
Appeal Decision

Site visit made on 21 July 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2021

Appeal Ref: APP/Y5420/C/19/3224456

Land at 9 Holmdale Terrace, London N15 6PP

- 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 Abraham Rosengarten against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 26 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a wooden single storey rear extension and a timber and plastic rear canopy extension.
 - The requirements of the notice are:
 1. Remove the wooden single storey rear extension and the timber and plastic rear canopy extension in their entirety.
 2. Remove all resultant debris.
 - The period for compliance with the requirements is Two (2) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) 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.

REASONS

Grounds of appeal

2. The appellant indicated on the appeal form that he wished to appeal on grounds (b), (c), (d), (e), (f) and (g).
3. The Planning Inspectorate on 16 May 2019 asked the appellant to confirm the grounds of appeal and to provide any additional facts to support each ground of appeal. In response the appellant stated that he wished to amend the grounds to (c) and (f) and that grounds (b), (d), and (g) were not appealed. The Planning Inspectorate confirmed on 4 June 2019 that the appeal would proceed on grounds (c) and (f). I will determine the appeal on that basis.

Enforcement notice

4. The alleged breach of planning control is described as "the erection of a wooden single storey rear extension and a timber and plastic rear canopy extension." The appellant argued that the notice should not include the canopy because it has been removed.

5. The enforcement notice was issued on 26 February 2019. The appellant does not say there was no canopy on or about that time, only that the canopy is no longer there. The officer report dated 22 February 2019 includes a photograph that clearly shows a rear extension plus a timber supporting structure covered by plastic sheeting to form a canopy. That being so there is no justification for removing the canopy from the description.

Ground (c)

6. In this ground of appeal the onus is on the appellant to demonstrate on the balance of probability that there has not been a breach of planning control as alleged in the enforcement notice.
7. The thrust of the appellant's case is that planning permission was granted for a conservatory and that the wooden building on site is a temporary conservatory. The appellant has not provided a copy of the planning permission or the approved plans. It appears that he does not have a copy in his possession because he was reliant on going to the Council offices to get the information.
8. The Council has confirmed that planning permission was granted on 3 October 2000 for the erection of a three bedroom house (with room in the roofspace) with a detached garage (the 2000 permission). The Council has provided a copy of the decision notice (ref HGY/2000/0853) but has stated that the Council no longer appears to have copies of the approved plans.
9. In the absence of the plans, the description of the development granted planning permission does not help in confirming whether or not a single storey conservatory forms part of the approved scheme. Even if it did, the conservatory would have to be built in accordance with the approved plans to benefit from the permission. The appellant stated that the wooden building is a temporary conservatory. The Council described the structure as crude. On the balance of probability the rear extension and the related plastic canopy are not in accordance with the approved plans.
10. Condition 4 of the 2000 permission removes permitted development rights. Therefore the structure cannot be authorised by a planning permission granted by a development order.
11. I conclude that there has been a breach of planning control and the appeal on ground (c) does not succeed.

Ground (f)

12. The issue is whether the requirements are excessive.
13. The principal requirement is to remove the rear extension and canopy. This requirement is not excessive in so far as it would remedy the breach of planning control and overcome the injury to amenity.
14. A requirement has to be worded precisely in order to comply with statutory provisions. The appellant has suggested making the extension smaller in order that it complies with the measurements of the approved conservatory or so that it is not able to be seen. These are not acceptable lesser steps because even if there is permission for a conservatory its size is not known. The requirement could therefore not specify the size and so would not meet the statutory test. Furthermore, the size is not the only unacceptable feature of the

extension. The reasons for issuing the notice refer to its unsympathetic design and inappropriate materials. The removal of a fourth wall also would not be an acceptable lesser step for similar reasons.

15. To build or cover the structure with matching materials would be likely to involve new building works, bearing in mind the form of temporary construction of the existing extension. Such works, even if they could be precisely stated, would not fall within the scope of the notice.
16. The appellant asked that if the extension is not allowed to stay on a permanent basis the structure be allowed for a short period of time each year to function as a sukah. This is a matter that would need to be taken up separately with the local planning authority because such an arrangement could not be incorporated into the enforcement notice.
17. In conclusion, the requirements are not excessive and the appeal on ground (f) fails.

Conclusion

18. For the reasons given above I consider that the appeal should not succeed.

Diane Lewis

Inspector