
Appeal Decision

Site visit made on 11 August 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 September 2016

Appeal Ref: APP/H5390/C/15/3140464

10 Marville Road, London SW6 7BD

- 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 Nigel Duncan against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 30 October 2015.
 - The breach of planning control as alleged in the notice is the removal of the pitched roof of the back addition installation of a door in the rear elevation of the roof extension to the back addition and erection of parapet walls around the remainder of the flat roof of the back addition in connection with its use as a roof terrace contrary to conditions 02 and 08 of planning permission (ref: 2012/02112/FUL) which state:
02 The development hereby permitted shall be built in complete accordance with the submitted drawings, and the height of the rear roof extension shall be no higher than the ridge of the existing building or that of adjoining buildings Nos 8 and 12 Marville Road
09 [sic] No alterations shall be carried out to the roof of the remaining back addition to facilitate its conversion to use, all or in part, as a terrace or other amenity space. No railings or other means of enclosure shall be erected around the roof and no alterations shall be carried out to the rear elevation of the application property to form further access onto the roof.
 - The requirements of the notice are:
 - (a) Remove the wall enclosing the newly formed flat roof to the back addition at 2nd floor level;
 - (b) Remove the French doors installed in the rear elevation of the rear roof extension at 3rd floor level; and replace with a window in accordance with the approved drawing No. DM/ST 12 3 08 of Planning permission [sic] (2012/06351/FUL) dated 4th January 2013. I attach a copy of the approved drawing No. DM/ST 12 3 08.
 - The steps specified in paragraph 4, of this notice must be completed within four (4) months of the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. No further action is taken.

Reasons

2. An enforcement notice must by virtue of section 173(1)(a) of the 1990 Act state the matters which appear to the local planning authority to constitute the breach of planning control and under section 173(3) should set out the steps which are required to be taken, or the activities which are required to cease which may be for the purposes of remedying the breach by making any development
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- comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.
3. A notice complies with these requirements if it enables any person receiving a copy of the notice to know what are those matters (section 173(2)). A test applied in deciding whether a notice satisfies the statutory requirements is whether it fairly tells the recipient what he has done wrong and what he must do to remedy it. Furthermore the recipient must be able to find out from within the four corners of the notice what he is required to do.
 4. There are several errors in the notice. The allegation of the breach of planning control refers to a breach of Condition 08 attached to planning permission Ref 2012/02112/FUL, but sets out what on the face of the notice is Condition 09 of that permission. It would appear however that the correct wording of condition 08 is that which is set out in the notice. It would be in the interests of clarity and enforceability, and would not prejudice either party, to correct this minor error by replacing "09" with "08".
 5. Secondly however, the requirements of the notice refer to planning permission 2012/03651/FUL and a drawing No. DM/ST 12 3 08. I am satisfied from what I have read that this relates to a different property and has nothing to do with the appeal site. Whilst it may be arguable that the notice could be corrected on the basis that the appellant is fully aware of the planning history of the site and there is no fundamental misunderstanding of the relevant planning permission to which the requirements should relate, I have to consider carefully whether the notice as it stands can be given a sensible meaning, as if it could not, it would be void for uncertainty.
 6. The reference to third floor level and French doors is unintelligible since the offending development has taken place at second floor level and the allegation refers to a door in the singular. Taken together with the reference to the drawing and planning permission Ref 2012/03651/FUL there is a fundamental illogicality in the notice. On its face it is so hopelessly ambiguous and uncertain as to the permission or permissions that are relevant to the property, that a recipient cannot tell with reasonable certainty what steps he or she has to take to remedy the alleged breach. The notice does not therefore comply with the requirements of section 173(3) of the 1990 Act and is a nullity.
 7. The Council was asked for its comments in light of this error in the notice. It said that the whole of sub-paragraph (b) should be deleted and replaced with the wording: *"Remove the door, infill the door opening to the rear elevation of the rear roof extension at second floor level and clad in slate to match the remainder of the rear elevation of the roof extension at second floor level."* This does not link the required steps to development previously approved in planning permission Ref 2012/02112/FUL and would amount to a substantial variation of the notice. Even if the notice were not a nullity and merely invalid, to have corrected or varied it as suggested would have caused injustice to the appellant as imposing a more onerous burden where previously only the steps set out in sub-paragraph (a) of the requirements were clearly feasible.

Conclusion

8. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been

made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

9. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act.

Grahame Kean

INSPECTOR