



Appeal Decision

Site visit made on 20 February 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 24 February 2017

Appeal Refs: APP/G5750/C/16/3158367 & 3158368

73 Kingsland Road, Plaistow, London E13 9NX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Nabeel Moghal and Mrs Arsala Moghal, respectively, against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 19 August 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 to: (1) Demolish the roof extension [*(as shown edged in yellow on the photograph attached at Appendix 1) to the notice*] 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 these requirements is three months.
- The appeals are proceeding on the ground set out in section 174(2) (f) of the Act. As the fees have not been paid the deemed applications do not fall to be considered.

Formal Decision

1. It is directed that the enforcement notice is varied by the addition of the following words to the end of the first requirement: "or modify the roof extension to accord with the details shown on Dwg Nos ZAAVIA/73KR/101, Issue A, and ZAAVIA/73KR/103, Issue A, both dated "2 Jun", copies of which, labelled 'Plan A' and 'Plan B', respectively, are attached to this decision" in paragraph 5 of the notice. To be clear the varied requirement would read: "*(1) Demolish the roof extension (as shown edged in 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 or modify the roof extension to accord with the details shown on Dwg Nos ZAAVIA/73KR/101, Issue A, and ZAAVIA/73KR/103, Issue A, both dated "2 Jun", copies of which, labelled 'Plan A' and 'Plan B', respectively, are attached to this decision*". The second requirement in paragraph 5 would remain without any modification. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Ground (f)

2. Section 173(3) of the Act says a notice shall specify the steps required to be taken in order to achieve any of the purposes set out in, amongst others, section 173(4)(a) of the Act. Those purposes include remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted or restoring the land to its condition before the breach took place. The requirement of the notice as issued is clearly pursuant to the latter objective and so its retention is appropriate. However planning permission for the addition or other alteration of the roof of a dwelling house is granted by Article 3 and Classes B and C of

- Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 [the GPDO]. This much appears to be common ground between the main parties. As such, the requirement of the notice would appear to be excessive in not allowing the structure that has been erected to be modified in order to accord with the deemed planning permission.
3. To the extent that there might be an issue between the main parties in this regard, it appears to be whether the particular schemes that have been put forward would constitute permitted development. The first application for a Lawful Development Certificate [LDC, No 16/01355/CLP] was refused in a decision dated 2 June 2016 because: *"...the vertical extension of the parapet walls ... cannot be considered an alteration or addition to the roof subject to Class B"*. However the second application for an LDC [No 16/01702/CLP] was refused in a decision dated 28 June 2016 merely because: *"The development does not comply with the provisions of s.192 which deal with the lawfulness of a proposed use or development, by virtue that works to the roof of the dwellinghouse have already been undertaken. As such the works would not be lawful and the certificate application is refused"*. The Council has not offered any substantive reason at any stage why the modified scheme would not be permitted development if the existing roof extension had not existed.
 4. In the circumstances it is clearly appropriate to put the requirement in the alternative, reflecting the provisions of the Act. Rather than do so by reference to the generic terms of the deemed planning permission, which is an option open to me, I shall vary the notice to require the structure to be modified to accord with the details shown on the plans that accompanied the second LDC. This alternative requirement is then a precise outcome, which avoids any ambiguity as to what the Appellant has to do in the period for compliance.
 5. In the circumstances I conclude that this ground of appeal must succeed and that the requirement needs to reflect the deemed planning permission that is granted by Article 3 and Class B of Part 1 to Schedule 2 of the GPDO, albeit as an alternative to the existing requirement.

Conclusion

6. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the varied enforcement notice.

Pete Drew
INSPECTOR

