



Appeal Decision

Site visit made on 16 March 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/C1950/C/20/3259665

Land situated at and known as 15 Northaw Road West, Northaw, Potters Bar, EN6 4NW

- 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 George Anastasiou against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The enforcement notice was issued on 18 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear and side extension.
- The requirements of the notice are:-
 - i) Demolish and remove the single storey rear and side extension as shown outlined in purple on the plan labelled A attached to the enforcement notice.
- Or
- ii) Modify the dwellinghouse to comply with the terms of planning permission (ref: 6/2016/2041/FULL) dated 28 February 2017, including the conditions subject to which that permission was granted.
- iii) Remove from the Land all materials, debris, waste, plant and equipment associated with requirement (i) or (ii) above.
- The period for compliance with the requirements is Four (4) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act have lapsed.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

1. The evidence before me cites the planning merits of the case before me. However, as stated within the banner heading the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act have lapsed. As such, they are not relevant to my decision. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development.
2. A site visit was to be carried out on an access required basis, but this was not possible. Nevertheless, I carried out an unaccompanied site visit, from the public highway, and I am satisfied I saw everything I needed to determine the appeal and I have proceeded on this basis.
3. Two appeal decisions relating to the appeal site have been cited within the evidence before me. However, I have not been provided with copies of the

decisions or their reference numbers. Therefore, I can give them little weight in the determination of this appeal.

4. The appellant has questioned the expediency of the Council's decision to take enforcement action taking into account the latest Government advice relating to enforcement action and the Covid-19 pandemic. I acknowledge that the Government's Written Ministerial Statement of the 25 March 2021 states, amongst other things, that *'the Government would like local planning authorities to continue to take a positive and flexible approach to planning enforcement action to support economic recovery and support social distancing while it remains in place. The National Planning Policy Framework already emphasises that planning enforcement is a discretionary activity, and local planning authorities should act proportionately in responding to suspected breaches of planning control'*. However, this matter falls outside my jurisdiction in determining this appeal, and therefore it is not a matter for consideration through it.

The ground (e) appeal

5. The ground of appeal is that copies of the notice were not served as required by section 172 of the 1990 Act. The appellant's criticism is not that those required to be served by section 172 were not served but rather that the notice served did not include the explanatory notes on how to appeal to the Planning Inspectorate. Every copy of an enforcement notice must be accompanied by an explanatory note containing the information specified in regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (as amended).
6. The copy of the enforcement notice supplied by the Council indicates that it consists of 7 pages, the pages are numbered, and it includes all of the information specified in that regulation. It is not clear how or if the appellant was served with only the parts of the enforcement notice that he submitted photographs of within his evidence.
7. Nevertheless, section 176(5) of the 1990 Act gives the Secretary of State power to disregard incorrect service where those who should or who have been served have not been substantially prejudiced. As the appellant has been able to submit an appeal against the enforcement notice I find that he has not been substantially prejudiced even if the copy of the enforcement notice he was served was missing the Explanatory Note cited above. The appeal on ground (e) fails.

The ground (f) appeal

8. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
9. The Council have stated that the steps required by the notice seek to remedy both the injury to amenity and to remedy the breach of planning control. This is because the requirements of the notice have the option of demolishing and removing the side and rear extension, requirement i), **or** modifying the dwellinghouse so that it complies with the terms and conditions of the planning

- permission (the 2017 permission) granted on 28 February 2017¹, requirement ii).
10. However, for a planning permission to be relevant within a requirement of an enforcement notice it needs to be extant as it needs to be capable of being implemented. Both parties were given the chance to comment on this matter and there is dispute as to whether the 2017 permission is still extant.
 11. Given that part of the footprint of the development as constructed appears to overlap that of the 2017 permission I consider that there is an element of development common to both the permission and the enforcement notice. The development as constructed has a much larger ground floor footprint than that approved by the 2017 permission.
 12. However, two of the walls of the garage shown on drawing No 315-09 would be in a similar position to that of the walls of the development as constructed. Based on the evidence, before me it appears that the digging of a trench to contain those parts of the foundations of the development would have been a '*material operation*' as defined within section 56 of the 1990 Act in respect of the 2017 permission. As such, it would appear that the development permitted by the 2017 permission was begun within the time limits set out in that permission.
 13. I acknowledge, that it is reasonable to consider that it is possible to deviate from the permitted works in a manner that later becomes an enforcement issue. Nevertheless this does not retrospectively alter the fact that the 2017 permission can be treated as being begun in relation to section 56 of the 1990 Act. Therefore, I consider that the 2017 permission is still capable of being implemented.
 14. The notice seeks to remedy the breach of planning control by demolishing and removing all of the unauthorised development. However, as there is an extant planning permission the breach of planning control could also be resolved by the development being altered to comply with the terms and conditions of that planning permission. As a result, and in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach.
 15. The appellant considers that the Council and Inspectors have agreed to amendments to the development as constructed. However, there is no evidence before me to indicate that another planning permission other than the 2017 permission is capable of being implemented on this site. He also considers that he could render the development and shorten it.
 16. Nevertheless, as stated above, there is no ground (a) appeal or deemed planning application in this case therefore I am not empowered to consider the planning merits of rendering and/or shortening the extension.
 17. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeals on ground (f) fail.

¹ Application No: 6/2016/2041/FULL

The ground (g) appeal

18. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice states 4 calendar months for compliance but the appellant has stated that 3 years is required in order to raise the funds to finance the building works, organise the contractors and carry out the works, taking into account the restrictions the Covid-19 pandemic has resulted in.
19. I note that even if the appellant chooses to undertake the remedial works to complete the development in accordance with the 2017 permission those remedial works would be relatively extensive. However, little evidence has been provided of the difficulties he may have in financing or completing the works. Whilst, I accept that the Covid-19 pandemic has placed restrictions on the movement of people those restrictions through the Government's 'roadmap' are being lifted. Moreover, there is a need for expediency in remedying the harm cited in the reasons for issuing the enforcement notice.
20. In the circumstances, I consider that the compliance period set out in the notice is reasonable and proportionate. Therefore, the appeal on ground (g) fails.

Overall Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

22. The appeal is dismissed and the enforcement notice is upheld.

D. Boffin

INSPECTOR