



Appeal Decision

Site visit made on 5 December 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Appeal Ref: APP/N5660/C/23/3323433 73 & 75 Durning Road, London SE19 1JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Semena Williams against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 21 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the intentional unauthorised erection of a single storey extension with basement level on the side elevation of the premises ('the unauthorised side extension and basement').
 - The requirements of the notice are:
 - a) Remove the unauthorised side extension and basement and reinstate the side elevation of the premises, along with the land/garden levels, as existed prior to the breach of planning control; and
 - b) Remove all associated waste and debris resulting from compliance with the above requirement, from the premises.
 - The period for compliance with the requirements is: Four 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).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 3 the deletion of the allegation in its entirety and its replacement with "the erection of a side extension with basement".
 - In section 5 a) the deletion of the word "unauthorised".
 - In section 5 b) the deletion of the word "premises" and substitute the word "land".
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
4. In section 3 of the notice the words "without planning permission" and "intentional unauthorised" do not describe an act of development and are therefore unnecessary. Furthermore, the alleged breach of planning control would be more succinctly described as "the erection of a side extension with basement". I shall therefore correct the notice accordingly.

5. The word “unauthorised” in requirement 5 a) is also unnecessary and can be deleted. The enforcement notice relates to “the land” as identified under section 2 of the notice. In the interest of clarity and precision I shall therefore delete the word “premises” in requirement 5 b) and replace it with the word “land”
6. The above corrections do not fundamentally change the notice or its requirements. Consequently, they do not cause injustice to either party.

Ground (f)

7. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are to remove the side extension and basement in its entirety and return the property and ground levels to as existed prior to the development taking place. The purpose of the notice must therefore be to remedy the breach of planning control.
8. For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach. The appellant refers to the size of the extension and its compliance, or otherwise, with the Council’s Building Alterations & Extensions Supplementary Planning Document, as well as the impact of the development on the living conditions of occupiers of neighbouring properties and on the character and appearance of the host building. Reference is also made to the structural stability of the development and its compliance with Building Regulations.
9. However, far from proposing alternative steps which would remedy the breach of planning control, the appellant instead seeks the retention of the development and has provided drawings outlining proposed alterations to the extension along with a Basement Impact Assessment.
10. Whilst I have sympathy for the appellant’s predicament, unfortunately the matters raised in their grounds of appeal relate only to the planning merits of the development. As there is no appeal under ground (a) there is no deemed application for planning permission before me. I am therefore unable to consider the planning merits of the scheme, including whether or not any alterations to it would make it appropriate. In the appeal on ground (f), the only consideration is whether the requirements exceed what is necessary to achieve the identified purpose of the notice, which in this instance is to remedy the breach of planning control.
11. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Consequently, the appeal on ground (f) fails.

Ground (g)

12. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of four months after the notice takes effect.

13. I am satisfied that the specified period of four months would be sufficient time to carry out the requirements of the notice. Nevertheless, the appellant contends that an extension is required to allow adequate time for the submission of a new planning application, incorporating proposed alterations to the development, and if necessary to appeal against any subsequent refusal. It has not been suggested how much further time would be considered reasonable.
14. The Council state that the appellant has had the opportunity to appeal against the enforcement notice under ground (a) and make a deemed application for planning permission, and/or appeal against the refusal of the previous planning application¹ but chose not to do so.
15. Furthermore, under the provisions of section 70C(1) of the 1990 Act the Council may decline to determine a planning application for development (either the whole or part of) that has previously been subject to an enforcement notice. The decision whether to decline to determine any such application would be entirely a matter for the Council.
16. The Council have not indicated whether they would accept a planning application that sought the retention of part of the development, nor do I have any evidence before me that such an application has been submitted to date. There is also no guarantee that a new planning application would be forthcoming should I extend the compliance period. At this stage, it is no more than speculation that a new planning application would be both submitted to and accepted by the Council. In these circumstances, I am not satisfied that there is good reason to extend the compliance period.
17. In any event, I am mindful that the Council has the power under section 173A(1)(b) of the 1990 Act to extend the compliance period, should they see fit. Whilst this is entirely a matter for the Council's discretion, should a new planning application be submitted and accepted by the Council, it would be open for the appellant to ask the Council for an extension of time to allow for that application to be determined.
18. For the reasons set out above, the appeal on ground (g) fails.

Other Matters

19. The appellant has questioned whether it was expedient for the Council to issue the enforcement notice, however that is not a matter before me in this appeal. A challenge to a Council's decision to take enforcement action on the grounds of expediency can only be made by way of judicial review.
20. I note that third party representations were received in support of the appeal, including that the development was not considered to be excessively large, out of keeping, or to the detriment of the amenity of neighbouring occupants. However, for the reasons already set out above, in the absence of an appeal on ground (a) I am unable to consider the planning merits of the development.

Conclusion

21. For the reasons given above, I conclude that the appeal fails. I have therefore upheld the enforcement notice as corrected.

¹ Council Reference 23/00199/FUL

David Jones

INSPECTOR