



Appeal Decisions

Site visit made on 18 October 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/A5840/C/22/3292032 (Appeal A) & 3292033 (Appeal B) 50A Pennethorne Road, London SE15 5TQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mrs Sonia Dos Reis (Appeal A) and Mr Liberato Tadeu Dos Reis (Appeal B) against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 28 January 2022.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey extension to the rear and side of the Property ("the Unauthorised Extension").
- The requirements of the notice are to:
 - 5.1 Remove the Unauthorised Extension from the Property;
 - 5.2 Repair any damage caused to any wall or structure the Unauthorised Extension is connected to as a result of the construction, use or removal of the Unauthorised Extension; and
 - 5.3 Permanently remove from the Property any materials and debris resulting from the carrying out of steps 5.1 and 5.2 above.
- The period for compliance with the requirements is: Three (3) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Ground (d)

2. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Section 171B sets out where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
3. It is for the appellants to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellants' evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants' version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
4. Section 171B of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building...operations...no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were

substantially completed. This appeal will therefore turn on whether the extension was substantially completed on or before 28 January 2018.

5. Given the absence of a planning application, for which there would be detailed plans, and, having regard to the findings in *Sage v Secretary of State for the Environment, Transport and the Regions & Maidstone Borough Council* [2003] UKHL 22, for the extension to be immune from enforcement action, I agree that the works which had been carried out by time the notice was served would need to have existed in that form for at least four years.
6. I saw that the extension is constructed of polycarbonate sheets, white plastic cladding, plywood and is fitted with double glazed doors. The appellants state that the works were carried out to address mould in their bedroom and toilet by replacing damaged fences and building a roof to stop rain from hitting the bricks of the property, allowing the walls to dry. The appellants have drawn my attention to a Google Earth image dated 2 September 2017, which shows some sort of structure was *in situ* at the time the photograph was taken.
7. The Council suggests the extension was initially only a roof that was fitted over an existing fence and part of the rear walls that were built, with the extension subsequently amended at a later date with a new roof and the fence fully replaced. An interested party states that the appeal property had a roof 'like an awning' towards the back and side of their garden and suggests that the 'wrap around the back and side extension was done recently'.
8. The appellants dispute that the installation was made in stages and advise that the works were all done at the same time. However, there is no explanation as to what 'at the same time' means. By the appellants' own admission, they did not recall the year of construction of the extension. The appellants advise that they started using their 'extension area' not only for storage but as a conservatory. It therefore seems likely that alterations were made to the structure to accommodate changes in the way it is used.
9. The Google Earth image (the photograph) is taken at height and is of limited quality. It is not possible to discern the nature of the materials which have been used to construct the structure, nor is it possible to see from the photograph whether the doors or plywood were *in situ*, or the extent of the white plastic cladding. As pointed out by the Council, the roof appears to have been constructed over fencing. The appellants suggest this may be due to a dark reflecting hitting the white cladding from the opposite building. However, they have provided no substantive evidence other than the photograph to support this assertion or show when or how the extension was constructed.
10. The photograph shows that something was present within the site in 2017, but it does not show that the works which are the subject of the enforcement notice were substantially completed at that time. There is a paucity of documentary evidence to show how and when the extension was constructed. While it is clear something was present within the site in 2017, this, in my view, does not, of itself demonstrate that the extension was substantially completed by 28 January 2018.
11. Thus, for the reasons given above, I find the appellants' evidence is not sufficiently precise or unambiguous and has therefore not demonstrated, on the balance of probabilities that the extension was substantially completed on

or before 28 January 2018. Consequently, the appeals under ground (d) must fail.

Ground (g)

12. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellants state they need additional time to construct an alternative to the appeal scheme, make alternative arrangements to store items currently located in the extension and demolish the extension.
13. The Council confirms that an alternative extension was granted planning permission on 8 February 2022, reference 21/AP/4571. The appellants suggest that a period of 6 months following the approval would be required to address matters such as building regulations and party wall agreement. The extension would need to be removed before works on the alternative extension could be carried out. However, whether the appellants wish to implement the planning permission or not is independent of the requirements of the notice.
14. While I note the concerns raised by the appellants' regarding damp and mould, I am not persuaded that retaining the extension is the only means of addressing it. Moreover, I cannot consider the planning merits of the extension, since an appeal under ground (a) has not been made.
15. Although I saw a wardrobe and table and chairs within the extension, the number of large items stored is limited. Some of the items currently stored within the extension could, in my view, be stored within the main dwelling and external storage could be used to accommodate the larger furniture items. I see no reason why it would not be possible to secure alternative storage for the items currently stored within the extension within a relatively short period of time.
16. While it may be necessary to secure the assistance of a builder to remove the works, given the nature of the construction of the extension and its limited size, I consider three months is more than sufficient to identify someone suitable to carry out the works, if necessary, and for those works to be carried out.
17. Consequently, the appeals under ground (g) fail.

Conclusion

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

M Savage

INSPECTOR