



Appeal Decision

Site visit made on 27 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/M0655/C/23/3316400

10 Lodge Drive, Culcheth, Warrington WA3 4ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Orang Ranjbar against an enforcement notice issued by Warrington Borough Council.
 - The notice was issued on 27 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a first floor side extension constructed of wood.
 - The requirements of the notice are to: Remove the first floor side extension constructed of wood.
 - The period for compliance with the requirement is: Two calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The Council requests that I vary the notice to refer to a different part of the Warrington House Extensions Supplementary Planning Document. The requested amendment relates to text included within paragraph 4 of the Notice, which details the Council's reasons for issuing the Notice. While I note the Council's request, I consider it is unnecessary to vary the notice in this instance.
3. The appellant asserts that the side extension is not a permanent structure, has no water or electricity connected to it and has no access to the property. However, it is not disputed that development has occurred and the appellant has not appealed under ground (c). While the extension is constructed of timber, from the evidence before me and my inspection of it from the public domain, I consider it constitutes development for the purposes of the Act.

Reasons

4. 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 the matters stated in the notice. It is for the appellant to make their case on the balance of probabilities.
5. The Planning Practice Guidance (PPG) advises that an applicant's 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 applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. 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.
7. The main thrust of the appellant's case is that the first floor side extension constructed of wood ('the side extension') has been *in situ* for more than 4 years. The appellant has provided correspondence between themselves and the Council. Within that correspondence, the appellant states that the structure is an elevated wooden children [sic] play house/ shed structure that has been there for over 15 years, which they have re-cladded [sic].
8. This appeal will therefore turn on whether the side extension was substantially completed on or before 27 January 2019. The appellant has provided a series of street view photographs which show that vegetation bordering the site significantly limits views into the site. This is consistent with what I saw on site, though I was able to see the structure from various points from the public domain and through vegetation along Wellfield Road.
9. The appellant has provided an aerial image dated April 2018 which they assert confirms the side extension was present prior to 27 January 2019. However, in my opinion, it is not clear from the photograph that a structure is present and if so, what the structure comprised. A further aerial photograph, undated, shows a structure to the side of the dwelling far more clearly. The fact that a structure is clearly evident on the undated aerial photograph but not on the 2018 aerial photograph points towards the side extension not being present when the April 2018 photograph was taken. Even if the undated aerial photograph was taken prior to 27 January 2019, it does not demonstrate that the side extension was, at that time, substantially completed.
10. The appellant has also provided a photograph, Photograph A, dated 26 June 2014, which shows a ladder leading up to what appears to be a wooden structure above, which is attached to the side of the house. Photograph A does not show the entire structure, which significantly limits comparison with the side extension. Nevertheless, timber supports are not evident in Photograph A, whereas a number of supports are visible in the photograph provided by the Council of the side extension. Furthermore, the side extension appears closer to the boundary fence compared with the structure shown on Photograph A. While Photograph A shows that some sort of wooden structure was present at the site in 2014, it does not show that the side extension was present at this time.
11. The Council has provided a series of photographs taken by a Building Control Officer on 1 April 2021, which are asserted to show the side extension still under construction. The appellant disputes that the side extension was still under construction at this time. However, even if it was substantially complete by the time of the officer's visit, the presence of building materials used in construction of the extension suggests such works were recently completed, since it is highly unlikely the appellant would retain such substantial quantities of building materials for such a long period of time after completing the works.

12. Significantly, the appellant confirms in their final comments, that they replaced the old rotten walls with new ones and reclad them. From the appellant's own evidence, it appears likely that, even if parts of a previous wooden structure have been retained, the works were so significant to have resulted in the construction of a new extension.
13. The appellant suggests they can obtain affidavits from some of their neighbours to confirm that the side extension existed four years prior to the service of the notice. However, as set out above, the burden of proof¹ is on the appellant in a ground (d) appeal. It is therefore for the appellant to submit any documentation they wish to be considered in support of their case. No affidavits from neighbours have been submitted through this appeal and so I am unable to afford this matter weight.
14. Thus, I find that the appellant's evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities, that the side extension was substantially completed on or before 27 January 2019. Consequently, the appeal under ground (d) must fail.

Conclusion

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

M Savage

INSPECTOR

¹ On the balance of probabilities