
Appeal Decision

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/U5360/C/19/3235484

Land at 58 Lower Clapton Road, Hackney, London E5 0RN

- 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 Balvinder Johal against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2015/0244/ENF, was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is Without planning permission the erection of a first floor rear extension, the installation of new UPVC doors and windows on the first and second floor rear elevation and the installation of a raised deck area with balustrade, wood fencing and outbuilding at first floor level.
 - The requirements of the notice are:
 1. Remove the unauthorised first floor rear extension
 2. Remove the unauthorised first floor rear raised platform
 3. Remove the outbuilding located on the first floor rear raised platform
 4. Remove the UPVC doors and windows from the rear elevation at first and second floor levels
 5. Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the property to the condition they were before the unauthorised extensions were constructed.
 - The period for compliance with the requirements is nine (9) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(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.

Procedural matter

2. When the local planning authority notified neighbours of the appeal by a letter dated 4 February 2020, the description in the summary details incorrectly stated "construction of a rear dormer". The local planning authority has confirmed subsequently that the notification included a copy of the enforcement notice, as referred to in the letter. There is no claim that the enforcement notice was incorrectly served.
3. I am satisfied that the notification process has not prejudiced any party and there is no reason to doubt the validity of the appeal process.

Reasons

4. 58 Clapham Road is a terrace property in mixed use with a retail unit on the ground floor and living accommodation on the upper floors, described by the appellant as a four bedroom flat.

Appeal on ground (c)

5. This ground is made only in relation to the outbuilding at first floor level. A comment by the appellant that the outbuilding may not be development is not followed through with any reasoned argument. Instead reliance is placed on the outbuilding being permitted development under Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
6. Article 3 of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2, subject to any relevant exception, limitation or condition specified in Schedule 2. Class A of Part 4 to Schedule 2 is specific to temporary buildings and structures. The main issue is whether the appellant has shown on the balance of probability that the outbuilding is a building or moveable structure required temporarily in connection with and for the duration of operations being or to be carried out on the land or adjoining land. Case law has established that 'required' in this context means 'reasonably required'.
7. The appellant stated that the outbuilding was used for domestic storage in connection with internal refurbishment works being carried out on site and that it would be removed on completion of the works. However, no details were provided of the internal works or of any timescale. The justification for the outbuilding is very weak.
8. The Council considered that the outbuilding was being used for storage in relation to the associated amenity space created by the erection of the raised platform of decking. This explanation has merit when account is taken of the appearance and siting of the outbuilding and the use of the decking.
9. The outbuilding is a relatively small structure, similar to a shed, with a shallow pitched roof. It rests on the raised platform, is of lightweight construction and sited in the rear corner of the amenity space. The appearance shows some attention to detail in terms of the cladding, doors and window and is in keeping with the use of the decking as play space. Its size and position on the platform fit neatly with the boundary fence and seating. The outbuilding looks to be a permanent structure to serve the amenity space, not a structure introduced onto the decking for a temporary period whilst internal works were carried out.
10. I conclude on the balance of probability that the outbuilding is not required temporarily in connection with operations being carried out in the adjacent dwelling. The structure is not within the scope of Class A of Part 4 of Schedule 2 and is not permitted development. The outbuilding does not benefit from planning permission granted by article 3 of the GPDO and a breach of planning control has occurred. The appeal on ground (c) fails. The appellant does not include the outbuilding within the appeal on ground (d).

Appeal on ground (d)

11. There is a four year time limit for taking enforcement action against operational development (section 171B of the 1990 Act). The main issue is whether on the balance of probability the operational developments alleged in the enforcement notice were substantially completed before 19 July 2015. There is no precise definition of the term substantially completed and it is a matter of fact and degree. In general, the appellant's evidence does not have to be corroborated

by independent evidence in order to be accepted. If a local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to accept it provided the appellant's evidence alone is sufficiently precise and unambiguous.

