

Appeal Decision

Site visit made on 28 February 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/A5840/C/16/3154534
289 Lordship Lane, London, SE22 8JH

- 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 P J Faul against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The Council's reference is 13/EN/0270.
 - The notice was issued on 14 June 2016.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the erection of an outbuilding ("the Unauthorised Development"). The Unauthorised Development does not accord with planning permission 12/AP/2518 for being constructed higher and longer than the approved development, with a significantly longer and taller roof light."*
 - The requirements of the notice are: *"EITHER: (i) Demolish the Unauthorised Development from the land; and (ii) Remove from the land all materials and debris resulting from compliance with requirement (i) above. OR: (iii) carry out works to the Unauthorised Development so that the Unauthorised Development accords with planning permission 12/AP/2518."*
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. 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.
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Decision

1. The enforcement notice is varied by deleting from Section 5, the 3rd requirement in its entirety and substituting the words *"(iii) Make the development comply with the terms (including conditions and limitations) of the planning permission Ref. 12/AP/2518 granted on 8 October 2012"*.
2. The appeal is allowed on ground (g) and the enforcement notice is varied by deleting from section 6 *"three months"* and substituting *"six months"* as the period for compliance.
3. Subject to these variations the enforcement notice is upheld.

Procedural matters

Matters relating to the notice

4. Before I address the grounds of appeal, I must consider whether the enforcement notice is in good order. It is important to get the notice right because legal culpability arises from a failure to comply with its requirements.

5. The requirements of an enforcement notice are governed by section 173(3)-(7) of the 1990 Act. In a simple case of a building put up (or other operational development carried out) without planning permission, the appropriate requirement is to demolish it and remove the materials.
6. Where development has taken place which differs materially from approved plans, the alleged breach of planning control is development without planning permission, and the requirement should be to make the development comply with the terms (including conditions and limitations) of the permission which has been granted in respect of the land¹.
7. In this case, two alternative courses of action are set out in order to remedy the breach of planning control that has occurred. However, the 3rd requirement of the notice should be expressed as: "(iii) *Make the development comply with the terms (including conditions and limitations) of the planning permission Ref. 12/AP/2518 granted on 8 October 2012*".
8. I propose to make this variation to requirement (iii). I am satisfied that to do so would not cause injustice to any party.

Background

The appeal site and relevant planning history

9. No. 289 Lordship Lane is an end-of-terrace former dwellinghouse that stands at the junction with Goodrich Road². In 1985 planning permission was granted for the conversion of the building into a flat and maisonette.
10. On 8 October 2012 planning permission (Ref. 12/AP/2518) was granted for the conversion of an existing garage in the rear garden into an artist's studio for use ancillary to the ground floor flat. The conversion work included the installation of new doors to the Goodrich Road elevation and the garden elevation and the installation of raised rooflights.
11. The approved scheme was not implemented and on 1 April 2015 planning permission was refused for an application (Ref. 15/AP/0246) for the conversion works that had been carried out. An appeal (Ref. APP/A5840/W/15/3135694) was made against that decision, but it was dismissed by a decision dated 21 March 2016.

The appeal decision of 21 March 2016 and the main issues identified

12. The Inspector described the garage building before and after the alterations had been carried out. She said that it had previously spanned the width of the plot up to the boundary with No. 291 Lordship Lane, but that it was lower at the 'common boundary treatment' between the two properties. The building was mono-pitched with the pitch increasing slightly towards Goodrich Road.
13. The alterations to the building had extended its length at the rear towards the back of properties on Lordship Lane. They had also changed the roof configuration to raise its height and a rooflight had been installed along about three-quarters of the length of the altered building.
14. The Inspector identified two main issues arising from the appeal development. The first was the effect on the living conditions of the occupiers on No. 291, in terms of an overbearing effect; the second was the effect on the character and appearance of the

¹ If the enforcement were simply to relate to putting right the offending details, the outcome could be an unconditional planning permission being given under section 173(11) once those offending details had been put right, thus removing the effect of any conditions or limitations on the original permission.

