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## Appeal Decision

Site visit made on 30 May 2017

**by Susan Wraith Dip URP MRTPI**

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

**Decision date: 24 July 2017**

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**Appeal Ref: APP/G5750/C/16/3161012**

**Land at 260 Lonsdale Avenue, East Ham, London E6 3PW**

- 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 Gulfaraz Khan 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.
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### Decision

1. The appeal is allowed on grounds (f) and (g), and it is directed that the enforcement notice be varied by:
  - (i) In paragraph 5, insertion of "Either:" before step 1.
  - (ii) In paragraph 5, after step 2, insertion of "Or: Alter the roof extension so that it complies with the details shown on Drawing No.: BR/06 a copy of which is appended to the notice."
  - (iii) In paragraph 5, deletion of "three months" and substitution of "six months" as the time period for compliance.
  - (iv) Appending to the notice the drawing attached to this decision.

Subject to these variations the enforcement notice is upheld.

### Preliminary matters

2. The appeal was originally made on ground (f). During the appeal process the appellant appointed a different agent. Grounds (e) and (g) were added. I shall consider these added grounds on which I have given the Council an opportunity to comment. I shall take into account the further comments made by the Council. No further comments were received from the appellant.
  3. The site visit had been arranged on an accompanied basis. However, the appellant did not attend. I proceeded to inspect the site from the street and from Greenway to the rear. There is a photograph of the roof extension
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attached to the enforcement notice. I am satisfied that I have sufficient information to reach a decision.

### **The appeal on ground (e)**

4. Ground (e) is argued on the basis that there is no evidence that proper procedures were followed in the issuing and service of the notice.
5. The Council has confirmed that the notice was signed by the Head of Planning and Regeneration. It has supplied an extract from its Officer Delegations Scheme which shows she has the necessary authority to issue an enforcement notice. I am satisfied, therefore, that the notice was issued correctly.<sup>1</sup>
6. On the matter of service, the Council undertook reasonable prior investigations to identify the interests in the land, including by obtaining an official copy of register of title from the Land Registry and by searching the Council's own licensing history and records. The Council has supplied a copy of its certificate of service which confirms that copies of the notice were served on all the identified relevant parties. Therefore, I am satisfied that the requirements of s172 were followed.
7. Even if there had been some error or oversight in service I have powers, under s176(5), to disregard such so long as the appellant (and/or any other person not served) has not been substantially prejudiced. There is no evidence of any party being substantially prejudiced by any shortcomings in service. Insofar as the appellant is concerned, a copy of the notice clearly reached him and an appeal was lodged in time.
8. For all these reasons the appeal on ground (e) fails.

### **The appeal on ground (f)**

9. 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 and reinstatement of the roof) is to remedy the breach.
10. The appellant has referred to permitted development rights for roof extensions which I take to be those set out in Class B of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "GPDO"]. Under Class B a householder can enlarge a dwellinghouse by an addition or alteration to its roof as permitted development subject to limitations and conditions.
11. The property is gable ended with a dual pitch roof. The roof extension has been formed by building up the rear part of the gable wall which now forms the side wall of the roof enlargement. Thus, the appearance of the pitch in this part of the side elevation has been lost. As the gable wall is an integral part of the whole dwellinghouse the works have exceeded a roof addition and, thus, fall beyond what is permitted within Class B. This is accepted by the appellant.
12. The appellant's case under ground (f) is that, rather than removing the roof extension entirely, it can be altered to bring it in line with what would be

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<sup>1</sup> A notice which is not properly authorised is a nullity and, therefore, not a notice at all.

permitted under Class B. Thus, (it is argued) lesser steps are possible and the requirements of the notice are excessive. The appellant has submitted a scheme.

13. It is the whole of the development that is unauthorised, not just its parts that exceed permitted development limitations. 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.
14. However, s173(4)(a) of the Act states that a breach can also be remedied by making the development comply with the terms of any planning permission which has been granted. That could, to my mind, include making an unauthorised development accord with the limitations and conditions set out in the GPDO which, in effect, gives a deemed grant of permission for a range of developments. Consideration first of all under ground (a)<sup>2</sup> would not, in these circumstances, be necessary.
15. Even if s173(4)(a) is not to be interpreted in that way, little purpose would be served in requiring complete removal of the roof extension where there is an obvious alternative that would overcome the difficulties with less costs and disruption. I also bear in mind that the enforcement regime is intended to be remedial not punitive. I shall therefore consider the appellant's scheme.
16. The scheme proposes removal of the additional brickwork to the gable, the making good of the gable in matching brickwork<sup>3</sup>, the reinstatement of the roof pitch at this part and the setting in of the roof extension by a minimum of 20 centimetres from the edge of the roof. The extension is also set down from the ridge, back from the eaves<sup>4</sup> and in from the party boundary with number 258. The resulting development would have the appearance of a dormer sitting within the roof slope tile clad to match the existing roof covering. There is a calculation which shows that the enlargement will not exceed 40 cubic metres in volume, that being a limitation in size under class B. I cannot see why the proposed scheme would not, in all material respects, result in a development which in the normal course of events could have been undertaken as permitted development.
17. I shall therefore vary the notice by introducing a requirement, in the alternative, that the roof extension is altered to accord with the submitted scheme.
18. The appeal on ground (f) succeeds to that extent.

### **The appeal on ground (g)**

19. On ground (g) a period of ten months is requested. It is argued that it would be impossible to engage a contractor and carry out the works within the three month period specified and that the disruption to the occupiers must also be taken into account.
20. I acknowledge that the works would need to be planned for and that there would be some disruption to family life as a consequence of compliance. A

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<sup>2</sup> An appeal on ground (a) is that planning permission should be granted for the matter alleged. It provides for the consideration of the development on its planning merits.

