
Appeal Decision

Site visit made on 17 September 2018

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 02 October 2018

Appeal Refs: APP/M0933/C/17/3184315 and 3184316

Monton, Cart Lane, Grange-over-Sands LA11 7AB

- 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 Trevor Wilson and Miss Louise Hadwin against an enforcement notice issued by South Lakeland District Council.
 - The enforcement notice was issued on 11 August 2017.
 - The breach of planning control as alleged in the notice is the carrying out of operational development within the Land consisting of a single building operation to increase the height of the eaves, ridgeline, garage and roof plane together with the construction of a box dormer window roof extension of the house known as Monton and in particular:
 - (i) The laying of additional timbers to the top side of the existing rafters;
 - (ii) The placing of a new sarking membrane, affixing of battens and affixing natural slate;
 - (iii) The increase in the former ridge height by the re-profiling of the roof apex and the removal and re-laying on a new mortar bedding of the existing ridge tiles; and
 - (iv) The construction of a box dormer window roof extension.
- Further in the alternative, even if the development were to benefit from Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, the Building has not been constructed in accordance with Schedule 2 B1(d)(ii) or Schedule 2 B2(b)(i)(aa) in that the cubic content created by the development when taken together with the additional roof space created by the garage extension permitted under reference SL/2015/0942 has exceeded the cubic content of the original roof space by more than 50m³ and the eaves of the original roof have not been maintained or re-instated.
- The requirements of the notice are:
 - (1) Strip back and remove all slate roofing materials and ridge tiles, set aside for re-use except for that on the garage;
 - (2) Strip back and remove, all slating battens, sarking and insulation between the rafters except for that on the garage;
 - (3) Strip back and remove the additional new timber(s) overlaying the original rafters;
 - (4) Remove all the window frames and framing to create the box dormer from the land and all materials and debris associated with compliance with paragraphs 5(1) to 5(3) above; and
 - (5) Return the roof of the original dwelling to its original profile and re-attach new insulation, sarking, slating battens, and re-affix slates and ridge tiles.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is varied by:

1. The deletion of the alleged breach of planning control in section 3 of the notice and the substitution instead of 'the construction of a box dormer window roof extension of the house known as Monton'.
2. The deletion of the requirements in section 5 of the notice and the substitution instead of 'Remove all the window frames and framing to create the box dormer window roof extension from the land and complete the east roof plane of the dwelling using matching materials and to the profile of the roof below and to the sides of the removed dormer'.
2. The ground (a) appeal is allowed in so far as it relates to matters alleged other than the construction of a box dormer window roof extension. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the 'the laying of additional timbers to the top side of the existing rafters, the placing of a new sarking membrane, affixing of battens and affixing natural slate, and the increase in the former ridge height by the re-profiling of the roof apex and the removal and re-laying on a new mortar bedding of the existing ridge tiles' at Monton, Cart Lane, Grange-over-Sands.
3. The ground (a) appeal is dismissed in so far as it relates to the construction of a box dormer window roof extension. Subject to the variations the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely 'the construction of a box dormer window roof extension' at Monton, Cart Lane, Grange-over-Sands.

Application for costs

4. An application for costs was made by Ms Fiona Hasson against Mr Trevor Wilson and Miss Louise Hadwin, and against South Lakeland District Council. This application is the subject of a separate Decision.

Reasons

The ground (c) appeals

5. Originally Monton was a single storey bungalow with a pitched roof. On 19 June 2015, subsequent to an application dated 10 March 2015, a Lawful Development Certificate SL/2015/0255 (the LDC) was granted for 'rear dormer extension, conversion of roof space and alterations to windows'. The application was determined under the provisions of The Town and Country Planning (General Permitted Development) Order 1995 as amended (the 1995 GPDO), because the date of the application pre-dated the replacement of the 1995 GPDO by The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO), which came into force on 15 April 2015.
6. The LDC established that, on the date of the application, a rear dormer as shown on an application drawing, would have been lawful because "The dimension and position of the proposed roof extension is considered a permitted development under Schedule 2, Part 1 Class A of..." the 1995 GPDO. Class A relates to 'the enlargement, improvement or other alteration of a dwellinghouse' and states that development is not permitted if, amongst other things, the development would consist of or include an alteration to any part of the roof. The development that was the subject of the application, a roof alteration, could not therefore be development permitted under Class A of Part 1 of Schedule 2 of the 1995 GPDO.

