



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 15 October 2020

Appeal Ref: APP/U5360/C/20/3247400

99 Glenarm Road, Hackney, London E5 0LY

- 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 Mohammed Shameem Mirza against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 9 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear roof extension.
- The requirements of the notice are:
 - 1) Remove the unauthorised roof extension.
 - 2) Make good all damage to the property resulting from the removal of the unauthorised roof extension and restore the relevant parts of the property to the condition they were before the unauthorised roof extension was constructed.
 - 3) Remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements of this notice.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. For the avoidance of doubt, the planning merits of the development are not a matter for me to consider in the context of an appeal on 'legal' grounds under section 174 of the 1990 Act as amended. My decision rests on the facts of the case, and on relevant planning law and judicial authority. In this type of appeal the burden of proof lies with the appellant, with the relevant test being on the balance of probabilities.
2. 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.
3. An enforcement notice was issued on 17 August 2012 alleging the construction of a rear roof extension at the appeal property. A subsequent appeal against the notice succeeded in part on grounds (f) and (g), but otherwise the notice was upheld¹. The Inspector varied the requirements to allow the appellant to implement a previous planning approval as an alternative to removing the unauthorised extension, and to extend the compliance period from three months to nine. However, the Inspector's variations included a typographical error in that the planning permission reference was stated as 2012/3137 and 2012/32137 when it should have read 2011/3137 (approved 12 January 2012)

¹ Ref APP/U5360/C/12/2183582 dated 31 January 2013.

as referred to earlier in the decision. This error was not noticed at the time so was not corrected. Several years later, the Council decided to withdraw the notice and re-issue it, due to the Inspector's error, which it was considered nullified or invalidated the first notice. The withdrawal letter was sent with the new notice when it was served on 13 January 2020.

The appeal on ground (d)

4. To succeed in an appeal on ground (d), the appellant must show on the balance of probability that the development was substantially completed four years or more prior to the issue of the notice, such that it is too late for the Council to take enforcement action. The relevant date in this instance is 9 January 2016.
5. The appellant's argument is that the development was substantially completed in 2012, well before the relevant date, as evidenced by the Council's first enforcement notice and the subsequent appeal.
6. The Council relies on Section 171B(4)(b) of the 1990 Act as amended. This 'second bite provision' states – "*the preceding subsections [relating to time limits] do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach*". In other words, s171B(4)(b) provides that if, within the appropriate 4 or 10 year period the Local Planning Authority has taken or "purported to take" enforcement action in respect of a breach of planning control, they have a further four years in which to issue a subsequent notice, provided always that the first was not already out of time.
7. In this case, the Council issued an enforcement notice on 17 August 2012, which related to an unauthorised roof extension at the appeal premises as currently alleged. The second bite provision would have allowed the Council four years to take further action. However, the second notice was not issued until 2020 and so this provision cannot be relied upon. Whether or not the first notice was nullified or otherwise invalidated by the Inspector's variations does not alter this fact.
8. It is clear from the first enforcement notice, and the subsequent appeal, that the development alleged was substantially completed four or more years prior to the issue of the appealed enforcement notice. Hence, the provisions of section 171B(1) apply and no enforcement action may now be taken. The appeal on ground (d) succeeds, therefore.

Conclusion

9. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal on ground (f) does not fall to be considered.

Formal Decision

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

Debbie Moore

Inspector