
Appeal Decision

Site visit made on 15 June 2017¹

by Susan Wraith Dip URP MRTPI

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

Decision date: 19 July 2017

Appeal Ref: APP/G5750/C/16/3160934

Land at 96 Shakespeare Crescent, Manor Park, London E12 6LP

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Muneeb Ahsan Yazdani against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 16 September 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 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 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in s174(2) (f) of the Act.
-

Decision

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

The appeal on ground (f)

2. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity caused by the breach. The words "as the case may be" indicate that the purpose of the notice should fall primarily within one or the other category. In this case the main purpose of the notice (which requires complete removal of the roof extension) is to remedy the breach.
3. The appellant has referred to permitted development rights for roof extensions. Class B to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "the GPDO"] provides for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof as permitted development subject to limitations and conditions.
4. One of those conditions (B.2(b)(i)(aa)) is that the eaves of the original roof are maintained or reinstated. Another condition (B.2(b)(i)(bb)) is that the edge of the enlargement closest to the eaves of the original roof is, so far as

¹ The site visit had been re-arranged. I had first visited on 30 May 2017 but the appellant had not been aware of the visit and was not at home on that occasion.

- practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.
5. The enlargement has been constructed such that its rear facing wall is an upward continuation of the rear facing wall of the dwellinghouse. As such, there is no 0.2 metre set back and the original eaves are lost. The above conditions have not been complied with.
 6. These conditions are fundamental to the design and size of any enlargement that could be erected under permitted development rights. Thus, as the development fails to comply, the whole of the development is unauthorised.
 7. I do not criticise the notice for requiring complete removal of the enlargement as this is clearly one of the ways in which the breach can be remedied. On the other hand, I do not rule out either the possibility of the breach being remedied by alterations to bring the development in line with the GPDO parameters.²
 8. However, in order to be satisfied that such alterations are feasible and would achieve their intended purpose it would be necessary for there to be a drawn up scheme. Such a scheme would also be needed to ensure that the notice could be varied to the necessary level of precision.
 9. The appellant has submitted a scheme which, essentially, proposes to leave the rear wall of the enlargement in place and to alter the elevation by adding, what will appear to be, eaves stretching across the width of the property. The face of the enlargement would then have the appearance of sitting back from the newly formed eaves.
 10. From what I saw at my site visit it is likely that the dwelling's original eaves would have been similar to those of its neighbours and, thus, quite shallow. The proposed newly formed eaves appear to project further outward. Also, being below the rear wall of the enlargement, their proposed position on the building appears to be lower.
 11. The word "original" in the GPDO is of significance here as it is the intention of the provision to maintain or reinstate the eaves feature in its original form. I cannot conclude, on what is before me, that the proposal for newly formed eaves would be a faithful reinstatement of the original eaves so as to bring the development in line with the GPDO conditions.
 12. No appeal has been made on ground (a). I am, therefore, unable to consider the appellant's proposal on its planning merits. Neither would it be appropriate to reach a view on whether the proposal overcomes harm to amenity (under the second limb of ground (f)) without having had the opportunity to consider all material considerations. There is no other scheme before me and no other obvious lesser steps that I can identify. I therefore conclude that, in the absence of any other obvious alternative, the steps of the notice go no further than necessary to remedy the breach.
 13. The appeal on ground (f) fails.

² S173(4)(a) of the Act states that a breach can be remedied by making the development comply with the terms of any planning permission which has been granted. That could include making an unauthorised development accord with the limitations and conditions set out in the GPDO.

Other matter

14. The appellant says that the breach has arisen because he was misled by his contractor. However, this is not a matter I can take into account in my consideration of the appeal.

Conclusion

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

Susan Wraith

Inspector