



Appeal Decision

Site visit made on 24 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Appeal Ref: APP/Z5060/C/22/3307836

Land and premises at 51 Fanshawe Crescent, Dagenham RM9 5ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs Asma Begum against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 30 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised development of a two-storey side and rear extension; the extended width to the single storey rear ground floor extension; extended rear dormer with roof terrace and front roof lights; a full width front Porch extension; the connecting roof beyond and between the single storey rear extension and the outbuilding; and the first-floor part rear extension.
- The requirements of the notice are:
 - Remove the unauthorised developments of a two-storey side and rear extension; the extended width to the single storey rear ground floor extension; extended rear dormer with roof terrace and front roof lights; a full width front Porch extension; the connecting roof beyond and between the single storey rear extension and the outbuilding; and the first-floor part rear extension.
 - Remove all subsequent waste material from the premises.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (a) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. An enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.
3. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. However, difficulties are likely to arise when the allegation is incorrect such that the requirements may be incomplete.
4. A Lawful Development Certificate (LDC) (proposed operations) was issued on 26 February 2019 for a hip to gable extension, rear dormer and two front rooflights, reference 18/02231/CLU_P and a further LDC for an outbuilding on 8 March 2019, reference 18/02232/LCU_P. The Council confirmed that prior approval was not required for a single storey rear extension on 22 March 2019, reference 19/00277/PRIOR6.

5. A planning application was submitted in 2022 for a development described on the decision notice as 'retrospective application for the construction of a two-storey side and rear extension, and the extended width to the single storey rear ground floor extension extended rear dormer with roof terrace and front roof lights and a full width front porch extension.' This was, according to the Council, the description given by the appellant, and it is on this basis that the Council drafted the allegation in the enforcement notice.
6. However, in submissions the appellant stated that the dormer and rear ground floor extension are new, there was no extension to an existing dormer or rear ground floor extension.
7. Given the relatively short period between the issuing of the certificates, the prior approval application and the submission of the planning application, and based on my observations, it is more likely than not, on the balance of probabilities, that the various extensions to the property were carried out and constitute a single act of development.
8. Accordingly, there was no dormer or rear ground floor extension to extend, and the allegation is inaccurate in these respects.
9. The recipient of a notice must be clear what must be done to remedy the breach because failure to do so is a criminal offence. In this case, it is not clear how the consequential requirements to remove the extended width to the single storey rear ground floor extension and extended rear dormer could be complied with.
10. While the notice is not so ambiguous as to render it a nullity, it is clearly flawed and cannot remain as it is. Neither party has suggested any alternative wording to make the allegation clearer. However, it seems to me that it would need to be different to the allegation the Council has used and would also lead to different requirements.
11. The appellant in their appeal on ground (f), suggested lesser steps so that they had the option of modifying the dormer and rear ground floor extension in accordance with the previously certified and prior approval schemes.
12. The purpose of the notice is to remedy the breach of planning control. As defined in section 173(4)(a), the breach of planning control could also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, this includes permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
13. However, the extension subject of the application for prior approval was subject to the conditions in the GPDO at that time, which included at Part 1 Class A A.4 (13) that the development must be completed on or before 30 May 2019. Accordingly, the prior approval scheme could not be lawfully implemented as it is in effect no longer extant, and it would not therefore be appropriate to vary the notice as suggested.
14. The Council's suggested 'simplified' requirements take me no further since they do not refer to the single storey rear ground floor extension. If I were to correct the allegation based on the above, and the requirements based on the Council's suggestion, it would result in deemed planning permission being

granted by virtue of section 173(11) for the rear ground floor extension once the requirements are complied with. This is evidently not what they intended and were I to correct the requirements on this basis this would cause the Council injustice.

15. Even if I were content to vary the requirement in respect of the dormer, so that the appellant had the option to either remove or alter so that it accords with the previously certified scheme, the only remedy to the breach of planning control in respect of the single storey rear ground floor extension, would be to remove it.
16. Such a variation would expand the requirements and therefore the scope of the enforcement notice, making it more onerous to comply with, thereby causing injustice to the appellant.
17. For the reasons given above, I do not consider that correcting or varying the enforcement notice is possible without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the Council or the appellant. Since this is a case where the Council have misdescribed the alleged breach, they may be able to issue another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

Conclusion

18. I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
19. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b) and (f) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Felicity Thompson

INSPECTOR