² Goodrich Road is the name that appears on the enforcement notice plan and in a previous appeal decision. In the Council's statement it is referred to as Goodrich Street.

appeal site and the wider area arising from the size of the enlarged garage and its rooflight.

15. Specifically, her concerns on the first issue were that a combination of the increase in the length of the building, the increase in its height at eaves level, and then the increased height of the rooflights (over 4m) resulted in there being only a small portion of the boundary between Nos. 289 and 291 where there is a relief from the mass of the development. The combination of the close proximity of the enlarged building and the increases in length and height created an overbearing mass that is obtrusive to the occupiers of No. 291 when using their garden or looking out of the windows.
16. The Inspector's concerns on the second issue were that the altered garage was too large for the site and creates a discordant feature that does not relate successfully to its context. Furthermore, the rooflight was clearly visible from the junction of Goodrich Road and Lordship Lane. Views are dominated by the rooflight, which appears incongruous in the street scene.
17. The Inspector considered examples of other development in the locality that had been brought to her attention. She concluded that the appeal development conflicted with the objectives of policies in the Council's Core Strategy, advice in the National Planning Policy Framework and guidance in the Council's 'Residential Design Standards' Supplementary Planning Document, and was therefore unacceptable.

The appeal on ground (f)

18. An appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections.

The parties' cases

19. The appellant contends that there are permutations of works that could be carried out to the appeal building that would address the previous Inspector's specific concerns about it, without having to implement the 2012 planning permission.
20. The Council's case is that to seek approval for an alternative scheme through an appeal on ground (f) is misconceived and reveals a misunderstanding of the scope of this ground of appeal.

Reasons and conclusions on ground (f)

21. The planning merits of an appeal development, where an enforcement notice has been issued, can be considered only where ground (a) has been pleaded and the fee has been paid. If an appeal has not been brought under ground (a) it is not appropriate for an appellant to introduce arguments on the planning merits of their appeal in the context of an appeal on ground (f).
22. In this case, the planning merits of the existing development have already been considered by an Inspector in determining his earlier planning appeal. The merits argument that the appellant has now advanced do not relate to the existing development, as it stands, but to an alternative proposal.
23. Given the issues raised by the existing development, the planning merits of any alternative can be properly considered only within the context of a formal planning application, where all interested parties affected by the development have an opportunity to comment. It would be inappropriate for me to express a view without those opinions being canvassed.
24. For these reasons, the appeal on ground (f) fails.

The appeal on ground (g)

25. An appeal on ground (g) is that the period for compliance with the notice is too short. The appellant's case is that six months, rather than three, would be required for him to revise the approved scheme and obtain planning permission for it.
26. The Council argues that, following the dismissal of the planning appeal, the appellant could have applied for planning permission for an alternative scheme at any time, but he did not do so. The ongoing harm caused by the unauthorised development should not be allowed to remain for an extended period while the appellant seeks approval for a different scheme. Three months is a sufficient period for compliance.

Reasons and conclusions on ground (g)

27. I acknowledge the point made by the Council that this appeal has prolonged the adverse effects that the development has on the living conditions occupiers of No. 291, and that the matter must be brought to a conclusion rather than be permitted to drift on unresolved. I accept also that the appellant could have already explored with the Council the possibilities of an alternative scheme being acceptable.
28. However, it is an accepted planning principle that an appellant has a reasonable expectation that his or her appeal against an enforcement notice will be successful. It is not unreasonable, therefore, to wait until the appeal has been determined before incurring the expense of drawing up and submitting an application for an alternative proposal.
29. If an alternative scheme is put forward which might be acceptable in planning terms, it is open to an Inspector to allow the appeal under ground (g) and extend the period for compliance with the notice so that the planning merits can be properly explored. That is what I shall do.
30. On the facts and circumstances of this case, I consider that an extension of the compliance period to six months is reasonable in order to resolve this matter. Accordingly, the appeal on ground (g) succeeds.

Overall conclusions

31. I have taken account of my observations at the site and the surrounding area and all the matters raised in the written representations. For the reasons given, I shall uphold the enforcement notice, as varied by the extension to the period for compliance.

George Mapson

INSPECTOR