The Planning Inspectorate

Appeal Decision

Site visit made on 7 June 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal Ref: APP/K5600/C/21/3288815
Land at 19 Gunter Grove, London, SW10 0UN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Boris Lefebvre against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
- The notice, numbered ENF/20/03510, was issued on 1 November 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of an enclosure on the rear flat roof at third floor level.
- The requirements of the notice are to:
  i) Remove the entire enclosure from the rear flat roof at third floor level;
  ii) Remove from the land all resulting debris.
- The period for compliance with the requirements is six calendar 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.

Decision

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

Preliminary Matters

2. Submissions are made in terms of the effect of the enclosure on the character and appearance of the area and Sloane Stanley Conservation Area. Precedent issues are also raised by both the appellant and interest parties. The appellant has explained his reasons for the build, including safety considerations. He has also referred to distress caused by the enforcement action taken by the Council.

3. However, I am unable to consider the planning merits of the alleged development or the personal circumstances of the appellant because an appeal has not been made under ground (a), which is that planning permission should be granted for what is alleged in the notice.

The Appeal on Ground (c)

4. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. Consideration of the same involves a two-stage process: whether the matters constitute 'development' requiring planning permission, and, if so, whether the development already benefits from a grant of planning permission. The onus of proof is on the appellant and the standard of proof is the balance of probabilities.

5. S55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. For the purposes of the 1990 Act, s55(1A) provides that building

operations include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder. S57 of the 1990 Act provides that planning permission is required for development, subject to the exclusions in s57(1) to (7).

6. The alleged enclosure is positioned on top of part of the flat roof of a three storey extension to the rear of the terrace dwelling at No 19 Gunter Grove. To assess whether it would amount to a building operation, established case law[1] has set down three primary tests relating to its size, permanency and degree of physical attachment. No one factor will be decisive and any assessment will be a matter of fact and degree in the given circumstances.

7. The size of the enclosure is such that it effectively runs to the full width of the extension on which it is built and is large enough to accommodate a bathroom with sink, toilet and shower.

8. The appellant asserts that the 'outdoor shell has not been built with heavy materials like bricks or blocks...' and that the materials are removable. Nevertheless, it has a timber frame construction with thermal insulation to the walls and roof, both of which are covered with orientated strand boards. I saw that render has been applied to the external walls and the roof includes a rooflight. It has rainwater goods discharging water from the eaves level guttering via a downpipe to the adjacent roof terrace, which can be accessed from a door in the rear wall of the enclosure. Internally, it has been tiled and fitted out to a high standard.

9. Clearly, the nature of the construction is that it would normally be carried out by a builder or similar tradesman with specific skills - having regard to the definition of building operations at s55(1A)(d) of the 1990 Act.

10. The appellant submits that the enclosure amounts to a mobile shell because the structure of the house has not been modified or touched. However, the enclosure is physically attached to the main dwelling and effectively forms part of it, being accessed internally via a landing door.

11. Therefore, even if the enclosure has been built out of lightweight and removable materials, there is no suggestion that it was envisaged as anything other than a permanent addition to the dwelling. Overall, there is nothing to distinguish it from a conventional rear extension.

12. Taking account of all three factors, I find, on the balance of probabilities, that the enclosure amounts to a building for the purposes of the 1990 Act, for which planning permission is required.

13. The appellant submits that what has been built is permitted development, thereby implying that planning permission is granted for it by Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, it has not been shown, and the onus is on the appellant to do so, that the building benefits from any of the classes of permitted development under Part 1 of Schedule 2 of the GPDO.

[1] *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] EWCA CIV 5569

14. Accordingly, the appellant has not demonstrated that the alleged development was not in breach of planning control on the balance of probabilities. The appeal on ground (c) fails.

15. The appellant explains in his grounds of appeal that he is seeking to apply for a lawful development certificate. However, for the reasons explained, I find that the enclosure was not lawful on the date the appeal was made. A certificate of lawful use or development should not therefore be granted.

The Appeal on Ground (f)

16. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to immunity caused by the breach.

17. In this case the requirements of the notice are, in short, to remove the alleged enclosure and all resulting debris. The purpose of the enforcement notice is therefore to remedy the breach.

18. The appellant has stated that he would like to work with the Council to find an alternative build and to do so before dismantling anything, for cost reasons. However, no ground (a) appeal has been made and no alternative schemes have been presented. It has not therefore been shown that there are any lesser steps that would remedy the breach of planning control.

19. The appellant does raise issues in respect of correspondence with the Council but such matters do no assist his case under ground (f) and are not matters for this appeal.

20. I find that the requirements of the notice tally with the allegation and are not excessive but necessary to remedy the breach. The appeal on ground (f) must fail.

Conclusion

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

Richard S Jones

INSPECTOR