
Appeal Decision

Site visit made on 8 February 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 04 April 2017

Appeal Ref: APP/M0933/C/16/3153405

Land at Monton, Cart Lane, Grange-over-Sands, Cumbria LA11 7AB

- 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 Trevor Wilson against an enforcement notice issued by South Lakeland District Council.
 - The enforcement notice was issued on 26 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the carrying out of operational development within the Land consisting of the increase in height of the eaves, ridge line and roof plane of the house known as Monton ("the Building") and in particular:
 - (i) The laying of additional timbers to the top side of the existing rafters; and
 - (ii) The placing of a new sarking membrane, affixing of battens and affixing natural slate; and
 - (iii) The increase of the former ridge height by the re-profiling of the roof apex and the removal and re-laying on a new mortar bedding of the existing ridge tiles.
- Further in the alternative, even if the development were to benefit from Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, the Building has not been constructed in accordance with B2(b)(i)(aa) in that the eaves of the original roof have not been maintained or re-instated.
- The requirements of the notice are:
 - (1) Strip back and remove all slate roofing materials and ridge tiles and then set aside for re-use;
 - (2) Strip back and remove, all roofing battens, sarking and insulation between the rafters; and
 - (3) Strip back and remove the additional new timbers overlaying the original rafters; and
 - (4) Remove from the Land all materials and debris associated with compliance with paragraphs 5(1) to 5(3) above; and
 - (5) Return the roof to its original profile, re-attach new insulation of a slimmer profile, sarking membrane, slating battens, re-affix slates and ridge tiles.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The enforcement notice is quashed

Application for costs

1. An application for costs was made by Mr Trevor Wilson against South Lakeland District Council. This application is the subject of a separate Decision.
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Procedural Matters

2. The breach of planning control alleged in the enforcement notice is, in summary, the carrying out of operational development consisting of the increase in height of the eaves, ridge line and roof plane of the house. The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended ("1990 Act").
3. The appeal on ground (a) is that, in respect of any breach of planning control stated in the notice, permission ought to be granted. Section 177(5) of the 1990 Act provides that where an appeal against an enforcement notice has been brought under section 174(2)(a), the appellant shall be deemed to have made an application for planning permission ("the deemed planning application"). It follows that the deemed planning application is limited by section 174(2)(a) to the breach of the planning control alleged in the notice including, where appropriate, as corrected. Accordingly, in this case the deemed planning application arising from the appeal on ground (a) can only relate to the increase in height of the eaves, ridge line and roof plane of the house that is alleged in the notice. I will return to the significance of this principle to this appeal below.

The Enforcement Notice

4. To recap, the breach of planning control alleged in the enforcement notice is the carrying out of operational development consisting of the increase in height of the eaves, ridge line and roof plane of the house. This is the starting point for the consideration of both grounds of appeal.
5. At the time of my site visit, a dormer window was present on the south-east elevation of the roof. The background to the construction of this dormer window is that, in June 2015, the Council granted a Lawful Development Certificate for a dormer window within the profile of the roof as then existing (Council Ref: SL/2015/0255).
6. Photographs taken by the occupiers of neighbouring properties, and other photographs provided in a report by Kate Bellwood Associates commissioned by the occupiers of those properties, clearly show that the dormer was constructed at the same time as other works to the roof, the latter including the addition of new rafters on top of the original rafters and the replacement of the ridge tiles. These photographs record the skeleton framework of the dormer in situ at the same time as the exposed new rafters. In other words, the works to the roof and the construction of the dormer window was a single building operation.
7. The dormer window as constructed extends to the ridge of the roof. It was therefore apparent to me that, if the height of the ridge line of the house had been increased as alleged in the notice, then the dormer window could not have been constructed in accordance with the Lawful Development Certificate granted in June 2015. In turn, if that was the case, then the allegation in the notice could not be correct, because it did not include the dormer window. My first task is therefore to establish whether the eaves and ridge line of the house have been increased as a matter of fact.
8. Evidence in relation to the ridge and eaves height comes primarily from the photographs provided by the occupiers of the neighbouring properties, the

photographs in the report by Kate Bellwood Associates and a report by the NPS Group dated 20 October 2015. The latter report was commissioned by the Council as part of its investigation of complaints about the breach of planning control as now alleged in the notice.

