
Appeal Decision

Site visit made on 19 October 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2021

Appeal Ref: APP/B5480/C/21/3275619

11 Beaufort Close, Romford RM7 8DD

- 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 Mrs Brenda Kiragu against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 23 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey rear extension.
 - The requirements of the notice are:
 - (i) Demolish the single storey rear extension from the area shown with black chequered markings on the attached plan; AND
 - (ii) Remove all materials, rubble and debris from the site as a result of taking step (i) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) 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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Decision

1. It is directed that the enforcement notice is:
 - varied by deleting the words "two months" within section 6 (Time for Compliance) and its replacement with "five months".
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

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 considers the rear extension could be modified, by its detachment from the existing house, and reduction in height to comply with permitted development rights for a detached outbuilding. I have been specifically referred to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Revised plans have been submitted showing how the extension could be modified in this way. However, given that the ground (a) appeal has lapsed, I cannot assess the planning merits of the case.
6. Furthermore, Permitted Development (PD) rights only apply when the development fully accords with the limitations set out in 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 is 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. In this respect, the appeal on ground (f) appeal is misconceived.
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.

The appeal on Ground (g)

9. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from 2 to 6 months, in order to allow the services of a builder to be sought and the for the works to be carried out.
10. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 5 months would strike a more reasonable and proportionate balance to carry out the actual works in the current circumstances with the pandemic. I shall therefore extend the period from 2 to 5 months for compliance with the notice.
11. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

R Satheesan

INSPECTOR