



Appeal Decisions

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal A Ref: APP/G5750/C/20/3260735

Appeal B Ref: APP/G5750/C/20/3260736

34 Tudor Road, East Ham, London E6 1DR

- 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 'Act').
 - Appeal A is made by Miss Patricia Gomez and Appeal B by Ms Antonia Gomez against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 8 September 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the alteration of part of the ground floor rear extension comprising an increase in height and the addition of a new roof.*
 - The requirements of the notice are:
 1. Demolish the alterations to part of the ground floor rear extension comprising an increase in height and the addition of a new roof (as shown in the location edged in blue on the attached plan, and as shown edged in yellow on the photographs attached at appendix 1).
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2 (c),(d) and (e) of the Act.
-

Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. It has not been necessary to do a site visit, as the issues are fact based and I am able to proceed to a decision based on the submitted evidence from both parties.
3. The appeals were lodged on ground (c) only. However arguments made by the appellants raise issues pertinent to grounds (e) and (d) as well, which I must deal with in the interests of natural justice. The Council has responded to all three grounds in its Statement so no prejudice arises to either party from my consideration of these matters as 'hidden' grounds of appeal.
4. In this decision I consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice succeeds on ground (e), the notice is quashed and the other grounds become redundant.
5. As both appeals are the same I will deal with them together.

The Appeals on Ground (e)

6. An appeal on ground (e) is that copies of the notice were not served as required by s172 of the Act - that is, on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. Proper service of the notice can include considering whether copies of the notice were served on the correct people, the method of service and timescale of service.
7. If it is found that the notice was not served properly, it will still be necessary to consider if anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
8. Miss Patricia Gomez (hereafter referred to as 'Appellant A') says the first she knew of the enforcement notice was from a letter sent from her mortgage company. This letter was dated and received before the notice came into effect and was addressed to Appellant A by name at 34 Tudor Road (the 'appeal property'). Appellant A also alleges a copy of the notice was sent to the previous owner, Mrs Antonia Gomez (hereafter referred to as Appellant B).
9. Appellant A completed the appeal form and on it lists her address as the appeal property. Furthermore, in part D of the appeal form she confirms that the address of the affected land (34 Tudor Road) is the same as her own address and has ticked to confirm she is the owner of the appeal property.
10. Section 329 of the Act prescribes a number of methods by which a notice may be served on any person having an interest in the land. In short, these methods are delivering the notice by hand, by post, and/or by leaving it in a conspicuous place at the usual or last known place of abode of that person. It can also be by electronic communications to an address given by that person.
11. The Courts¹ have held that the use of HM Land Registry details for an address is sufficient for the 'proper service' of a notice, if the Council has not been given another address. The submitted Land Registry records show that Appellant A is the registered proprietor of the appeal property and has been since 2015. This has remained the case on the two separate search dates carried out by the Council, namely on 18 October 2019 and on 16 December 2020.
12. The Certificate of Service shows the Council served 4 copies of the enforcement notice by putting them through the letterbox of the appeal property, each addressed individually to different people at that property, namely the Owner/Occupier, Appellant A, Appellant B and a fourth named person.
13. The Council also sent copies of the notice by post to the mortgage company and to Appellant B at an address in Kent. The mortgage company addressed their letter to Appellant A by name at the appeal property, which is the same address the Council have used.
14. Appellant A has not explained why she did not receive the notice served on her through the letter box at the appeal property, but received the letter from her mortgage company sent to the same address. Appellant A has not claimed she was residing elsewhere at the time when the notice was served. Even if she

¹ *London Borough of Newham v Miah* [2016] EWHC 1043 (Admin)

was away from the appeal property at the time the Council put a copy of the notice through the letterbox on 8 September 2020, she states she received the letter from her mortgage company on 6 October 2020. Also Appellant B knew about the enforcement notice, although it is not clear from the evidence whether this was from being served with a copy at the appeal address or from the copy posted to her at an address in Kent.

15. With regards to the claim that Appellant B was the previous owner, it is not clear from the submitted evidence why the Council were of the opinion that Appellant B had a material interest in the land and should be served with a copy of the notice, or what that interest is now. Appellant B is not listed on the Land Registry details. The Council has not said that it served a planning contravention notice or used its powers under section 330 of the Act to obtain information about the addresses of interested parties and found Appellant B still had an interest.
16. Nonetheless, even if Appellant B was a previous owner of the property but is no longer, it is not relevant to Appellant A's case. Appellant A is the current owner of the property, by her own admission and verified by the HM Land Registry search details, and she has been served with a copy of the notice, as has her mortgage company.
17. From the evidence before me I find that Appellant A has not discharged the burden of proof to demonstrate the notice has not been served as required by s172 of the Act.
18. Even if Appellant A did not receive any of the copies of the notice served on her at the appeal address for whatever reason, she nonetheless found out about the appeal from her mortgage company and Appellant B. She has been able to submit an appeal against the enforcement notice and argue her case. Therefore neither appellant has been substantially prejudiced.
19. The appeals on ground (e) fail.

The Appeals on Ground (c)

20. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. It is a legal ground of appeal and the onus of proof lies with the appellants and the test of the evidence is on the balance of probabilities. The key questions are whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful.
21. The Council is clear that the enforcement notice does not relate to the pre-existing side and rear extensions, but to the alterations that have been made to the existing infill extension in raising its height, replacing the roof, and the external materials used.
22. In section 55(1) of the Town and Country Planning Act 1990 (the 'Act') 'development' is defined to include the "carrying out of building, engineering, mining or other operations in, on, over or under land". Section 55(1)(c) defines 'building operations' to include structural alterations of or additions to buildings. From the evidence before me, including the submitted photographs and images, I am of the view that raising the height of the infill extension and

altering its roof are additions and alterations that amount to 'building operations' and hence are 'development'.

