
Appeal Decision

Site visit made on 2 November 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/C5690/C/16/3147528

Land and Premises known as Garages 1-4 Glynwood Court, Dartmouth Road, London SE23 3HU

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Phidias Kadis against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 23 February 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the alteration to the garages by;
 - (a) the construction of additional brick courses to the rear wall (West Elevation) to increase its height to 2840mm
 - (b) the increase in height to the front wall (East Elevation) above the lintel to 2600mm
 - (c) the construction of additional brick courses to the side wall (South Elevation) to increase its height to 2840mm
 - (d) the construction of additional brick courses to the side wall (North Elevation) to increase its height to 2840mm
 - (e) the construction of a new flat felt roof
 - The requirements of the notice are:
 1. Remove the flat felt roof
 2. Reduce the height of the rear wall to 2200mm
 3. Reduce the height of the front wall to 2300mm as shown on drawing 1 "Existing East Elevation" attached
 4. Reduce the height of the side wall South Elevation to 2300mm front and 2200mm rear as shown on drawing 1 "Existing South Elevation" attached
 5. Reduce the height of the side wall North Elevation to 2300mm front and 2200mm rear as shown on drawing 2 "Existing North Elevation" attached
 6. Reinstate the roof to the form which existed prior to the unauthorised development by;
 - a. reinstating the pitched roof slope to the garages with a maximum ridge height of 2900mm to match the roof slope shown on drawing 1 "Existing South Elevation" drawing 2 "Existing North Elevation" and Photograph 1 and
 - b. reinstating the corrugated roof materials to the pitched roof slope of the garages to restore the roof to its former appearance
 7. Make good all damage to the premises resulting from compliance with requirements 1-6 above
 8. Remove all materials, debris, waste and equipment resulting from compliance with requirements 1-7 above
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in s174(2)(f) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:

- (i) In paragraph 3 (a), deletion of "West Elevation" and substitution of "north west elevation" and deletion of "to increase its height to 2840mm";
- (ii) In paragraph 3 (b), deletion of "East Elevation" and substitution of "south east elevation" and deletion of "above the lintel to 2600mm";
- (iii) In paragraph 3 (c), deletion of "South Elevation" and substitution of "south west elevation" and deletion of "to increase its height to 2840mm";
- (iv) In paragraph 3 (d), deletion of "North Elevation" and substitution of "north east" elevation and deletion of "to increase its height to 2840mm";
- (v) Renumbering the paragraph titled "What you are required to do" by deletion of "4" and substitution of "5";
- (vii) In paragraph 5, deletion of steps 1-8 in entirety and substitution of:
 - " 1. Remove the flat felt roof;
 - 2. Remove the additional brick courses to the rear wall;
 - 3. Reduce the height of the front wall to its height as shown on Photograph 1 attached;
 - 4. Remove the additional brick courses to the side wall (south west elevation);
 - 5. Remove the additional brick courses to the side wall (north east elevation);
 - 6. Reinstate the roof to the form which existed prior to the unauthorised development by:
 - a. reinstating the pitched roof slope to the garages to match the roof slope shown in Photograph 1 and
 - b. reinstating the corrugated roof materials to the pitched roof slope of the garages to restore the roof to its former appearance;
 - 7. Make good all damage to the premises resulting from compliance with requirements 1-6 above; and
 - 8. Remove from the Land and Premises all materials, debris, waste and equipment resulting from compliance with requirements 1-7 above. "

(viii) Deletion from the notice of Drawing 1 and Drawing 2.

The appeal is allowed on ground (f) and it is directed that the enforcement notice (as corrected) be varied, in paragraph 5, by:

- (i) Deletion of steps 3 and 6;
- (ii) Re-numbering of steps 4, 5, 7 and 8 to 3, 4, 5 and 6 respectively;
- (iii) At step 5 deletion of "1-6" and substitution of "1-4"; and
- (iv) At step 6 deletion of "1-7" and substitution of "1-5".

Subject to these corrections and variations the enforcement notice is upheld.

Preliminary matter

2. The site visit had been arranged on an accompanied basis but there was no representative from the Council in attendance. The appellant provided access for

me and I was able to undertake the inspection. I am satisfied that I have sufficient information to make a decision and that there is no prejudice to either party arising from the Council's absence.

