



Appeal Decision

Site visit made on 11 June 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/U5360/C/20/3256218

Land at 180 Queensbridge Road, Hackney, London E8 4QE

- 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 Mitchel Alistair Galvin-Farnol against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2020/0001/ENF, was issued on 26 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a side roof extension.
 - The requirements of the notice are:
 1. Remove the side roof extension;
 2. Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirement of the notice.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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DECISION

1. The enforcement notice is quashed.

REASONS

The property

2. The property at 180 Queensbridge Road is on a corner plot. The appellant's evidence shows that a roof extension dated back to at least 1999. The extension was set back from the side wall to the house, with its main elevation facing towards Brownlow Road. The appellant purchased the property in 2018 and subsequently carried out works to the roof extension, including an enlargement at the eastern end to create additional internal space.

Enforcement notice

3. The alleged breach of planning control is described as "Without planning permission, the erection of a side roof extension." In its statement the Council explains that whilst it is accepted that there was previously a roof extension in situ, the extension as built is considered materially different. The notice refers to a 'side roof extension' because the extension is built on the side roof slope, not the front. Importantly the Council confirms that the notice refers to the entirety of the roof extension, not just the 'new' extension. The Council

- considers the wording is unambiguous and clear in identifying the breach of planning control but, acknowledging that there appears to be confusion as to what the notice refers to, suggests it may be appropriate to amend the wording to read "Without planning permission, the erection of a roof extension". Also, requirement 1 should be amended to state "remove the roof extension".
4. The appellant's grounds of appeal statement indicates an understanding that the notice was attacking only the new addition and not the roof extension as a whole. In the appellant's final comments, once the scope of the notice was fully understood, representations are made that suggest potential appeals on grounds (b), (c), (d) and (f).
 5. An enforcement notice should tell the person on whom it is served fairly what he has done and what he must do to remedy it (the *Miller-Mead* test on validity). I am able to correct any defect, error or misdescription in an enforcement notice if I am satisfied there will be no injustice to either the appellant or the local planning authority. Taking into account the history of a roof extension on the property I consider that for the avoidance of doubt as a minimum the allegation would need to be corrected as the Council requests in order to describe the development that appears to the Council to constitute the breach of planning control. Reference to a plan or photograph and expansion of the Reasons may also assist. It follows that requirement 1 would need correction too, to ensure consistency in the notice.
 6. The proposed corrections could be regarded as extending the scope of the notice, which in itself is of concern. The deemed planning application under the ground (a) appeal would be for the erection of a roof extension and it may be that the appellant would wish to expand or alter his case on the planning merits of the extension as a whole.
 7. Furthermore, while comments have been made in response to the Council's requested corrections, it may be the case that additional grounds would have been pleaded and additional evidence and detailed argument would have been produced. The Council would need to be afforded the opportunity to consider and respond to any new evidence or grounds of appeal.
 8. With all these matters in mind, to proceed to determine the appeal having corrected the wording of the alleged breach of planning control and requirement 1 would cause injustice to the appellant and to the Council.

Conclusion

9. For the reasons given above the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (a) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Diane Lewis

Inspector