
Appeal Decision

Site visit made on 26 July 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 23 August 2017

Appeal Ref: APP/E5900/C/16/3165837

25 Jamestown Way, London E14 2DE

- The appeal is made by Rajshree Laturia under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/15/00290) issued by the Council of the London Borough of Tower Hamlets on 19 November 2016.
 - The breach of planning control alleged in the notice is "Unauthorised front roof extension and installation of solar panels to the roof of the property".
 - The requirements of the notice are as follows: -
 - "1) Remove the front roof extension and solar panels from the property as shown in the attached photographs in appendix A.
 - 2) Remove all debris and rubbish associated with the remedial works and make good and reinstate the former original front roof slope."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c).
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the installation of solar panels on the roof of 25 Jamestown Way, London E14 2DE.

Reasons for the appeal decision

Introduction

3. Representations I have received from members of the public express concerns about various works that have been carried out at 25 Jamestown Way. My decision, however, can only relate to the matters alleged in the enforcement notice to be breaches of planning control, namely the front roof extension and installation of solar panels on the roof of the property.
 4. The appeal is based on the following lines of argument. Ground (c): (i) that the front roof extension is permitted development and (ii) that the installation of the solar panels did not require planning permission since they are not development as defined by planning legislation. Ground (a): if the appeal on
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ground (c) fails, planning permission should however be granted for the front roof extension and the installation of the solar panels.

5. Because the solar panels are on top of the rear roof extension as well as being on top of the front roof extension, I have considered whether the rear roof extension is authorised for planning purposes. The Council have expressed the view that it is and I have no reason to disagree.

Ground (c) – the front roof extension

6. Because the construction of the front roof extension began in January 2015, the version of the permitted development order that applies to it is the 1995 Order, as amended at that time. This authorised the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. It was subject to several limitations and conditions, only one of which is in contention in this appeal. That is B.1(b), which stated that development was not permitted if “any part of the dwellinghouse would, 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”.
7. It is not in dispute that the front roof extension extends beyond the plane of an existing roof slope which forms the principal elevation of the house. The determining issue under ground (c) is whether it also fronts a highway.
8. The 1995 Order as amended did not define the term “highway”. The Town and Country Planning Act 1990 under which the Order was made states that it has the same meaning as in the Highways Act 1980 which, so far as the issue arising in this appeal is concerned, simply states that it means the whole or any part of a highway.
9. The 1995 Order and its amendments were revoked by the 2015 Order, which came into force in April 2015 and remains in force with amendments. B.1(b) is now B.1(c), but it otherwise remains the same. However, in a change to the 1995 Order, the 2015 Order states that, for this purpose, the term “highway” includes an unadopted street or a private way and the term “unadopted street” means a street not being a highway maintainable at the public expense. These interpretations applied when the appeal decision APP/E5900/X/15/3137333 was made in relation to 55 Jamestown Way, since the determinative date for the front dormer proposed in that appeal was 8 July 2015. They do not apply in the current appeal since they are not retrospective.
10. A highway is a defined route over which the public at large can pass and re-pass as frequently as they wish without hindrance and without charge. It can come into existence through a statutory order or an agreement made with the landowner or by being dedicated as a highway by the landowner (either expressly or by presumption or by deemed dedication after 20 years’ public use). The use by the public must be as of right and not on sufferance or by licence. The right can be limited to a particular class of user or mode of transport. A privately-owned or privately-maintained way can be a highway, but only if the public at large can use it as of right.
11. Information made available by the Council indicates that (i) Jamestown Way was built between 1998 and 1999 and was open and being used by 2001, (ii) it is not an adopted highway or maintained at the public expense, (iii) there is no

indication that a statutory order has been made in respect of it and (iv) there is an agreement with the landowner under section 106 of Town and Country Planning Act 1990, which was made on 4 December 1997 between the landowner, the developer of the estate and the then planning authority.