9. The NPS Group report noted that the new ridge tiles are flatter than the original ones and are bedded on a reduced depth of mortar. The report did not reach a definitive conclusion as to whether the original roof timber had been reduced in height, but did not discount the possibility. Taking these factors into account, the NPS Group report found that if any alteration of ridge height *has* occurred (original emphasis), it is in the region of 25 mm maximum at the gable ends. The report then goes on to conclude that, as the gable ends are higher than the main central part of the ridge, it is possible that the majority of the ridge is in fact now lower than originally found. The overall conclusion of the NPS Group report was that the ridge height had not altered significantly.
10. I have serious reservations about the findings in the NPS Group report. In part, this is because of the ambiguity of the language used. The repeated use of the word "if" and the emphasis on the word "*has*", as well as phrases such as "in the region of", "anecdotally of approximately", "possibly" and "impossible to guarantee", do not give me confidence that the authors of the report are certain of their conclusions. I am also mindful that one of the more significant conclusions in the report, specifically that a reduction in the height of the original roof timber could not be discounted, was on the author's own admission based on "anecdotal evidence".
11. In fairness to the authors of the report, this vagueness in the language used may result from the methodology used in the survey upon which the report is based. The brief given to the NPS Group was to undertake a visual inspection of on-going roof alterations. The survey was undertaken at a time when the dormer and roof was externally complete but the internal finish had not commenced. Although the interior roof structure was visible at that time, and the rafters at the gable end were exposed, there was no opening up of the work already done. Moreover, no comparison with an original height datum was available to the authors of the report. I can therefore understand why the authors of the NPS Group report were not in a position to be more positive in their findings. Nevertheless, this limitation in the evidence base on which the NPS Group report was founded means that the conclusions in the report cannot be relied upon. Accordingly, I attach only limited weight to the conclusions in the NPS Group report.
12. Furthermore, I have difficulty in reconciling the findings of the NPS Group report with the photographic evidence and my own observations at the site visit. The NPS Group report compares the original roof structure with that constructed by reference to the original and proposed ridge sections, as shown on Drawing No 01D. I have been provided with a copy of that drawing as part of the appeal documentation. The drawing includes a section of the original roof and the new roof, as well as an overlay of the two sections. That overlay shows the new roof to be only marginally higher than the original roof.
13. The section and elevation of the original roof in Drawing No 01D show the ridge tile to be sitting on a substantial mortar base, such that the ridge tile stands proud of the slates on the roof slope. If this was the case in practice, then the mortar base on which the ridge tile rests would appear as a line between the

ridge tile and the highest roof slate. However, comparison with the photographs of the original roof provided by the occupiers of neighbouring properties and those provided in the report by Kate Bellwood Associates reveals that there is no line of mortar beneath the ridge tile and that the ridge tile rests directly on the highest slate on the roof slope. This is evidently not the relationship shown in Drawing No 01D.