23. However, section 55(2) sets out a number of operations that are removed from the definition of development. In sub-clause (a) the carrying out of works to a building for maintenance, improvement or alterations is not development if the works "(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building...". The alleged works materially affect the external appearance of the building by changing its shape and size and using conspicuous materials. Hence, in my view the alleged works are not exempt from the definition of 'development'.
24. Section 57(1) of the Act states that planning permission is required to carry out any 'development' of land, but s58 of the Act grants planning permission for certain developments by various means and Orders.
25. The Town and Country (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') is one such Order that grants planning permission for certain types of development, described as "permitted development". Schedule 2, Part 1, Class A of the GPDO permits the "*enlargement, improvement or alteration of a dwellinghouse*" subject to various conditions and limitations set out in sections A.1 – A.4. These are also summarised in the Planning Portal extracts submitted by the appellants.
26. The dwelling is not on Article 2(3) land because it is not within a Conservation Area or one of the other defined designations, and the dwelling is not detached. Consequently, condition A.1.(g) allows for the erection of a single storey extension provided it does not extend more than 6 metres from the rear wall of the original dwellinghouse or does not exceed more than 4 metres in height. However, paragraph A.1.(i) applies a further limitation if the enlarged part of the dwelling is within 2 metres of the boundary of the curtilage of the dwelling, as is the case here. In these situations, the enlarged part of the dwelling should not exceed 3 metres in height.
27. The Council have appended photographs to the enforcement notice which show the alleged matters outlined in yellow. There are no dimensions annotated on these images, but from a site visit to the neighbouring property at 32 Tudor Road, the Council state they measured the height to be 3.3 metres.
28. The appellants state the extension is 2.9 metres in height. However, the appellants have not submitted any substantive evidence to demonstrate this or to refute the Council's measurements.
29. The submitted aerial images in the Council's Appendix 3 show that in 2018 the roof along the infill element of the existing extension was a different colour to the roof of larger rear extension – the Council says it is Perspex. Furthermore, the roof of the infill extension is clearly at a lower level because the larger roof extension is casting a shadow over part of the infill extension roof. This height difference is further confirmed by an aerial roof image in the Council's Delegated Report where the roof of the infill extension can be seen sitting lower than the roof of the larger rear extension and linked to it by a slope.

30. In the 2019 aerial images, particularly figure 3, the light grey Perspex roof has been replaced with a dark grey roof that matches the roof on the bigger extension, and a rooflight has been installed. This is shown in more detail in the Council's site visit photos in Appendix 4.
31. In light of the above and on the balance of probabilities, I find the height of the resulting infill extension has been increased. In the absence of evidence to the contrary, the height of the extension exceeds the stipulated height limitation of 3 metres. Hence the alleged works do not comply with condition A.1.(i).
32. I now turn to the use of materials. For Class A development, limitation A.3(a) stipulates that the *"materials used in any exterior work...must be of similar appearance to those used in the construction of the existing dwellinghouse"*. The Technical Guidance² advises that this requirement is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development.
33. The Council describe the materials used in raising the height of the extension as being a mixture of corrugated plywood and MDF sheets with overlapping felt shingles and are of differing colours. From the submitted photographic evidence the existing house is cream/white render or coloured brick. The extension materials as described above are clearly not of a similar appearance to the existing dwelling. Hence the alleged works do not comply with condition A.3(a).
34. The Council also refers limitation A.1(k)(iv) that does not permit 'an alteration to any part of the roof of the dwellinghouse' to an extension permitted under Class A. It is very unlikely that an extension would be built without a roof and so works to roofs, including where the roof of a Class A extension joins the roof of the existing building, are 'permitted development' under Class B and C, subject to the limitations and conditions set out in those roof Classes. I have not been advised that the replacement roof contravenes any aspect of Class B or C. Nonetheless, any breach of the GPDO means the development as a whole is unlawful.
35. In light of the above and on the balance of probabilities, I find the alleged development is not 'permitted development' and requires express planning permission, which has not been granted. Therefore there is a breach of planning control and the appeals on ground (c) fail.

The Appeals on Ground (d)

36. Ground (d) is that, at the date that the notice was issued, it was too late to take enforcement action.
37. For the ground (d) appeal to succeed the onus is on the appellants to show, on the balance of probabilities, that the alleged alterations to the dwellinghouse were substantially completed more than 4 years before the date the notice was issued so as to be immune from enforcement.
38. There needs to be a consideration of what existed on the relevant date 4 years before the notice was issued, i.e. on 8 September 2016 and what exists

² Permitted development rights for householders - Technical Guidance. Published by MHCLG Sept 2019

now. The Council states the 4 year relevant date as being 8 September 2015, which is more than 4 years. The appellants base their case on the fact that the extension has existed since 1982 "aside from minor alterations in 2018", which is within 4 years from either 2015 or 2016. Therefore, despite this date error, there is no injustice to the parties.

39. The Council does not contest that the main body of the extensions has? been in place at the appeal property for more than 4 years. Rather the Council is concerned with the subsequent alterations that have been made.
40. It is clear from the Council's dated aerial images that works to the roof and the resultant increase in height of the infill extension took place between 2018 and 2019, which is within the 4 year time period. The appellants themselves state that 'minor alterations' were made in 2018 and do not contest the Council's evidence. This date coincides with the Council's time scale.
41. From the evidence before me I therefore find, on the balance of probabilities, the alleged development is not immune from enforcement action. The appeals on ground (d) fail.

Conclusion

42. For the reasons given above the appeals are dismissed and the enforcement notice is upheld.

K. Stephens
INSPECTOR