



Appeal Decision

Site visit made on 15 January 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/L5240/C/22/3309186

2A Hillside, Gloucester Road Croydon, CR0 2DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mohammed Tashraf Hakim Choudhury against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 28 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are:
 1. Remove/demolish the rear ground floor extension shown on the attached diagram and outlined in red on the edited photographs marked below.
 2. Remove all the resultant debris from the premises as a result of compliance with requirements 1 as identified above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be varied by:

- Deletion of steps 1) and 2) under section 5 (What you are required to do), and substituted therefor by the following steps:
 - 1) Remove/demolish the rear ground floor extension shown on the attached diagram and outlined in red on the edited photographs marked below.
- Or
- 2) Carry out the development in accordance with the plans and conditions approved by the Council under the Certificate of Lawfulness of Proposed Use or Development; reference: 22/04467/LP approved on 10 March 2023;
- and
- 3) Remove all constituent materials from the land resulting from the compliance with steps 1 or 2 above.
- Deleting the words "6 (six) months." within section 6 (Time for Compliance) and its replacement with "9 months".

2. Subject to these variations, the enforcement notice is upheld.

The appeal on Ground (f)

3. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
4. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
5. As the notice does no more than seek remedy of the breach, it is not excessive. However, since this appeal was originally lodged the Council have approved a Certificate of Lawfulness of Proposed Use or Development (LDC) for a single storey rear extension to form a 3m deep extension¹. Details and drawings of this approved LDC have been submitted with this appeal.
6. Case law has established that enforcement should be remedial rather than punitive. In light of this LDC, the breach of planning control could be addressed through an alternative option to require the development to be carried out in accordance with the plans and conditions approved under ref: 22/04467/LP. This would achieve the purpose of the notice which is to remedy the breach.
7. No persuasive argument has been made by the Council to explain why it would not be possible to implement this recently approved LDC scheme. Furthermore, the LDC scheme was approved after the Notice was served, and therefore the Council would have been aware of the current unauthorised development when approving this proposed LDC application.
8. I will therefore add an alternative requirement to make the development comply with the plans and conditions approved under the LDC which would remedy the breach of planning control, in line with s173(4)(a) of the 1990 Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
9. As such, the appeal on ground (f) succeeds and I will vary the notice to insert this alternative requirement.

The appeal on Ground (g)

10. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 months to 12 months in order to raise finance to fund the works and appoint a contractor to carry out the necessary works.
11. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 9 months would strike a more reasonable and proportionate balance to comply with the notice and undertake the necessary works. I shall therefore extend the period from 6 to 9 months for compliance with the notice.
12. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

¹ Council ref: 22/04467/LP approved on 10 March 2023.

Conclusion

13. For the reasons given above, whilst the requirements of the notice are not excessive to remedy the breach, in light of the recently approved LDC, it is reasonable to require the development to comply with the plans and conditions approved with this LDC. Furthermore, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and (g) succeeds to that extent.

R Satheesan

INSPECTOR