12. I have studied this agreement. Jamestown Way is not an estate road referred to in the agreement. The agreement provides for defined public walkways, which do not adjoin the house, and it allows the landowner and the developer to close them one day each year "so as to preclude the Walkways becoming public highways". It also permits them to make rules and regulations with regard to the conduct of persons using the walkways. These provisions are inconsistent with a dedication of the walkways as highways and, even if the provisions have not been exercised, a deemed dedication has not taken place, because 20 years' public use cannot have occurred.
13. At present, vehicular access to and egress from Jamestown Way cannot be achieved without having permission to go through one of the two double sets of automated barriers that exist between the estate and the external road network. This is a very clear indication that the use of Jamestown Way by the public is not as of right and is by licence. In addition, there are high roadside arches at the main entrance to the estate, with the main footway passing through one of them, a porters' lodge next to one of the barriers, street signage that is not in the public authority style and many signs indicating that the land is private property. Although there are no physical barriers on the estate to pedestrian entry and egress, I do not consider that the public at large can in these circumstances be under any doubt that when they are walking on Jamestown Way they are not doing so as of right.
14. For the above reasons and on the balance of probabilities, I have concluded that when the construction of the front roof extension commenced it was permitted development, since no part of the house would, as a result of its construction, extend beyond the plane of an existing roof slope which formed the principal elevation of the house *and* fronted a highway, as that term applied at the time. The appeal has therefore succeeded on ground (c) in relation to the front roof extension.

Ground (c) – the solar panels

15. A previous installation of solar panels was removed to make way for the front roof extension. The present installation took place in October 2015.
16. The information available to me indicates that the parts were transported to the house in one consignment and that they were then assembled on the roofs by placing the plastic interlocking mounting units in rows on the roofs and inserting the solar panels into the mounting units. The installation rests on the roofs under its own weight and is not fixed or attached to anything, except by an electricity cable leading into the house. It has a low profile and a smooth shape to prevent it being dislodged by high winds.
17. The appellant maintains that the installation is not permanent; the supplier has suggested that it is brought indoors in the winter and then put out again for the summer, which should not take "more than a couple of hours". I consider that this is very unlikely to happen as a matter of routine, since access to the

rooftops is difficult. In any event, the installation would be in place for several months at a time.

18. As a matter of fact and degree, it seems to me that despite the absence of physical attachment, the installation is not a "portable chattel" as maintained by the appellant, because of the amount of work required to assemble it on site, or to remove it, and the extent to which it will be permanent. It is in my view development requiring planning permission, because it is a building operation as defined by section 55 of the 1990 Act, which includes additions to buildings. Since planning permission has not been applied for and is not granted by the 2015 Order (because the highest part of the installation is higher than the highest part of the roof of the house), the appeal on ground (c) has failed in relation to the solar panels.

Ground (a) – the solar panels

19. The main issue in deciding whether planning permission should be granted for the installation of the solar panels is the effect it has on visual amenity.
20. The installation is set back from the front of the front roof extension, which is itself set back above the eaves of the house and behind a parapet wall. As a result, there are no obvious views of it from Jamestown Way or from the open area between Jamestown Way and the river.
21. The block of flats at the rear of the house is several storeys higher than the house. The occupiers of the flats on the lower floors with windows facing the rear of the house have a view of the rear roof extension and the edge of the installation. However, this is a sleek low-profile installation that protrudes a maximum of about 25cm above the roof and it is not unduly obtrusive when seen from here. The occupiers of flats on the upper floors with facing windows are able to see the whole of the installation, but it is not in my opinion unsightly when seen from here and if it were removed a view of the roofs of the extensions would remain.
22. The planning system does not normally seek to protect private views, unless there is an unacceptable loss of outlook, which may occur, for example, as a result of the size and proximity of proposed development. This objective is included in Policies DM24 and DM25 of the Tower Hamlets Local Plan Managing Development Document. In my opinion, the installation does not have an impact that is substantial enough to bring it into conflict with planning policies.
23. I have therefore concluded that planning permission should be granted for the installation of the solar panels and the appeal on ground (a) relating to it has therefore succeeded. I have considered whether any planning conditions should be imposed and have concluded that none are required.

D.A.Hainsworth

INSPECTOR