
Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2021

Appeal A Ref: APP/Z5060/C/20/3255485

Appeal B Ref: APP/Z5060/C/20/3255622

Land and premises at 22 Calverley Crescent, Dagenham, Essex RM10 7QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr R Gjeta and Appeal B is made by Mrs Gjeta against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 10 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a side extension.
 - The requirements of the notice are:
 - Remove the unauthorised side extension in its entirety.
 - Remove all subsequent waste material from the premises.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matter

2. In reviewing the file, it appeared that the appeals could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the ground of appeal and points in dispute.

Appeal A and Appeal B on ground (f)

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the side extension and all associated waste materials to be removed, I find the purpose is to remedy the breach of planning control.
4. The appellants' case on this ground is that the requirements should be varied to enable them to modify the extension by reducing its height to a single storey, to reflect what could have been built as permitted development by virtue of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The appellants provided a plan which show this, and I note that since the appeals were made, the first floor of the extension has been removed in accordance with this plan.

5. The purpose of the enforcement notice is to remedy the breach of planning control however, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
6. As such, whilst acknowledging that permitted development rights cannot be claimed retrospectively, it would have been open to me to vary the requirements of the notice to offer the opportunity to modify the development in accordance with the details submitted and the terms of the permission granted by the GPDO, should such rights represent a realistic fallback position.
7. Planning permission was previously granted for the erection of a part single/part two storey rear extension, part first floor/part two storey side extension and conversion of garage to habitable room, planning permission reference 18/00625/FUL.
8. The Council stated that this development was not constructed in accordance with the approved plans although, in the absence of explanation it is not clear whether this non-compliance relates only to the extension, subject of these appeals, or other aspects of the development.
9. In either case, bearing in mind Article 3(5) of the GPDO, if the operations involved in the construction of any part of a building are unlawful then the planning permission granted by the GPDO does not apply. Therefore, since part of the building does not appear, on the basis of the evidence before me, to have been constructed lawfully then the extension could not have constituted permitted development and there is no fallback position. It would not therefore be appropriate to vary the requirements as suggested.
10. Since there is no appeal under ground (a) there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
11. Consequently, in order to remedy the breach of planning control, it is not excessive to require the removal of the side extension in its entirety and all resulting materials from the site. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeals on ground (f) therefore fail.

Conclusion

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

Felicity Thompson

INSPECTOR