

Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/N5660/C/23/3335971

71 Herne Hill Rd, London SE24 0AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Robert Wright against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 10 November 2023.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a rendered, flat roofed, side extension.
 - The requirements of the notice are:
 - a) Remove the unauthorised side extension and reinstate the premises as existed prior to the breach of planning control; and
 - b) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) 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.

Reasons

2. The appeal property is an end of terrace house. Planning permission was granted for the demolition of a garage and erection of a single storey side extension in July 2020. The structure now built differs significantly from the approved scheme. A 'variation of condition' application proposing a revised scheme was refused in August 2023. With this appeal, I have been provided with drawings setting out the appellant's current proposals.
3. The appeal is made solely on ground (f), which 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
4. An enforcement notice can seek to achieve, wholly or partly, the following purposes, as set out in section 173(4) of the Act:

a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

b) remedying any injury to amenity which has been caused by the breach

5. In this case, the notice requires the extension to be removed and the property returned to its previous condition. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a). That, indeed, is what the Council says is its purpose. With that in mind, it is not permissible to vary the requirements in the notice in any way that would frustrate the purpose of remedying the breach of planning control.
6. The appellant argues that the extension is similar to the one for which planning permission was previously granted, and suggests it could be retained but modified to accord more closely with that permission. On that basis, the requirement to remove it in its entirety is said to be excessive. In considering that point, I am mindful that section 173(4)(a) indicates that a breach of planning control may be remedied by making the development comply with the terms of any planning permission which has been granted in respect of the land.
7. However, the Council states that the planning permission was never commenced (the development carried out being a different scheme) and has now expired. The appellant does not challenge that directly. A breach of planning control cannot be remedied by relying on an expired planning permission.
8. Even if it were argued that the planning permission remains extant, the proposal the appellant now puts forward is materially different to the permitted scheme, including a very noticeable difference in the design of the roof. Consequently, the current proposal would not remedy the breach of planning control, regardless of whether the planning permission has expired. While there may be practical reasons for the particular scheme now proposed, there is no appeal under ground (a) (that planning permission should be granted for what is alleged in the notice), and it is not open to me to consider the planning merits of what is proposed. There is no proposal to make the development comply fully with the planning permission that was granted, and it is not clear whether it would be practical to do so.
9. For these reasons I find that the requirements of the notice are not excessive, and it has not been shown that the purpose of the notice could be achieved with lesser steps.

Conclusion

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

Peter Willows

INSPECTOR