



Appeal Decision

Site visit made on 18 January 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/N5660/C/21/3277580

Land at 38 Leonard Road, London SW16 5TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Yaw Acheam Pong against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 19 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a single storey, flat roofed rear extension ('the unauthorised extension') and its unauthorised use as a self-contained flat ('the unauthorised flat').
 - The requirements of the notice are to:
 - a) Cease the use of the unauthorised flat and remove the unauthorised extension from the premises - and reinstate the affected rear elevation as existed prior to the breach of planning control; and
 - b) Remove all associated waste and debris resulting from compliance with the above step, from the premises.
 - The period for compliance with the requirements is nine months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed.

Ground (c)

1. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
2. The appellant's case under ground (c) is briefly stated and relates only to the allegation of the erection of a single storey flat roofed extension; not to its use as a self-contained flat. The appellant has referred to The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order) and makes the case that a prior approval application was made for the extension and the Council determined that such approval was not required. As such, the appellant makes the case that the 2015 Order permits the development that is alleged in the notice.
3. The Council has acknowledged the decision it made with regard to the prior approval application reference 20/01474/PDE. It has also noted that provisions of Class A, Part 1, Article 3 of Schedule 2 of the 2015 Order allow for the enlargement, improvement or other alteration of a dwellinghouse. However, the Council has drawn my attention to condition A.3.(a) of Class A, which states that the materials used in any exterior work must be of a similar

appearance to those used in the construction of the exterior of the existing dwellinghouse.

4. I note that the extension has a brick built exterior finish, whereas the original dwelling has a white painted render finish. As such, I do not consider the materials used in the exterior work of the extension to be similar in appearance to those used in the construction of the exterior of the existing dwellinghouse. In this regard I agree with the Council, that the development does not comply with condition A.3.(a) of the permission granted by Class A of the 2015 Order.
5. In addition to the above, the Council suggest that the development was constructed and used from the outset as a self-contained flat. This is not disputed by the appellant. In this regard, the evidence before me demonstrates that it is more likely than not that the development was not constructed as an enlargement to the dwellinghouse at 38 Leonard Road, but rather as an additional self-contained unit of accommodation at the appeal site. The development constructed on site is not, therefore, the development that is the subject of the prior approval application reference 20/01474/PDE
6. For the reasons given above, I conclude that, on the balance of probability, the development alleged in the notice is not permitted by Class A, Part 1, Article 3 of Schedule 2 of the 2015 Order. I have not been made aware of any reason why the development does not require the benefit of express planning permission, in accordance with section 57 of The Town and Country Planning Act 1990 as amended, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the development alleged in the enforcement notice constitutes a breach of planning control. For this reason the ground (c) appeal must fail.
7. That there were no objections from adjoining neighbours is not of relevance to this ground (c) appeal and does not alter the conclusions above.

Overall Conclusions

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

Formal Decision

9. The appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR