



Appeal Decisions

Inquiry held on 1 July 2008

Site visit made on 1 July 2008

by **Lucy Drake** BSc MSc MRTPI

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

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Decision date:
16 July 2008

Appeal Ref: APP/U5350/C/07/2054740

3 Filey Avenue, London, N16 6NU

- 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 Firstquest Ltd against an enforcement notice issued by the London Borough of Hackney.
- The notice was issued on 16 August 2007.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey extension at the rear of the property.
- The requirements of the notice are to:
 - (i) Completely and permanently demolish and remove from the land the unauthorised single storey extension at the rear of 3 Filey Avenue, London, N16 6NU.
 - (ii) Completely and permanently make good all damage resulting from the compliance with the other requirements of the notice.
 - (iii) Permanently and completely remove all the waste, materials, equipment and other debris created as a result of fulfilling the other requirements of the notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal Ref: APP/U5350/C/07/2056412

3 Filey Avenue, London, N16 6NU

- 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 C Bodner against an enforcement notice issued by the London Borough of Hackney.
- The notice was issued on 16 August 2007.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey extension at the rear of the property.
- The requirements of the notice are to:
 - (i) Completely and permanently demolish and remove from the land the unauthorised single storey extension at the rear of 3 Filey Avenue, London, N16 6NU.
 - (ii) Completely and permanently make good all damage resulting from the compliance with the other requirements of the notice.
 - (iii) Permanently and completely remove all the waste, materials, equipment and other debris created as a result of fulfilling the other requirements of the notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: As the enforcement notice is quashed by my decision on the first appeal I take no further action on this appeal.

The appeal on ground (c) (Appeal Ref: APP/U5350/C/07/2054740 only)

That the matters which have occurred do not constitute a breach of planning control

1. 3 Filey Avenue is a three-storey terraced property with a cellar. Mr Mabey and Mr Bodner (the tenant of the property and appellant in the second appeal) calculated the size of the house as it would have been in 1948 by a mixture of external and internal measurements (the roof space and cellar being measured internally and the other parts externally). This included what would have been the coal bunker and outside toilet at the rear which have now been absorbed into the rear extension the subject of this appeal. When in any doubt over a measurement they said that they rounded it down. Their estimate of the cubic content of the dwelling as it existed in 1948 was 627m³.
2. The day before the inquiry Mr Ormonde for Firstquest (the owners of the property and the appellants in the first appeal) independently measured the net increase in cubic content created by the extension and his figures were presented and explained at the inquiry and re-checked at the site visit. The ground level slopes down from the back wall of the rear garden to the back of the main part of the house. Art 1(3) of the Town and Country Planning (General Permitted Development) Order 1995 provides that 'any reference in this Order to the height of a building ... shall be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the ground immediately adjacent to the building or, where the level of the surface of the ground it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.'
3. The highest part of the surface of the ground adjacent to the extension is the wall facing the remaining part of the back garden. The extension has a flat roof in two parts with the upper level constructed so that it can be pulled onto a metal frame in the rear garden to provide an open-roofed succah. The height of the higher part of the roof was measured at 2.64m above the ground level of the back garden and that of the lower at 2.15m. The difference between them of 2.39m being agreed as the correct height to use to assess the cubic content of the extension. The additional floor area created by the extension was agreed at the inquiry as 26.21m² and the additional cubic content agreed as 62.7m³
4. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 provides that the enlargement, improvement or other alteration of a dwellinghouse is permitted development. Limitation A.1 provides that:

Development is not permitted by Class A if –

 - (a) the cubic content of the resulting building would exceed the cubic content of the original dwellinghouse –
 - (i) in the case of a terrace house..... , by more than 50m³ or 10%, whichever is the greater.
5. The Council provided no alternative or better estimate of the original cubic content of the dwellinghouse and I see no reason why Mr Bodner and Mr Mabey's figure should not be accepted as an accurate and fair calculation. If there is any inaccuracy it seems likely to me that it, if anything it may be an

underestimate because of the use of internal measurements for the roof volume and the rounding down of some measurements. It was Mr Ormonde who independently measured and calculated the net increase of the extension and came up with a smaller figure than any other party had previously estimated. The Council, Mr Bodner and Mr Mabey were content to accept Mr Ormonde's figures at the inquiry, even though they differed from their earlier calculations.

6. On the basis of these figures the extension is exactly 10% of the cubic content of the original dwellinghouse, measured to 2 decimal places. It does not exceed that figure and is therefore permitted by Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995. The increase in cubic content of exactly 10% is unusual, but I find no reason not to accept it as sufficiently accurate for the purposes of that part of the Town and Country Planning (General Permitted Development) Order 1995. Accordingly, I find that there has not been a breach of control and the appeal on ground (c) succeeds.
7. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (c) and the enforcement notice quashed. Having quashed the enforcement notice, the appeals on grounds (a), (d), (f) and (g), and appeal **APP/U5350/C/07/2056412** do not therefore fall to be considered.

Formal Decisions

Appeal Ref: **APP/U5350/C/07/2054740**

8. I allow the appeal and direct that the enforcement notice be quashed.

Appeal Ref: **APP/U5350/C/07/2056412**

9. As the notice has been quashed of the notice I take no further action on this appeal.

LM Drake

INSPECTOR