14. This discrepancy between the detail shown in Drawing No 01D and the photographic evidence has two implications. Firstly, it immediately raises questions about the accuracy of Drawing No 01D. For that reason, I place no reliance upon the overlay of the two sections in that drawing. Secondly, to the extent that the NPS Group report relies upon the detail shown in Drawing No 01D, it reinforces my view that the conclusions in the NPS Group report cannot be relied upon.
15. For the benefit of my site visit, a section of the new fascia had been removed to expose the underlying structure. It was evident that the lower section of the original barge board (to adopt the nomenclature used on Drawing No 01D), distinguishable through its blue/grey colour and slightly splayed lower end, remains in situ. Photographs show that there was originally an upper section of barge board that rested directly upon this lower section, but which has been removed. These photographs show that the roof tiles originally rested on battens affixed directly above this.
16. I noted that the upper section of barge board has been replaced by a new timber of approximately equal depth. Directly above this is a further timber of a depth comparable to the combined depth of the original barge board and the new timber that rests directly upon it. The battens are affixed to the new timber and the slates rest upon those battens. The photographs provided by the occupiers of neighbouring properties and those provided in the report by Kate Bellwood Associates also clearly show this same structure, and also show that the same structure extends to other parts of the roof.
17. The original roof comprised the two sections of barge board, each of modest depth, with slates resting on battens fixed to those, topped by a close-fitting ridge tile. The new roof replicates the depth of the original barge boards but with a new timber of equivalent depth placed directly on top of that. Even allowing for the removal of the original upper section of barge board and a ridge tile of a shallower angle, the new roof represents a more substantial structure. Comparing photographs of the new roof with those of the original roof, it is evident that the ridge height has been increased as a result of the new works.
18. During my site visit, I stood in the room created by the new dormer window. There is ample head height within that space and it is therefore apparent that the increase in the ridge height was not required to create adequate head room. Nevertheless, as a matter of fact and for whatever reason, I am satisfied that the ridge height has been materially increased compared to the original roof.
19. Comparison of photographs of the new roof with photographs of the original roof also show that the height of the eaves has been increased as a result of the new works. For this purpose, I have taken the eaves height to be the point where the wall would meet the upper surface of the roof slope, as advocated in the Department for Communities and Local Government publication *Permitted*

development rights for householders: Technical Guidance, April 2016. The increase in eaves height is particularly evident in photographs of the north-west elevation, in which the depth of the barge board is noticeably deeper than that of the original roof. This would be consistent with the requirement for the barge board to conceal the greater depth of the roof structure that is evident from photographs of the roof under construction. I accept that it would have been necessary to temporarily remove the eaves of a roof whilst works are carried out. However, in this case, I am satisfied on the basis of the photographic evidence and my observations of the exposed structure at the site visit that the height of the eaves has been materially increased as a result of the new works, such that the eaves of the original roof have neither been maintained nor reinstated.

20. The corollary of the increase in ridge height and eaves height is that the plane of the roof must, by definition, have also changed. This is again evident in the photographs provided by the occupiers of neighbouring properties and in the report by Kate Bellwood Associates.
21. The enlargement of a dwellinghouse consisting of an addition or alteration of its roof is permitted under Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Class B.1 and the conditions set out at Class B.2. One of the limitations, set out at Class B.1(b), is that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. Furthermore, one of the conditions, set out at Class B.2(b)(i)(aa), is that development is permitted by Class B subject to the condition that the eaves of the original roof are maintained or reinstated.
22. I have found that, as a matter of fact, the ridge height has been materially increased compared to the original roof. The works carried out therefore do not accord with the limitations set out at Class B.1(b). I have also found that the eaves of the original roof have not been maintained or reinstated as a result of the works that have been carried out, such that they do not accord with the condition set out at Class B.2(b)(i)(aa). I therefore consider that the alterations of the roof, consisting of the increase in height of the eaves, ridge line and roof plane, do not accord with the provisions at Article 3, Schedule 2, Part 1, Class B of the GPDO and that express planning permission is required for that development.
23. As indicated above, photographs of the new roof and dormer window whilst under construction clearly show that these works were undertaken as a single building operation. I recognise that the Council has granted a Lawful Development Certificate for a dormer window within the profile of the roof as then existing. However, the works that have taken place have altered the profile of the roof, in terms of its ridge height, eaves height and plane. Moreover, the dormer window extends to ridge of the roof as now constructed and therefore joins the ridge at a height above ground level that would not have been possible had the original roof remained unaltered. Consequently, I conclude that the dormer window has not been constructed in accordance with the terms of the Lawful Development Certificate granted by the Council.
24. I have been referred to the judgment in *Garland v MHLG* [1968] 20 P&CR 93, which confirms that a single development cannot be subdivided into parts that

are permitted development and parts that are not. However, I consider that the point in *Garland* to which I have specifically been referred is not directly relevant in this case. In relation to the new roof and dormer window constructed at the appeal property, neither constitutes permitted development. It follows that, unlike the scenario considered in *Garland*, all of the works were undertaken as a single building operation that required express planning permission in its entirety.

