



Appeal Decision

by **R Satheesan BSc PGCert MSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 June 2020

Appeal Ref: APP/B5480/C/19/3232638
5 Curtis Road, Hornchurch RM11 3NP

- 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 Ian Stewart against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 19 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a rear and side extension with balcony on the roof.
- The requirements of the notice are:
 1. Demolish the rear and side extensions OR
 2. Alter the rear extension so that it complies with 'Garden Elevation East As Proposed', 'Side Elevation South As Proposed', 'Side Elevation North As Proposed' of drawing 202 Revision B dated Jan 2017 and 'Ground Floor As Proposed' and 'First Floor As Proposed' of drawing 201 dated Nov 2016 as submitted in application P0120.17 and copied below.
 3. Remove all materials, rubble and debris accumulated as a result of taking either step 1 or step 2 above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) 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.

Summary decision: The appeal succeeds in part and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Procedural Matters

1. The Appeal has been lodged under ground (f) only. However, in light of the current Covid-19 pandemic, both parties have been given the opportunity to comment on the length of time they consider is reasonable to comply with the enforcement notice. I have therefore determined the appeal under ground (g) also, and I am satisfied that neither party would be prejudiced by my inclusion of this.
2. Arguments relating to the planning merits of the development that has been undertaken can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed, and the planning merits arguments put forward in the appellant's case have played no part in my decision.
3. Due to current Government policy regarding Covid-19 and restricting social contact, I have not undertaken a site visit, but instead made a desk-based

assessment to determine the current appeal, which relates solely to the appeal on grounds (f) and (g). This is considered appropriate given that there is no ground (a) appeal and I am not considering the planning merits of the development. As both parties have been provided the opportunity to comment, I am satisfied that neither party would be prejudiced by this.

4. The second requirement of the notice, under section 5 (What you are required to do) is poorly worded, in so far as it should precisely match the allegation. The allegation refers to a "rear and side extension", whereas, the second requirement states "Alter the rear extension...". It should therefore state "Alter the rear and side extension". My understanding of the notice is not affected by this minor error, and nothing within the appellant's submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeal on Ground (f)

5. 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".
6. Although the appellant draws attention to some impracticalities with the previous planning permission he has stated that the development was commenced and I have no evidence to indicate that it could not be completed as approved, even if some elements may not adhere to the building regulations.
7. The appellant states that the reference to "height, mass and bulk" are not suitable reasons for taking enforcement action and any potential privacy issue resulting from the use of the flat roof as a balcony could be addressed by altering the French doors so that they are inward opening only and installing a 1100mm high balustrade around the doors, to prevent access onto the flat roof. It is also stated that this could be secured by condition. However, given that a ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and cannot therefore impose the suggested planning conditions. I must take the notice at face value, which has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not overcome the breach of planning control and planning permission would still be required.
8. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
9. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

10. This ground of appeal is that the time given to comply with the notice is too short. The period for compliance stated in the Enforcement Notice is 3 months. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In light of Government policy regarding Covid-19 and restriction of social contact, I

consider that this period needs to be prolonged by a further 3 months to obtain quotations, appoint a contractor and carry out the works.

11. In my opinion, the 6 months suggested by the appellant would strike a more reasonable and proportionate balance in light of the current pandemic. I also note that the current situation with the pandemic is fluid and it is unclear how long restrictions associated with this will last. However, the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action
12. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

13. For the reasons given above, 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 (g) succeeds to that extent.

Formal Decision

14. It is directed that the enforcement notice is varied by:
 - deleting the second requirement, under section 5 (what you are required to do), and replacing it with the following:

“Alter the rear and side extension so that it complies with 'Garden Elevation East As Proposed', 'Side Elevation South As Proposed', 'Side Elevation North As Proposed' of drawing 202 Revision B dated Jan 2017 and 'Ground Floor As Proposed' and 'First Floor As Proposed' of drawing 201 dated Nov 2016 as submitted and approved in application ref: P0120.17, and copied below, so as to comply with the terms of this permission, including its conditions and limitations.”
 - deleting the words “Within 3 months of the effective date of this Notice to:” within section 5 (What you are required to do).
 - deleting the words “3 MONTHS after the date this Notice takes effect” within section 6 (Time for Compliance) and its replacement with “within 6 months after this Notice takes effect”.
15. Subject to these variations, the enforcement notice is upheld.

R Satheesan

INSPECTOR