



Appeal Decisions

Site visit made on 13 July 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2021

Appeal A Ref: APP/Z5060/C/20/3257653

70 Burlington Gardens Chadwell Heath Romford RM6 6ET

- 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 Lakhvinder Singh against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 13 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a rear extension.
 - The requirements of the notice are:
 - Remove the unauthorised extension in its entirety.
 - Remove all subsequent waste material from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. 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 Act as amended have lapsed.
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Appeal B Ref: APP/Z5060/C/20/3257739

70 Burlington Gardens Chadwell Heath Romford RM6 6ET

- 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 Lakhvinder Singh against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 20 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of an outbuilding located in the rear garden.
 - The requirements of the notice are:
 - Remove the unauthorised outbuilding in its entirety.
 - Remove all subsequent waste material from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. 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 Act as amended have lapsed.
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Decisions

Appeal A Ref: APP/Z5060/C/20/3257653

1. The appeal is dismissed, and the enforcement notice is upheld.

Appeal B Ref: APP/Z5060/C/20/3257739

2. The appeal is dismissed, and the enforcement notice is upheld.

Appeal A: The appeal on Ground (f)

3. The appeal on this ground 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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
4. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
5. The appellant states that the steps required are excessive in terms of remedying the breach as the matter could be resolved by way of a retrospective planning application which has already been submitted. However, no details of any approved planning permission for the development have been submitted. I also note that the Council state that a retrospective planning application for an extension to the existing outbuilding and single storey ground floor rear/side infill extension and raised parapet wall was refused¹. In addition, given that a ground (a) appeal has lapsed, I cannot assess the planning merits of the case.
6. The appellant further states that the alleged breach of planning is nominal since the development which has been built without planning relates only to the side infill extension and the raised parapet wall, and that the remainder of the development for the rear extension was approved under a prior approval application. Permitted Development (PD) rights only apply when the development fully accords with the limitations set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). If development is commenced but any limitation is exceeded, the whole development would be unlawful, not just the element in excess of PD. Limitations to, for example, the size of development are expressed precisely in the GPDO. There cannot be a 'de minimis' infringement. It has been held that PD rights cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance.
7. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
8. On this basis, the Ground (f) appeal fails.

Appeal B: The appeal on Ground (f)

9. The appeal on this ground 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

¹ Council ref: 20/01539/HSE.

- matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
10. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
 11. The appellant states that an original outbuilding had been in an existence for more than 8 years and that this has been extended by an additional 1.3m. The appellant considers that the requirement to remove the entire outbuilding is unreasonable. However, there is nothing before me to corroborate the assertion that a previous outbuilding was extended. Furthermore, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. A building, such as the current appeal development, which exceeds the tolerances under the relevant part of the GPDO is entirely outside PD rights.
 12. The appellant also states that the matter could be regularised by a retrospective permission. However, given that a ground (a) appeal has lapsed, I cannot assess the planning merits of the case. Furthermore, no details of any approved planning permission for the development have been submitted, and the Council also state that a retrospective planning application for an extension to the existing outbuilding and single storey ground floor rear/side infill extension and raised parapet wall was refused².
 13. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
 14. On this basis, the Ground (f) appeal fails.

Conclusions

15. **For Appeal A:** For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice.
16. **For Appeal B:** For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR

² Council ref: 20/01539/HSE.