



Appeal Decisions

Site visit made on 23 March 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal A Ref: APP/C5690/C/22/3292658

Land at 47 Veda Road, London SE13 7JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr George Podger on behalf of Veda Road Ltd against an enforcement notice issued by London Borough of Lewisham.
- The notice was issued on 20 January 2022.
- The breach of planning control as alleged in the notice is unauthorised front roof slope extension.
- The requirements of the notice are to:
 1. Remove the front roof slope extension.
 2. Restore the front roof slope to its previous condition and appearance before the unauthorised development was carried out.
 3. Make good all damage resulting from the compliance with the requirements of this notice.
 4. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/C5690/X/22/3305577

47 Veda Road, Ladywell, Lewisham, LONDON SE13 7JQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Veda Road Ltd against the decision of London Borough of Lewisham.
- The application ref DC/22/128038, dated 15 August 2022, was refused by notice dated 18 August 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the construction of an outbuilding in the rear garden.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. Under Appeal A the appellant sought to include an appeal under ground (a). However, the initial request to include a ground (a) appeal, which the appellant claims to have been submitted via post, was not received by the Planning Inspectorate and there is no proof of postage. A later email request was made. However, this was made after the date the enforcement notice (the Notice)

took effect and therefore the request was denied. Consequently, the appeal proceeds on grounds (b), (c) and (e) only.

Appeal A – The ground (e) appeal

2. An appeal on ground (e) is whether copies of the Notice were served as required by section 172 of the Act. Section 172(2) states "A copy of an enforcement notice shall be served— (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice".
3. S176(5) of the Act goes on to state that 'Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.'
4. A copy of the Notice was served on the 'Director of Veda Road Ltd' at 47 Veda Road. The appellant argues that it was simple to ascertain online that the director is Anthony George Eustace Podger of 210 Trundleys Road, London SE8 5JE. Be that as it may, this appeal has been made by Mr George Podger and therefore he cannot possibly have been substantially prejudiced by a copy of the Notice being served on the appeal property instead of his Trudleys Road address.
5. It is also argued that a number of the charge holders included in the register of title for the appeal property were not served with a copy of the Notice. The appellant has not identified which specific parties they are referring to. Having compared the list of persons served with the Notice and the register of title, it would appear that Agepo Ltd and Susan Henrietta Podger were not served with a copy. However, I note that the address of these parties is identical to the address which the appellant states a copy of the Notice should have been served on Anthony George Eustace Podger - 210 Trundleys Road. I also note that the appellant and Susan Henrietta Podger share the same surname.
6. Given that the three registered charges on the register of title, including the appellant, share the same address and two of which share the same surname, it is reasonable to conclude there is a familial and/or business relationship between them all. Consequently, it seems unlikely that the registered charge parties that were not served a copy of the Notice were not made aware of the Notice by the appellant. Even in the event they were not aware, by reason that an appeal has been lodged, there is no evidence to suggest that they have been substantially prejudiced by not being served with a copy of the Notice.
7. I therefore find, it has not been demonstrated that any interested parties have been substantially prejudiced as a result of a copy of the Notice not being served on the correct address for the appellant or by not serving a copy on all of the interested parties with a charge on the register of title.
8. The ground (e) appeal therefore fails.

Appeal A – The ground (b) appeal

9. The appeal on ground (b) is that the matters alleged in the Notice have not occurred. The burden of proof is upon the appellant.

10. At the time the appeal was lodged, the appellant argued that the roof slope had not been extended as alleged in the Notice. However, the appellant subsequently confirmed that the roof slope had been removed during works to the roof. When the roof was replaced it was different to the original slope, possibly due to the new rafters being larger than the original ones to comply with building regulations.
11. Therefore, the matters alleged in the Notice have occurred.
12. The ground (b) appeal therefore fails.

Appeal A – The ground (c) appeal

13. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
14. The appellant initially argued that the works that had been carried out to the roof were permitted development in accordance with a certificate of lawful development granted on appeal. However, as they later realised the roof slope had been extended they now concede that it does not benefit from permitted development. Consequently, the matters alleged in the Notice require planning permission. In the absence of such planning permission, the matters alleged therefore constitute a breach of planning control.
15. The ground (c) appeal therefore fails.

Appeal A - Other Matters

16. The appellant argues the planning merits of the development. However, such matters cannot be taken into consideration under a ground (b), (c) nor (e) appeal.

Appeal A – Conclusion

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

Appeal B

Main Issue

18. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.

Reasons

19. There is no dispute between the parties that the proposed building would meet most of the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The Council's reason for refusal is that the total area of the ground covered by buildings, enclosures and containers within the curtilage would exceed 50% of the total area of the curtilage as well as the development proposing the provision of a raised platform.
20. Paragraph E.1(h), Class E, Part 1 of Schedule 2 of the GPDO states that development is not permitted if it would include the construction or provision of a verandah, balcony or raised platform. The Council contend that this in-set

area is approximately 720mm high measured from the part of the platform located closest to the existing floor directly below.

21. The appellant contends the Council has taken the ground level reference point from the incorrect position. The GPDO states the ground level is to be measured from 'the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.' On this basis the appellant argues the in-set area should be measured from the height of the ground level to the front of the building, from which point it would not be more than 300mm high and therefore would not be a raised platform. Following this, the appellant states that this area would simply form part of the curtilage and as such would not count against the 50% curtilage limit.
22. However, this argument is fundamentally flawed. By taking the 'ground level' from the forward most point of the building, this is clearly acknowledging the in-set area forms part of the building, otherwise the measurement would be taken from the highest ground level directly below the in-set area. Even if I found that the in-set area was not a raised platform due to it not being higher than 300mm when measured against the highest ground level to the front of the building, that would not automatically mean it does not form part of the building. It would clearly be an integral part of the building both in its construction and functionality. Therefore, regardless of whether it is a raised platform or not, the in-set area is clearly part and parcel of the overall building and cannot be considered as a separate entity. As such, it must be considered in the calculation of the overall ground covered by the building.
23. The Council confirm the building, including the in-set area, and other previous additions to the dwelling would total approximately 66.49 sqm, which exceeds 50% of the total area of the curtilage, which is approximately 124.85 sqm. Consequently, it would fail to satisfy paragraph E.1(b) of the GPDO.

Conclusion

24. I therefore find that the proposal fails to meet the requirements of Class E of the GPDO and therefore would not be permitted development.

Formal Decisions

Appeal A

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

Appeal B

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of an outbuilding in the rear garden was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Alexander Walker

INSPECTOR