The Planning Inspectorate

Appeal Decisions

Site visit made on 2 November 2016

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 21 November 2016

Appeal Ref: APP/G5750/C/16/3145430-32
139 Hatherley Gardens, London E6 3HD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Thomas Daniel O'Brian (appeal 3145430), Mrs Jessica Ann O'Brien (appeal 3145431), and Mrs Thomas Daniel O'Brien (appeal 3145432) against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, reference 14/02099/ENFC, was issued on 5 February 2016.
- The breach of planning control as alleged in the notice is *Without planning permission the erection of a roof extension*.
- The requirements of the notice are *(1) Demolish the roof extension (as shown edged yellow on the photograph attached at Appendix 1) and return the roof of the property to its form prior to the unauthorised works being undertaken (2) On completion of step 1 above, remove all materials and debris from the site.*
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the ground set out in section 174(2)[c] of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The appeals fail, as set out in the Formal Decisions

Preliminary matters

1. The appeals are made on ground (c) only. This is a legal ground of appeal and has to be decided on the basis of fact and law, and without considering questions of planning merit or personal circumstances. Such matters could only have been considered in these cases if there had been an appeal on ground (a). Similarly in the absence of an appeal on ground (f) there is no basis upon which I can consider whether the requirements of the notice exceed what is reasonably necessary in this case.

2. All three appellants were represented by the same agent, and the case put forward was the same for all three appeals. Therefore I do not distinguish between the three appeals in what follows.

3. At the site inspection it was pointed out for the Appellants that the extension had not been constructed as shown on drawings HG 139/01 and HG 139/01 B as a room shown as bathroom on the plans was in fact a bedroom, and that there was no soil pipe visible externally. For the avoidance of doubt, my decision is taken on what has been constructed and is being enforced against rather than what is shown on any plan.

The appeals on ground (c)

4. An appeal on ground (c) seeks to establish that there has been no breach of planning control. In these cases it is claimed that the roof extension was, when constructed, permitted development. The permitted development rights now applying to roofs are set out in the Town and Country Planning General Permitted Development Order 1995 as amended (the GPDO) Schedule 2, Part 1 "Development within the curtilage of a dwellinghouse" Class B "additions etc to the roof of a dwellinghouse", Class C "other alterations to the roof of a dwellinghouse" and Class G "chimneys, flues, etc on a dwellinghouse".

5. The Appellants point out that the present GPDO wording differs from that extant when work on the project started in April 2014, and I shall proceed on that basis. They state that the requirement of B.2 (a) was then *The materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.* This wording is almost identical to that now current, other than in use of "must" instead of the "shall be" set out above. Neither party has drawn attention to this difference or claimed that it is significant to the appeals, and I concur that it is not.

6. The outer walls of the extension are rendered. The Appellants refer to *…a number of areas where painted render is an obvious part of the construction of the exterior* (of the appeal building) *…. The reveals of all windows, the plinth at the bottom of the rear wall and the lintels and features around the front windows at both ground and first floor level all show a painted render….* It is argued from this that the materials used in the construction of the extension are similar in appearance to the materials used in the construction of the existing dwellinghouse.

7. The areas of painted render described above serve a decorative function in relation to the main parts of the building which are formed of unrendered brick, surmounted by a tiled roof. The brick and tiled areas substantially exceed the rendered areas. A conclusion on ground (c) thus turns on whether the presence of some rendered surfaces on the appeal building are sufficient to make the extension compliant with requirement of B.2 (a), or whether the words *similar appearance* require an assessment of the effect of the changes made.

8. In considering this matter I note from the national Technical Guidance "Permitted development rights for householders" April 2016 that this provision is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. It does not require that materials must be the same as those extant or match exactly, but goes on to say that "…the visual impacts of the materials used will be the most important consideration…" I have concluded from this that the presence of some render on the appeal building is not in itself sufficient to establish that the rendered roof extension complies with the GPDO, but rather that regard must be had to the affect upon appearance.

9. Turning then to visual impact, the painted render of the extension makes it stand out markedly from the brick built floors below and the remaining roof tiles. The area rendered is out of proportion to the much smaller areas of decorative render on the rear elevation, and is also different in not forming part of a decorative feature. In terms of the GPDO, as a matter of fact and degree I have concluded that the materials used in the extension are not of a similar

appearance to those used in the construction of the exterior of the existing dwellinghouse. It follows that the appeal on ground (c) fails.

10. In these circumstances I do not need to consider the three other objections made by the Council to the extension being permitted development, or the arguments and appeal decisions from both parties relating thereto, as even if the Appellants' cases succeeded in all these matters, it could not alter my decision on failure to comply with the appearance/materials requirement.

11. I have taken into account all the other representations made, to the extent relevant to a legal ground of appeal, but do not find that they alter or are necessary to my decisions on these appeals.

Formal Decisions Appeal Refs: APP/G5750/C/16/3145430, APP/G5750/C/16/3145431 and APP/G5750/C/16/3145432

12. The appeals on ground (c) fail and the Enforcement Notice is upheld.

V F Ammoun

INSPECTOR