

## Appeal Decision

Site visit made on 20 March 2017

**by K R Saward Solicitor**

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

**Decision date: 31 March 2017**

---

**Appeal Ref: APP/N5090/C/16/3164173**  
**242 Nether Street, London N3 1HU**

- 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 Umer Ahmed against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice was issued on 25 October 2016.
  - The breach of planning control as alleged in the notice is without planning permission the construction of an unlawful roof extension including a side and rear dormer.
  - The requirements of the notice are to demolish the side and rear dormer and modify the remainder of the roof to match the approved plans "proposed second storey extension elevations" and "roof detail to new extension" (both attached to the notice) granted under the following council reference no. F/03685/11 to restore the property to the state in which it was prior to the breach of planning control.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c)&(f) 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.
- 

### Decision

1. The appeal is dismissed and the enforcement notice upheld.

### Procedural Matters

2. Whilst the ground (a) appeal and the deemed planning application have lapsed, the arguments raised under ground (a) are that the extension is permitted development. Such arguments fall under ground (c). An appeal has brought on that ground under which I address the issues raised.

### Reasons

#### The appeal on ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
  4. The issue in contention between the parties is whether the roof extension attacked by the enforcement notice constitutes permitted development by virtue of the provisions of Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
-

5. The appeal property is a relatively large detached house. Planning permission was granted on 10 November 2011 for a two storey side extension. Works pursuant to that permission had been started. The cubic content of the roof for this element is 73.96m<sup>3</sup>.
6. The appellant has extended the roof further with a partial hip to gable alteration and added a large flat roofed dormer.
7. An application for a Certificate of Lawfulness of Existing Development for the "retention of extension to roof including rear dormer and partial hip to gable to facilitate a loft conversion" was refused by the Council on 13 January 2016. The appellant considers that decision to have been unreasonable, but no appeal against that decision appears to have been made. This appeal relates solely to the enforcement notice. Concerns regarding the time taken by the Council in determining the application for a Certificate of Lawfulness are beyond the remit of this decision.
8. The parties agree that the additional cubic content of the extended roof is 12.02m<sup>3</sup> and that the roof dormer is 15.59m<sup>3</sup>. As the combined total is 27.61m<sup>3</sup> the appellant maintains that these roof additions are within the 50m<sup>3</sup> limit for a detached house within Class B.
9. However, the limitations in paragraph B.1.(d) is that development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50m<sup>3</sup>.
10. This means that the total roof space cannot be extended beyond 50m<sup>3</sup> to be within permitted development limits. As the roof had already been extended by 73.96m<sup>3</sup>, it was not possible to increase the cubic content further as permitted development. That is clear from the wording of paragraph B.1.(d) which sets the limit as 50m<sup>3</sup> by reference to the 'original roof space'. There is no provision to disregard an existing extension from the calculation.
11. It is not a case that Class B can be utilised to supplement the grant of a planning permission where the combined total would exceed the 50m<sup>3</sup> threshold. If the roof had not previously been extended, then the hip to gable extension and roof dormer would be well within the size limits. As it is, the resulting roof space is now 101.57m<sup>3</sup> of which 27.61m<sup>3</sup> for the additional extensions cannot be permitted development. Express planning permission was required for those parts also and has not been obtained.
12. The appeal on ground (c) fails.

### **The appeal on ground (f)**

13. The ground of appeal is that the steps required by the notice to be taken are excessive. The appellant argues that there should be the option to reduce the unauthorised extension to 50m<sup>3</sup>. However, it would not be possible to bring the development within permitted development limits when the 2011 planning permission has already been implemented with a roof space exceeding 50m<sup>3</sup>.
14. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

15. The Council has not identified specifically which of those two purposes it seeks to achieve, but its reasons include harm to the character and appearance of the property and surrounding area. This reason is consistent with the purpose of remedying injury to amenity. As the steps required in the notice seek removal of the unauthorised extensions, it is clear that the purpose is also to remedy the breach of planning control. Therefore, the notice is directed at both purposes.
16. Nothing in the notice requires demolition of those parts authorised by the 2011 planning permission. Remedy of the breach can only be achieved by the demolition of the unauthorised elements of the extended property. No lesser steps would satisfy the requirements of the notice. Therefore, they do not exceed what is necessary and the appeal on ground (f) must fail.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal should not succeed.

*KR Seward*

INSPECTOR