12. The appellant and the Council agreed that the works were substantially completed by 24 November 2015. This agreement reflects the findings of an Inspector who visited the site on that date. This site visit was in connection with an appeal against the Council's refusal of planning permission for the conversion and rear extension of an existing maisonette above retail to form 2 flats, including a roof dormer previously granted planning permission. However, as set out above, the relevant date is several months earlier in July 2015.
13. The appellant stated that all the works on the extension, windows, decking and fence were carried out concurrently between late 2014 and mid 2015 and were substantially completed no later than 18 July 2015. To support his case the appellant relied on a signed statutory declaration by the builder who carried out the works, an image from Google Street View dated April 2015, delivery invoices for building materials and a fitted kitchen, and a statement from a neighbour.
14. The Council disputed that this evidence showed that the works were substantially completed by the relevant date and brought forward its own evidence, including information from a neighbour.
15. The April 2015 image shows that the work on the dormer was underway. The rear windows are not able to be seen clearly, mainly because they are obscured by the rear outrigger. Alterations to the outrigger were necessary to construct the extension but no work to the upper part of the outrigger appears to have been carried out, where the old brickwork was in tact. The area of infill at first floor level and the area now covered by decking are not visible on the image.
16. The builder stated that he was instructed to undertake the works in February 2015 and that the dormer, infill extension at first floor, the raised timber deck, fencing and balustrade were completed in June 2015. No specific mention was made of the installation of the UPVC doors and windows. The photographic evidence from the Council shows that scaffolding was erected and work was underway on the dormer in March 2015. However, photographs of the rear of the property at first floor level, taken on 4 July 2015, show the building work in progress. The external brick walls to the extension were constructed but works to the roof were in progress and joinery to the door and window openings to the extension was yet to be installed. The inside of the extension appeared to be a shell. The flat roof to the ground floor, where the deck was to be placed, was in use for storing building materials and no work to form the deck was apparent.
17. The appellant did not challenge the date or authenticity of the photographs. In the appellant's view they demonstrated that the works were nearing substantial completion and he maintained the limited works that remained could be completed within the next two weeks. However, no details have been provided to support that point. Furthermore, the photographs show that the statutory declaration from the builder is unreliable, particularly as it is imprecise as to the works he was instructed to do and, importantly, the date of completion was probably inaccurate.

18. An invoice for French doors and different window types has a delivery date to the property of 11 May 2015. The appellant stated that the units were installed on or around this date. This timescale conflicts with the evidence in the 4 July 2015 photograph which shows that the patio doors and kitchen window were not installed in the extension. The Council's photographic evidence is not sufficiently clear to show whether or not the remaining windows at first and second floor were fully installed at that time.
19. An invoice from Howden's Joinery dated 2 June 2015 was said to be for a fitted kitchen based on a modular system that allowed for purchase and collection on the same day, with installation without delay. The appellant submitted that the date for the order and collection of the kitchen, when read with the statement of the builder and the invoice for doors and windows, demonstrated that the extension was substantially completed on 2 June 2015. However, again there is inconsistency with the 4 July 2015 photographs, which show the work on the extension had not progressed sufficiently to allow a kitchen to have been fitted. The builder's statement has been shown to be unreliable. The invoice included a delivery charge, which appears not to be consistent with the claim the kitchen was collected.
20. Turning to the raised deck, balustrade and fencing, an invoice dated 25 June 2015 from a building supplier was for deck board, timber and related products. The invoice does not show if and when payment was made and provides no information as to the construction of the decking and fencing. The date of June 2015 provided by the builder conflicts with the 4 July 2015 photographs that indicate very little if any work had taken place on the raised deck.
21. The email dated 16 August 2019 from the letting agents in the adjacent property at number 56 recalled work was carried out in 2015 and the appellant re-occupied in May 2015. This information is not sufficiently precise and the email, which does not have the status of a statutory declaration, has very little weight.
22. In my view the email information submitted by the Council does not state work commenced in July 2015. Around the 6 July it appears that the work was sufficiently advanced for the complainant to be concerned that the work was not authorised by planning permission and that a roof terrace was intended. A subsequent email dated 1 September indicated that the first floor decking was in place by that time.

Conclusions on ground (d)

23. The onus is on the appellant to demonstrate on the balance of probability the operations are immune from enforcement action due to the passage of time and therefore are lawful.
24. In this case the local planning authority has evidence from others to contradict or otherwise make the appellant's version of events less than probable. Furthermore, the appellant's evidence has been shown to be insufficiently precise and lacks credibility on the key dates. On the balance of probability the first floor rear extension, the installation of new UPVC doors and windows on the first and second floor rear elevation and the installation of a raised deck area with balustrade, wood fencing and outbuilding at first floor level were not substantially completed before 19 July 2015. The operational development has not become lawful. The appeal on ground (d) does not succeed.

Overall conclusion

25. For the reasons given above I conclude that the appeal should not succeed.

Diane Lewis

Inspector