

Appeal Decision

Site visit made on 18 April 2017

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 May 2017

Appeal Ref: APP/B5480/C/16/3157386

29 Roslyn Gardens, Gidea Park, Romford RM2 5RH

- 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 Colin Cameron against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 27 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a part single /part 2-storey side extension.
- The requirements of the notice are:-
 - (i) Remove the side extension.
 - (ii) Remove all materials and debris from the site associated with requirement (i).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f)&(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Procedural Matters

1. In its Appeal Statement, the Council refers to the requirements of the notice in terms of it *either* requiring removal of the side extension or removal of the materials and debris. Use of the word "either" is clearly a mistake. It does not override the notice which requires both steps to be taken.
2. The appellant queries how the Council's delegated officer's decision can have had regard to matters arising under an appeal on ground (f) when that decision pre-dated the appeal. I take the Council's comments to refer to it having considered whether the notice could be drafted in such a way as to provide an alternative to demolition.

Reasons

The appeal on ground (f)

3. The appeal concerns a part single and part two storey extension constructed at No 29 Roslyn Gardens, a semi-detached house. A retrospective application for what is described as the "2 storey side extension" was dismissed on appeal¹ on 13 March 2014. The development was subsequently found by the Council to still be in situ prompting the issue of the enforcement notice.

¹ Appeal ref: APP/B5480/D/14/2212893

4. The ground of appeal is that the steps required by the notice to be taken are excessive. This ground does not involve a consideration of the planning merits. Therefore, arguments concerning the development as built do not fall to be considered in the absence of an appeal on ground (a) and payment of the requisite fee. For the same reason other appeal decisions referred to by the appellant where development has been allowed for reasons related to character and appearance do not have bearing in this ground (f) appeal. Whilst noting that the neighbour at No 31 supports the appellant, those comments also concern the planning merits.
5. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). The notice indicates that it has been issued for both purposes. The requirement to remove the unauthorised side extension reinforces an aim of remedying the breach. In addition, the reasons for issuing the notice identify injury to amenity from visual harm to the street scene.
6. Remedy of the breach can only be achieved by removal of the extension and so the requirement is not excessive. Nevertheless, enforcement action is intended to be remedial rather than punitive.
7. The appellant has supplied a copy of a 1972 planning permission and approved drawing for the 'erection of garage with bedroom over' and suggests reinstatement in accordance with this plan as a lesser step. According to the Council this planning permission was never implemented. Due to the passage of time, it will have lapsed and does not therefore afford an alternative option.
8. The Council Officer's delegated report recommended that an enforcement notice should give the option of reinstating the side garage and reducing the size of the extension to accord with a previously approved plan for a Lawful Development Certificate² (LDC) or to remove the 'roof extension' in its entirety. The option of a reduction was not given in the issued notice. The reason provided by the Council is that it would be a completely new building involving removal of the whole side extension and such a measure would lack precision.
9. A notice can require restoration of the property to its condition prior to the breach of planning control or to secure compliance with a lawful fallback position provided it can be done with precision. The LDC was for a proposed development. In the absence of plans and further details I have no means of knowing what existed immediately before the breach took place or whether the proposal would remain lawful to assess if there is a solution in this regard short of a complete remedy.
10. The appellant refers to alternative proposals that are being discussed with the Council, but has not suggested how they might amount to lesser steps in this appeal, if at all. However, since this appeal was submitted the Council has granted planning permission on 24 April 2017 pursuant to application no. P0257.17 for a two storey side extension encompassing revisions on the existing unlawful development. The effect of section 180 of the 1990 Act is that the notice ceases to have effect insofar as it is inconsistent with any subsequent permission. This means that the notice will not bite if revisions are

² Application ref: D0134.13

made to comply with the new permission within the compliance period. It is appropriate that the notice be varied to give the appellant the option of either demolishing the unauthorised extension or making alterations to accord with the terms of the new planning permission. It is beyond the scope of this decision for me to pass any comment on the merits of the newly approved scheme, as invited by the appellant.

11. To the extent described, the appeal on ground (f) succeeds.

The appeal on ground (g)

12. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellant seeks 8 months from the date of an email sent to the Planning Inspectorate on 27 October 2016 i.e. until 27 June 2017 to accommodate ongoing negotiations with the Council and the submission of revised plans.

13. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision. The 6 month period given in the notice therefore goes well beyond the date sought by the appellant. Planning permission has now been secured for a revised scheme which can be implemented immediately.

14. If the appellant opts to build out the revised scheme instead of demolishing the extension, the Council suggests this should be done within 4 months. Whilst not raised by the appellant, I see no justification in allowing a lesser period for compliance with the approved scheme particularly as alterations could take longer than works of demolition. Six months is a reasonable period in either scenario.

15. The ground (g) appeal fails.

Formal Decision

16. It is directed that the enforcement notice be varied by deleting the text under paragraph 5. in its entirety and inserting:

“EITHER (i) remove the side extension OR (ii) alter the extension to comply with the terms of planning permission reference P0257.17 dated 24 April 2017 including the conditions subject to which that permission was granted;

AND (iii) remove all materials and debris from the site associated with requirement (i)/(ii).

Time for compliance: 6 months from the effective date of this notice.”

17. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

KR Saward

INSPECTOR