
Appeal Decisions

Site visit made on 10 April 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 21 April 2017

**Appeal Ref: APP/G5750/C/16/3166251 and 3166252
70 Nelson Street, East Ham, London, E6 2QA**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Karol Rusnak and Mrs Maria Rusnakova against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, reference 15/00061/ENFC was issued on 9 December 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:
 1. Demolish the roof extension (as shown edged in yellow on the photograph attached to the notice at Appendix 1) and return the roof of the property to its form prior to the unauthorised works being undertaken.
 2. On completion of step 1 remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction.

Procedural Matters

1. There are no appeals on ground (f) but I have a duty to ensure that the notice is correct. The issuance of a notice, once the requirements have been complied with, does not prevent the owner/occupier of a property doing what he/she is lawfully entitled to do. I therefore consider that the requirement to 'return the roof of the property to its form prior to the unauthorised works being undertaken' is excessive and I will correct the notice by deleting those words.
2. In the circumstances of these appeals I draw the Council's attention to s.173A(1)(b) of the 1990 Act and its powers to waive or relax any requirement of the notice.

The appeal on ground (c)

3. In a ground (c) appeal the Appellants are saying that the matters alleged in the notice do not constitute a breach of planning control. In appeals on this ground the planning merits of the development do not fall to be considered.
 4. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the
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carrying out of any development of land¹. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.

5. Class B of Part 1 of Schedule 2 permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to a number of specified tolerances, limitations and conditions all of which have to be satisfied. It is the Appellants' case that all of these tolerances, limitations and conditions are satisfied. The Council, however, says that the development does not comply with condition B.2(a) which states that 'the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'. The existing dwellinghouse means 'existing immediately before the carrying out, in relation to that building, of development described in the Order'².
6. The Technical Guidance³ advises that 'this condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration. For example: the face and sides of a dormer window should be finished using materials that give a similar visual appearance to the existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape'.
7. The appeal property is a two storey end of terrace house which has a rendered front elevation. The windows are white uPVC. The rear elevation is a mixture of white render and red brickwork and the roof is concrete tiles⁴. With regard to the exterior materials the Appellants say 'the external elevations and window treatment of both the original house and the dormer match and are a white render and white uPVC frames respectively'⁵.
8. I noted on my visit that the other houses in the terrace had red brick rear elevations with no render and that the small area of white render around the French windows on the first floor of the appeal property appeared to have been recently installed. All of the houses in the terrace have concrete roof tiles. The white render of the face and sides of the roof extension is not at all similar in appearance to the concrete tiles of the roof and therefore the roof extension does not comply with condition B.2(a) and it is not permitted development.
9. No application has been made for planning permission for the roof extension and thus there is no grant of planning permission for it. The erection of the roof extension therefore constitutes a breach of planning control as alleged in the notice and the appeals on ground (c) fail.

¹ S.57 of the 1990 Act

² Article 2(1) of the GPDO

³ DCLG Permitted Development Rights for Householders 2016 page 33

⁴ Paragraph 2.1.1 of the Appellants' Appeal Statement

⁵ Paragraph 3.1.1 of the Appellants' Appeal Statement

Conclusions

10. For the reasons given above I conclude that the appeals should not succeed and I shall uphold the enforcement notice with a correction.

Decision

11. It is directed that the enforcement notice is corrected by the deletion of the words 'and return the roof of the property to its form prior to the unauthorised works being undertaken' from requirement 1 of part 5 of the enforcement notice. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector