
Appeal Decision

Site visit made on 21 February 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 07 April 2017

Appeal Ref: APP/U5360/C/16/3158387

2 Ashtead Road, London E5 9BH

- 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 Solomon Reiner against an enforcement notice issued by the Council of the London Borough of Hackney.
 - **The enforcement notice, numbered 2016/0077/ENF, was issued on 08 August 2016.**
 - **The breach of planning control as alleged in the notice is: Without planning permission the erection of a wrap-around dormer roof extension on the front and side roofslopes of the property.**
 - **The requirements of the notice are: (I) Remove the unauthorised roof extension from the front and side roofslopes of the property; (II) Make good any damage resulting from the compliance with the requirements of the notice and restore the property to its condition before the unauthorised development was carried out; and (III) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.**
 - **The period for compliance with the requirements is six months after the notice takes effect.**
 - **The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.**
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Decision

1. The enforcement notice is quashed.

Application for costs

2. An application for costs was made by the Council of the London Borough of Hackney against Mr Solomon Reiner. However, that application was withdrawn by letter dated 06 April 2017 and I shall take no further action in respect of the matter.

Procedural Matters Relating to the Enforcement Notice

3. The alleged breach of planning control is described in the enforcement notice as *"Without planning permission the erection of a wrap-around dormer roof extension on the front and side roofslopes of the property"*. Similarly, the requirements of the notice, as set out in the banner heading above, are that the roof extension is removed from the front and side roofslopes.
4. I made an unaccompanied visit to the site on 21 February 2017 and it was clearly apparent that the development that had been undertaken was a roof enlargement that extends across the front, side and rear roofslope of the

- property. It is not a series of separate dormer alterations but is a single structure; in effect a large 'box' dormer which extends across the majority of the roof.
5. From reading the respective statements, and the notice itself, it was not clear to me whether the Council had deliberately omitted to refer to the extension on the rear roofslope or, less still, whether the appellant had proceeded on the understanding that the notice only related to part of the structure. Consequently, I wrote to the parties to seek clarification.
 6. In response, the Council set out its view that the omission was an administrative mistake, albeit with an acknowledgement that the previous case officer had left the Council and that it had not been possible to contact him to ascertain his intention with regard to the wording of the alleged breach and associated requirements. In the Council's view, the use of the word 'wrap-around' gives a clear indication that the intention was that the description would apply to the front, rear and side. Moreover, the Council suggests that the requirement is clearly aimed at remedying the breach in its entirety and, had the intention been to under-enforce, the requirements would have been likely to include a requirement to make good the remaining rear section of the dormer.
 7. Further, the Council contends that no prejudice would arise if I were to alter the description of the breach to include reference to the rear section and to amend the requirements to the effect that the entire roof alteration would need to be removed. In its view, the appellant clearly understood that it was the Council's intention to remove the entire structure. Notwithstanding those comments, the Council does acknowledge that, on its face, the description of the breach could give cause to believe that the rear part of the alteration was not subject to the notice.
 8. The appellant responded briefly to confirm his understanding that the Council's intention was not to require the removal of the rear element of the structure. He is also of the view that he would be prejudiced if I were to vary the terms of the notice to include reference to the rear section in the description and the requirements.
 9. Having regard to the above, I consider it likely that the Council intended to serve the notice in relation to the development, as a whole, and that the omission of reference to the rear element of the dormer was, most probably, a clerical or typographical error. I have formed that view on the basis that the development is clearly a single structure and not one that could be readily disaggregated in terms of its front, side and rear sections.
 10. Therefore, in its present form I find that the description of the alleged breach within the notice does not accurately reflect the development that has taken place. It is inaccurate in that regard. In addition, the requirements are unclear in their present form because it is not readily apparent how the front and side sections could be separated from the rear section of the structure. In fact, the rear half of the side element, which extends across the former hipped roof, could be said to be both a side and a rear extension. There is no requirement to make good any works, after the requirements have been carried out and I consider that any person who was tasked with carrying out the requirements would have great difficulty in working out precisely which element of the structure would need to be removed.

11. Thus, on the basis that the allegation does not appear to reflect the nature of the breach and the fact that the requirements are imprecise it would not be appropriate for me to determine the appeal on the basis of the wording as it stands. To do so could cause injustice to both parties.
12. In addition, having regard to the information before me I am not satisfied that I could correct/ vary the terms of the notice without causing prejudice to the appellant. As acknowledged by the Council, it would not be unreasonable for a party to conclude that the notice did not apply to any development on the rear roofslope. Reference to the term 'wrap around' in the description does not clarify matters because that could simply mean to wrap around the side and front and not necessarily, the side, front and rear. The appellant states that he has interpreted the notice to the effect that it refers to the front and side roof slopes only. Although that is not readily apparent from his appeal statement, which is not particularly detailed or descriptive, I cannot discount the possibility that appellant has submitted the appeal on the basis that the notice does not apply to the rear section.
13. If I were to vary the notice as suggested by the Council its scope would be extended and the requirements would undoubtedly be more onerous than presently stated. The terms of the deemed planning application would be different and it is likely that the appellant would wish to make additional comments in respect of the planning merits under ground (a) and in respect of the need for planning permission under ground (c). Consequently, it seems to me that there is a real prospect that injustice would arise on the part of the appellant if I were to vary the terms of the notice.
14. Consequently, whilst I am conscious that my decision may lead to a delay in the eventual resolution of the matter, I consider that the only appropriate course of action is to quash the notice on the basis that it is inaccurate with regard to the description of the alleged breach; that the requirements are imprecise; and that it cannot be corrected without causing injustice to the appellant and potentially the Council. It would be for the Council to consider whether to serve a subsequent notice at which point the description of the breach and the requirements could be clarified.

Conclusion

15. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and that the requirements are imprecise. 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 under grounds (a), (c), (f) & (g) 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 as amended do not fall to be considered.

Chris Preston

INSPECTOR