<sup>3</sup> This part of the gable is presently rendered.

<sup>4</sup> I have no reason to doubt that the distance of set back from the eaves is at least 20 centimetres.

longer time period would be helpful to the appellant and occupiers in both these respects.

21. On the other hand I must also take into account the wider public interests which are best served by timely compliance with the notice to remedy the harm which, in the Council's view, arises. It is feasible that a contractor could be engaged and that the actual works could be undertaken within the time period specified.
22. The Council has powers to vary the compliance period but I need to be satisfied, myself, that the period specified is reasonable in the first instance. Having weighed these arguments I consider a period of six months would strike a more appropriate balance between the conflicting public and private interests without placing a disproportionate burden upon the appellant and occupiers. I have reached that view being satisfied that there would be no breach of the requirements of Article 8 and Article 1 of the First Protocol to the Convention as incorporated by the Human Rights Act 1998.
23. I shall vary the notice accordingly. To this limited extent the appeal on ground (g) succeeds.

### **Conclusion**

24. For the reasons given above, I conclude that the requirements are excessive and that a reasonable period for compliance would be six months. I am varying the enforcement notice accordingly prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

*Susan Wraith*

Inspector



# Annex to Appeal Decision

## Drawing for Variation of the Notice

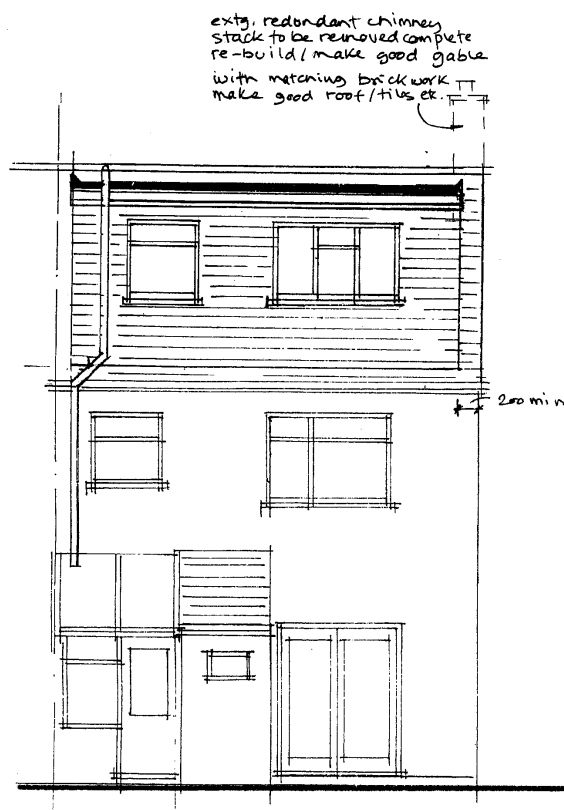
This is the drawing referred to in my decision dated: 24 July 2017

by Susan Wraith Dip URP MRTPI

Land at 260 Lonsdale Avenue, East Ham, London E6 3PW

Appeal ref: APP/G5750/C/16/3161012

Scale: NOT TO SCALE



PROPOSED REAR ELEVATION

### DOORS AND WINDOWS

Proposed doors and windows to achieve a U value of 0.16 W/m<sup>2</sup>/K.

To be double glazed sealed units UPVC.

Glazing to be 'K' glass and to have a 16mm argon filled gap between panes proposed glazing to be installed by a FENSA registered contractor.

Proposed dormer sides and to be timber framed constructed and to be clad in plain clay tiles, colour to match existing roof covering.

Provide code 3 lead soakers at junction of dormer side and existing pitched roof junctions.

Where dormer sides are built against boundary walls, to be lead cover flashed, dressed onto the raised parapets of the party walls, all lead details to be as recommended in the LDA manual.

Lintels over existing first floor windows to be exposed to assess suitability to carry additional loadings imposed by proposed dormer construction.

-If new steel or reinforced concrete lintels required, details / structural calculations be provided.

Rapid ventilation to be provided to loft room, to be equivalent to  $\frac{1}{30}$ th of floor area.

Background ventilation to be provided to proposed loft room, use trickle ventilators fitted to window frames.

Background ventilation to habitable rooms to be equivalent to 8000 mm<sup>2</sup> area.

### PLUMBING:

All plumbing to be in accordance with BS 5572:1978

All wastes to be connected to existing raised S&VP.

Above ground drainage to be provided with rodding access at all changes of directions.

Shower trays to be built on raised plinths with a removable access panel to access shower traps.

-Basin to have 32mm diameter trap, 75mm deep seal trap and 38mm dia. branch.

-Shower/bath to have 40mm diameter trap, 75mm deep seal trap and 40mm diameter branch (increasing to 50mm diameter on longer lengths)

-Basin waste to connect above w.c.

-Bath waste to connect in area 400mm below center line of w.c. connection.

-Waste pipes and traps to be in unobtrusive positions and concealed wherever possible

-Waste pipes to enter soil stack direct with access above for cleaning.

-100mm SVP to terminate via ridge vents using 100mm flexible hose or minimum 900mm above highest opening with cage to terminal.

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|----------------------|-----------------------------------------------------|--------------------------------|
| Job:                 | 260 LONSDALE AVENUE<br>EAST HAM<br>LONDON<br>E6 3PW | Date: Oct. 2014<br>Scale: 1:50 |
| Drawing No.<br>BR/06 | ARCHITECTURAL SERVICES                              |                                |