
Appeal Decision

Site visit made on 8 June 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 20 June 2017

Appeal Ref: APP/T5150/C/16/3165994

31 Meadow Garth, London, NW10 0SL

- 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 R Husain against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 15 November, 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a hip to gable end roof extension and rear dormer to the premises ("the unauthorised development").
 - The requirements of the notice are:
 - STEP 1 Demolish the unauthorised hip to gable end roof extension and rear dormer.
 - STEP 2 Remove all associated debris, items and materials arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - STEP 3 Re-instate the premises to its former state before the unauthorised works were carried out. (Photo attached to enforcement notice of premises prior to works being carried out).
 - The period for compliance with the requirements is 3 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Reasons

2. The issue under ground (c) is whether the matters alleged to have occurred constitute a breach of planning control. It is one of the "legal" grounds of appeal and the appellant has to show on the balance of probabilities that there was no such breach of planning control. The planning merits of the development alleged to be unauthorised are not relevant to an appeal on this ground.
 3. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) grants planning permission for certain additions to the roof of a dwellinghouse provided they comply with the limitations and conditions set forth in Class B of Part 1 of Schedule 2 to the Order. Of particular relevance is the restriction in Class B.1(c) that any part of the dwellinghouse must not, *"as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway"*.
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4. The development alleged to be unauthorised appears to have been carried out as a single operation and incorporates a rear dormer extension and a hip-to-gable end-roof extension at the front.
5. The front walls at No 31 are staggered in that there is more than one plane forming the front elevation which faces the highway. The hip-to-gable end-roof extension does not project beyond the forward-most front plane of the elevation. However it projects beyond the slope of an existing section of the roof where it abuts a similar section of the roof belonging to 33 Meadow Garth. This can be seen clearly in the photographs supplied.
6. The wording of Class B.1(c) clearly refers to the plane of *any* existing roof slope which forms the principal elevation. It is not therefore possible in my judgement to cherry pick just one of the front roof slopes as being that in respect of which the development would comply with the Order, and then to use that example to justify overall compliance.
7. My view is supported by the Government Technical Guidance published to assist in the application and interpretation of the Order.¹ It advises on page 33 that an enlargement of the roof space is not permitted development on a principal elevation that fronts a highway. It also states that the principal elevation could include more than one roof slope facing in the same direction, for example where there is an 'L' shaped frontage, as is the case here. In such cases, *"all such roof slopes will form the principal elevation"*.
8. The appellant points to a certificate of lawfulness of proposed development that enabled him to erect a small infill extension at the front of the house. It projects beyond the front roof slope that I have described as abutting No 33. However whether the Council granted the certificate in error or on the basis of different permitted development legislation as it then existed, and without the benefit of any Technical Guidance then available, is not to the point. I must consider the proper application of the Order to the particular case before me.
9. The two applications granted certificates in respect of other dwellings in the Council's area are noted. However they relate to dwellings with different roof planes and in any event the Council acknowledges that both certificates appear to have been granted in error. They are therefore of limited assistance here.
10. I have considered the appeal decisions cited by the Council and they are also of limited assistance insofar as they illustrate the application of the relevant general principles of the Order as described above.
11. I therefore find that the unauthorised development does not benefit from a permission granted by virtue of the Order. This is because it extends beyond the plane of an existing roof slope, namely that section which abuts No 33, which forms the principal elevation of the dwellinghouse and fronts a highway. Nor does the development benefit from an express planning permission. It is therefore in breach of planning control and the appeal on ground (c) fails.

Conclusion

12. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice.

¹ The DCLG Permitted Development for Householders: Technical Guidance 13 April 2016

Formal decision

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

Grahame Kean

INSPECTOR