25. Relating this conclusion to the breach of planning control alleged in the enforcement notice, it is evident that the breach of planning control goes beyond the carrying out of operational development consisting of the increase in height of the eaves, ridge line and roof plane of the house. The breach of planning control that has occurred includes the construction of the dormer window.
26. The corollary of the above is that the allegation at paragraph 3. of the notice is incorrect. The allegation could be corrected, with a consequential variation to the requirements to include the removal or alteration of the dormer, but only if this would not cause any injustice. It is to this question that I now turn.
27. If I were to correct the notice to include the dormer window, then by reason of Section 177(5) of the 1990 Act the deemed planning application before me would include the dormer window and the planning merits of that structure would fall to be considered. This would be a different deemed planning application to that currently before me. I therefore sought the views of the appellant and the Council as to whether the allegation could be corrected without causing injustice. In the interests of fairness, I also accepted a representation on this question on behalf of the occupiers of the surrounding residential properties. It is convenient to consider this question from the perspective of the Council in the first instance.
28. The Council has indicated that, in its view, correcting the notice would not cause it any injustice. However, for the reasons that I set out below, I am not convinced that this would be the case.
29. In resolving that it was expedient to initiate enforcement action against the carrying out of operational development consisting of the increase in height of the eaves, ridge line and roof plane of the house, the Council took the view that the construction of the dormer window was permitted development. Consistent with that position, quite correctly the Council did not consider the effect of the dormer on the living conditions of the occupiers of the surrounding residential properties, in terms of matters such as privacy and outlook raised by them. That would not be the position with a deemed planning application that included the dormer window, as part of which the effect of the dormer on the living conditions of the occupiers of the surrounding residential properties would fall to be considered.
30. I am also mindful that the appeal property forms the boundary with the Sands Conservation Area, and that there is a statutorily listed building to the north east of the appeal site. The Council has a duty under the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving the setting of the listed building, as well as preserving and enhancing the character and appearance of the conservation area. The Council discharged that duty in considering the increase in the height of the eaves, ridge line and roof plane of the house. However, because it considered

that the dormer window constituted permitted development, it did not take into account the effect of the dormer window in exercising its statutory duty.

31. If I corrected the notice to include the dormer window in the breach of planning control, the Council would be deprived the opportunity to consider the effect of the dormer on the living conditions of the occupiers of the surrounding residential properties. I would then not be in a position to take the Council's views on that issue into account in reaching my decision. Similarly, whilst I could make my own assessment on the setting of the listed building and the Sands Conservation Area in accordance with the statutory duty, I would be obliged to do so without the views of the Council on that issue. In both respects, this would cause injustice to the Council.
32. There is also the question of the requirements of the notice, and the period of compliance. As it stands, I do not know what steps the Council would consider necessary to comply with the notice should it be corrected to include the dormer window. It is not for me to anticipate what those steps might be. Similarly, I do not know whether the Council would consider any variation to the period of compliance to be appropriate, taking into account the steps that the Council would consider necessary to comply with the notice as corrected. I consider that the Council would suffer injustice if it was not afforded the opportunity to formally consider these matters.
33. From the appellant's perspective, I understand that he had the opportunity to address the Planning Committee when it considered whether it was expedient to initiate enforcement action in relation to a breach of planning control that did not include the dormer window. It is a matter entirely for the Council to consider, in accordance with its own procedures, whether or not the inclusion of the dormer window in the breach of planning control should be reflected in the requirements of any fresh enforcement notice. However, whatever the procedures adopted by the Council to arrive at the decision might be, it is reasonable that the appellant should be afforded the opportunity to participate to the fullest extent that those procedures allow.
34. The appellant makes it clear that his case in submitting this appeal, including the decision to appeal only on grounds (a) and (c), was based on the breach of planning control alleged in the enforcement notice. I fully accept that, had the notice included the dormer window when initially issued, it is entirely conceivable that the appellant may have appealed on different or additional grounds. Although not expressly stated by the appellant, it is also possible that an appeal on ground (a) may have been framed differently had the dormer window featured in the breach of planning control, particularly in terms of issues relating to the living conditions of the occupiers of the surrounding residential properties, such as privacy and outlook.
35. In my view, correcting the current notice to include the dormer window in the breach of planning control would deny the appellant opportunities in all the above respects. This would cause injustice to the appellant.
36. The occupiers of the surrounding residential properties have individually, and collectively through the auspices of a planning consultant, expressed their views on the effect of the dormer window on their living conditions. As part of my site visit, I was invited to view the appeal site from their properties. I was also able to view their properties from within the room served by the dormer window. I would therefore be in a good position to reach an informed