Matters concerning the enforcement notice

3. Before proceeding to consider the appeal under ground (f) and the merits of the arguments I must, first of all, be sure that the notice is in good order. From what I saw at my site visit, and from the evidence submitted, some issues arise concerning the drafting of the notice in particular with regard to its use of Drawings 1 and 2 and the dimensions annotated thereon.
4. Firstly, the ground level to the rear of the garages i.e. within the gardens of numbers 107 and 109 Dartmouth Road, is higher than that to the sides and front of the garages. However, this rear ground level is not shown on the drawings which appear to portray level ground to all sides of the garages. The notice is therefore unclear as to where the height of 2200mm for the rear elevation (referred to in step 2) is to be measured from.
5. Secondly, in its original form (as shown on the photograph attached to the notice) the building had a steeply falling front roof slope which appears to have projected beyond the front wall to an eaves height lower than the height of the front wall. The front roof slope appears to be shown on the front elevation drawing but the projecting element is not shown on the section. The 2300mm height referred to in step 3 and annotated on the drawing could be the eaves height or the height to the top of the lintel above the garage doors rather than the overall height of the front wall which also had a timber above the lintel to support the roof. The notice is unclear in this respect.
6. Thirdly, the elevations in the drawings are incorrectly labelled. For example the elevation labelled "existing south elevation" appears in fact to be the north east facing elevation and that labelled "existing north elevation" appears to be the south west facing elevation. This has implications for the text within the enforcement notice.
7. I am told that these drawings were originally prepared for the purposes of the planning application preceding the enforcement notice. The appellant now acknowledges that they have some shortcomings. Where drawings with dimensions are used within an enforcement notice it is important that they are accurate and can be clearly interpreted. This is because legal culpability arises from any failure to comply. In this case I consider that the drawings introduce uncertainty, thus resulting in a notice which does not provide the necessary degree of clarity about what is required.
8. In all other respects I am content that the recipient of the notice would understand the nature of the breach being alleged and (if the unclear drawings and dimensions were deleted) would understand from the notice what is required to put matters right.
9. The appellant would like a specific measurement to be incorporated into the notice in the interests of certainty but no particular measurement has been put forward by either party for me to consider. However, the use of the photograph in the notice, which shows the pre-existing situation, is a useful reference. I also note that there is general agreement between the appellant and the Council, which is

documented in the appeal submissions and the decision of the previous Inspector, as to the extent of additional brick courses to the rear wall¹. In all these circumstances I consider that the notice could be made adequately clear by the deletion of the unclear drawings and dimensions.

10. The requirements of an enforcement notice should derive directly from the allegation. As well as removing reference to the dimensions and drawings, I shall correct requirements 2, 3, 4 and 5 so that they more closely follow the wording of the allegation. Requirement 2, which concerns the height of the front elevation, shall be framed by reference to the photograph rather than the drawing. I shall also correct the orientations stated for the elevations in both the allegation and the requirements. For example "South Elevation" shall be corrected to read "south west elevation".
11. I shall correct requirements 1 and 7 in respect of punctuation and requirement 8 by clarifying that the removal of materials and debris shall be "from the Land and Premises". In the interests of ease of reading I shall delete all steps in their entirety and substitute the corrected steps in entirety.
12. The paragraph titled "What you are required to do" is numbered 4 whereas it should be numbered 5. This appears to be a typographical error which I shall correct.
13. I shall correct all the abovementioned errors under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.

The appeal on ground (f)

14. I shall now proceed to the appeal on ground (f) which I shall consider in the context of the notice in its corrected form.
15. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach². The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
16. Unlike an appeal on ground (a), where the full planning merits of a development can be considered, an appeal on ground (f) is constrained by the Council's purpose in issuing the notice. In this case, because the notice requires complete removal of the flat felt roof and the additional brick courses its purpose is to "remedy the breach". This is not a case where the Council has under enforced by seeking lesser steps to "remedy any injury to amenity" that has been caused by the breach.
17. S173(4)(a) of the Act states that remedy of the breach can be achieved by making any development comply with the terms of any planning permission which

¹ The Council has referred to there being nine new brick courses to the rear wall. However, the appellant has explained that two of these courses replaced existing courses of brickwork thus giving an overall height increase of seven courses. This appears to have been accepted by the previous Inspector in paragraph 7 of her decision letter (appeal decision APP/C5690/W/15/3139514) in which it is stated that the Council estimates the building to be some 65 cm taller at the rear than previously and that the appellant estimates the increased height to be 64 cm. The 1 cm difference in these estimates is immaterial.

