacques against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of an added second single storey rear extension.
 - The requirements of the notice are:
 - i. *Demolish the added second single storey rear extension.*
 - ii. *Remove all resultant debris from the Land.*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) 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.
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Decision

1. The enforcement notice is quashed.

Procedural matter

2. The appellant argues that the works consist of upgrading the existing structure which was built more than 4 years ago, whilst the Council says that what has taken place is a new building, which is wider and higher than the one that previously existed.
3. Besides pursuing the appeal on ground (d), the appellant's arguments also bring into play matters relating to ground (b), that the matters alleged in the notice have not occurred. As these arguments are interrelated, I have dealt with them together under the ground (d) appeal. The Council has addressed these matters, and so no injustice arises from my dealing with them.

Appeal on ground (e) – that copies of the notice were not served as required by s.172 of the Act

4. It is undisputed that a copy of the notice was served on the owners of the site by posting it to 2 Cardington Square, the appeal site. The owners do not live there, so did not receive the notice. However, the address given for the owners on the Land Registry entry is 2 Cardington Square.

5. Section 329 of the Act deals with the service of notices under the Act, and provides that they may be served or given in a number of ways which include that of leaving it at the usual or last known place of abode of that person on whom it is to be served or, in a case where an address for service has been given by that person, at that address. The last known address for the owners was that provided by them to the Land Registry, and in the circumstances, I am satisfied that this amounts to good service in accordance with the Act.

6. Accordingly, the appeal on ground (e) fails.

Appeal on ground (d) – that the time for taking enforcement action has passed

7. The appeal site comprises a two-storey detached building, with a café on the ground floor and a flat on the first floor. The café has been extended in the past, with three elements being distinguishable, which form a continuous block of single-storey development stretching from the rear of the café to the rear boundary, located on the side of the property nearest to the neighbouring house at 4 Cardington Square. All three extensions are used as ancillary space in connection with the café.
8. It is undisputed that works took place in 2018 to the middle extension in question. Whether a new building has been created can be a matter of fact and degree. It may be the case that a building has been so altered or renovated that it becomes in effect a new building. The onus of proof on this ground of appeal rests with the appellant, and again, the test is on the balance of probability.
9. I have been provided with copies of a number of photographs and satellite images of the site. I find that the resolution of the satellite images is so poor that little can be discerned with any degree of confidence. However, there are two photographs of the site taken through the archway of the neighbouring property at 4 Cardington Square. One, dated 2013, shows an extension at the rear of the appeal site which is set back from the boundary wall along its whole length until a return section which meets the side wall at the front of the garage belonging to 4 Cardington Square. The appellant's photograph showing the damaged roof prior to works having taken place also shows a gap between the extension in question and the boundary with No 4.
10. However, the 2019 photograph of the same view, shows that a significant part of the middle extension now abuts the boundary wall. I saw the same view on my site visit. Irrespective of the claims about where the legal boundary of the two properties lies, it appears to me that the middle extension has been enlarged to be nearer to the boundary wall than was previously the case. There is no evidence which satisfies me that what has been built is materially higher than what existed previously. The extension has been clad in white UPVC, when the previous photographs show that the extension was clad in a brown coloured material, probably timber. This is materially different in appearance.
11. Whilst what is now there is materially different from the previous condition of the building, this is not decisive as to whether there has been the erection of a new building. The appellant says that the original timbers of the extension remain, and that the new work was to remove some rotten or defective plywood cladding nailed to the retained timber upright studs and to replace them with new waterproof plywood cladding, with white UPVC attached to the

whole of the walls. New UPVC windows have been installed in place of the rotten timber windows. Internally, new plasterboarding and a ceiling have been installed throughout. The photographs provided by the Council are annotated to show that some of the original wall timbers remain.

12. It therefore seems to me that the floor and structural timbers of the extension have been retained, but the external fabric of the extension comprising UPVC cladding over wood boarding together with a new roof felt and windows are all new, along with a small addition adjacent the boundary of No 4.
13. Bearing in mind that the original extension had only two external walls, it was not a substantial building to begin with. The structural integrity of the building was provided by the timber uprights and roof beams, all of which appear to have been retained, and, with the exception of the small addition on the side boundary, only cosmetic changes have been made to the exterior. As a matter of fact and degree, I find that what has taken place is not the erection of a new building, but the alteration and extension of an existing building. To this extent the appeal on ground (b) succeeds.
14. Under Section 176(1) of the Act, I can correct or vary a notice if I am satisfied that it would not cause injustice to the appellant or the local planning authority. However, to correct the notice to refer to the operational development that I find has taken place would potentially cause injustice to the appellant, because a notice specifying the more limited works that have occurred may have given rise to an appeal under ground (a), or, depending on the precise wording of any requirements, to an appeal under grounds (f) or (g).
15. In these circumstances, I must quash the notice, without prejudice to the power of the Council to issue a new notice reflecting the works which I have determined have been carried out, if it considers it expedient to do so.

Conclusion

16. For the reasons given above, I conclude that the appeal on ground (b) succeed, and I direct that the enforcement notice should be quashed.

JP Roberts

INSPECTOR