conclusion on the effect of the dormer window on the living conditions of occupiers of the surrounding residential properties, including in relation to privacy and outlook. As such, I am satisfied that the occupiers of the surrounding residential properties would not be caused injustice should the dormer window be included in the breach of planning control.

37. I have also given careful consideration as to whether the occupiers of the surrounding residential properties would be caused injustice should the enforcement notice be quashed. In this context, I am mindful of the 'second bite' provisions set out at section 171B(4)(b) of the 1990 Act. This section provides that, where an enforcement notice is quashed on grounds relating to validity, the local planning authority has a further four years in which to issue a second or subsequent notice.
38. In a scenario whereby the notice subject to this appeal could not be corrected and is quashed it would, pursuant to section 171B(4)(b), be open to the Council to issue a fresh enforcement notice that included the dormer window in the breach of planning control, should it consider it expedient to do so. In determining whether or not it would be expedient to issue a fresh enforcement notice, I must assume that, as with the appellant, the occupiers of the surrounding residential properties would be afforded the same opportunity to participate in that discussion to the fullest extent that the Council's procedures allow.
39. In the event that the Council did resolve to issue a fresh enforcement notice that included the dormer window in the breach of planning control, the recipients of that notice would have the right of appeal. Should an appeal be lodged against the enforcement notice, the occupiers of the surrounding residential properties would be entitled to make representations on any and all grounds of appeal in accordance with the normal appeal timetable and procedure. This would include any appeal on ground (a) and, because the deemed planning application would relate to the breach of planning control, this would include the effects of the dormer window on the living conditions of the occupiers of the surrounding residential properties, as well as from the increase in the height of the roof.
40. The Inspector appointed to determine that appeal would then be entitled, and indeed required, to take any representations on that issue into account. This would be the case irrespective whether the Council resolved to include the dormer window in the reasons for issuing the enforcement notice or the requirements to comply with it provided, that is, that the breach of planning control included the dormer window. It also follows that, should no appeal on ground (a) be pleaded, then planning permission could not be granted for the breach of planning control that included the dormer window and the increase in the height of the roof.
41. The occupiers of the surrounding residential properties consider that the appellant could have provided justification for retaining the dormer within the ground (a) appeal but, for the reasons set out above, an appeal on ground (a) can only relate to the alleged breach of planning control and this did not include the dormer window. Similarly, although the appellant had an opportunity to respond to representations made by local residents in his Final Comments, these responses quite correctly only referred to the deemed planning application. Indeed, I note that the appellant specifically responds to

the concerns expressed by occupiers of the surrounding residential properties in relation to matter such as privacy by pointing this out.

42. With all the above in mind, I am satisfied that the occupiers of the surrounding residential properties would not be caused injustice should the enforcement notice be quashed. I understand that any further delay in resolving this matter might be source of frustration to those residents, as no doubt it will to the appellant as well, but that is not the test that I must apply in these circumstances.
43. Although I am satisfied that the occupiers of the surrounding residential properties would not be caused injustice, having regard to the above, I consider that both the appellant and the Council would be caused injustice should I correct the notice to include the dormer window. Because the breach of planning control alleged is not correct and is not correctable, the enforcement notice is invalid as it stands. In these circumstances, I must quash the enforcement notice.

Conclusion

44. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient accuracy the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal grounds (a) and (c) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

45. The enforcement notice is quashed.

Paul Freer

INSPECTOR