² These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

has been granted, by discontinuing any use or by restoring the land to its condition before the breach took place.

18. In this case there is no suggestion of any planning permission having been granted for the development. The appellant's main argument is that if the parapet wall around the outer edge of the garage block was to be removed the resultant development would constitute de-minimis development when compared to the garages as they previously existed. As such (it is argued), the requirements to completely remove the development are excessive.
19. I do not agree that such works (amounting to the removal of two courses of brickwork and coping stones) would bring the development sufficiently close to the pre-existing situation as to make it de-minimis development. The development overall has resulted in a change in the roof profile from a pitched to a flat roof and has raised the height of the rear wall by some seven courses of brickwork. Even without the parapet the resultant development would still be materially different from what existed previously as a matter of fact and degree.
20. With regard to the front wall, however, the garage door openings with lintel above appear unchanged. Above the lintel there is a timber which supports the roof as there was before. I consider the increase in height to the front wall (which is alleged in the notice) is marginal and that, as a matter of fact and degree, it does not amount to a material change to the height of the front wall. I shall, therefore, delete requirement 3.
21. The appellant has taken issue with the requirement to restore the profile and appearance of the original roof. He points to practical difficulties which would involve (for example) re-installing an overhanging gutter to the rear elevation. He also says that the roof was previously clad with asbestos and corrugated sheeting with gaps and questions whether restoring the building to its former state would be appropriate. I acknowledge that these issues could give rise to some difficulties for the appellant in exactly complying with this requirement of the notice.
22. In any event, the allegation within the notice does not expressly refer to the removal of the existing pitched roof. It only describes the works carried out following the removal of the pitched roof to install the new flat roof. The requirements of a notice should derive directly from the allegation and go no further than necessary to remedy the breach as alleged.
23. I consider, therefore, that in this case the requirement to restore the former profile and appearance of the roof is excessive. I shall delete requirement 6. This will leave open the matter of the details for completion of the remedial roof works. This will be a matter for the appellant and the Council in the first instance³. Even though there will no longer be a requirement to restore the roof I consider the notice, nonetheless, will serve a useful purpose.
24. The appellant has argued that, with the removal of the parapet, the development would then be acceptable on its planning merits. However, there is no appeal made on ground (a) or appeal against any refusal of planning permission that is before me. I am unable, therefore, to fully consider the planning merits of what is being proposed which concern effect upon the character and appearance of the

³ If a scheme for the roofing over the garages is granted planning permission, under s180 of the Act the enforcement notice shall cease to have effect so far as inconsistent with that permission.

adjacent conservation area and locally listed buildings as well as amenity considerations. The previous appeal decision is also a material consideration.

25. The appeal on ground (f), as already explained, is limited to the consideration of the steps necessary to remedy the breach. Even if the second limb of ground (f) did fall to be considered it provides only for the consideration of effect upon amenity whereas, in this case, the planning considerations are wider. To simply consider effect upon amenity without addressing all of the material considerations would be to pre-empt the due process of a planning application, including the consideration of a clear and comprehensively drawn up scheme and the opportunity for public involvement. On the basis of what is before me I would not have been able to conclude that the proposal is acceptable on its planning merits or that the harm to amenity, as identified on balance by the previous Inspector, had been satisfactorily overcome.
26. I have considered in the round whether there is any obvious alternative involving any other lesser steps that would avoid the need for a planning application. However, there is none that I can identify in the circumstances of this case.
27. The appeal on ground (f) succeeds to the limited extent of the deletion of steps 3 and 6.

Conclusion

28. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (f) succeeds to that extent.

Susan Wraith

Inspector