7. The construction of the rear dormer extension to Monton was commenced following the issue of the LDC and whether or not it is permitted development, as claimed by the Appellants, falls to be determined against the provisions of the 2015 GPDO. Class B of Part 1 of Schedule 2 of the 2015 GPDO relates to 'the enlargement of a dwellinghouse consisting of an addition or alteration to its roof' but development is not permitted if, amongst other things, any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the roof, and if the eaves of the original roof are not maintained or re-instated. On 13 October 2015 a planning application was submitted for a single storey garage extension to Monton.

8. The erection of the garage was carried out at the same time as the construction of the roof dormer and the application was, in fact, for the retention of the garage. The application was considered by the Council's Planning Committee on 26 February 2016 when they also considered enforcement action against a breach of planning control relating to the roof alterations. The Committee decided to grant planning permission for the garage, the decision notice is dated 15 June 2016, and authorised enforcement action against the roof alterations. An enforcement notice was issued on 26 May 2016 and alleged the increase in height of the eaves, ridge line and roof plane of the house known Monton.

9. Mr Wilson submitted an appeal against the enforcement notice under grounds (a) and (c). The Inspector appointed to determine the appeal visited the property on 8 February 2017 and in his Decision dated 4 April 2017 he found the notice to be invalid because it "...does not specify with sufficient accuracy the alleged breach of planning control", and that "It is not open to me to correct the error...since injustice would be caused were I to do so". The notice was therefore quashed. The principal error in the notice was found to be the omission of the rear dormer extension in the alleged breach of planning control. On 20 July 2017 the Committee resolved to issue a new notice, which is the subject of this Decision.

10. The dormer extension and other works to the roof are now complete and nothing of the construction of the roof was visible at the site visit. The previous Inspector had the benefit of seeing the construction of the roof at his site visit because "...a section of the new fascia had been removed to expose the underlying structure". He followed this statement with a careful analysis of the evidence that was before him and concluded that "...I am satisfied that the ridge height has been materially increased compared to the original roof" and that "...I am satisfied on the basis of the photographic evidence and my observations...that the height of the eaves has been materially increased as a result of the new works, such that the eaves of the original roof have neither been maintained nor reinstated.

11. The Inspector also stated, with regard to a report that had been commissioned by the Council, that "I have serious reservations about the findings in the NPS Group report", and concluded that "...the conclusions in the NPS Group report cannot be relied upon". Ultimately, the Inspector concluded that "as a matter of fact, the ridge height has been materially increased compared to the original roof. The works carried out therefore do not accord with the limitations set out at Class B.1(b). I have also found that the eaves of the original roof have not been maintained or reinstated...such that they do not accord with the condition set out at Class B.2(b)(i)(aa). I therefore consider that the alterations of the roof, consisting of the increase in height of the eaves, ridge line and roof plane, do not accord with the provisions..." of Class B of Part 1 of Schedule 2 of the 2015 GPDO.

12. The conclusions reached by the previous Inspector, given in particular that the roof construction was not exposed at the site visit for this appeal, are a starting point. He found the roof on which the dormer extension has been constructed not to be permitted development and, if this is the case, the dormer extension itself cannot be permitted development. This Decision will consider whether any evidence submitted since the issue of the previous Decision merits reaching a conclusion, on whether the roof is permitted development, that is different to that of the previous Inspector.

13. In May 2017, following receipt of the previous appeal decision, the Council instructed Lambert Smith Hampton (LSH) to undertake a survey of the property. They commissioned an 'as built' survey drawing to compare against original existing and proposed drawings. A report on this comparison was issued to the Council on 1 June 2017 and concluded that "...there were both increases and decreases in height evident at the development". The Council, on the basis that this "...did not without doubt resolve the query..." re-instructed LSH on 7 July 2017 to undertake a further review. This review was a desktop study only and was of all the information provided to LSH.

14. LSH concluded that it "...is reasonable to assume and therefore conclude that the roof must have increased in height at ridge level" and that it "...is reasonable to assume and conclude that the eaves have increased in height". They also commented, in their report issued on 10 July 2017, that "...we have not been provided with any evidence that the preparatory works which relate to 'dropping' or reducing the height of the roof were undertaken". The LSH report does not merit reaching a conclusion that is different to that of the previous Inspector.

15. The principal other evidence produced since the previous appeal decision is a 'Report on Roof Structure and Method of Construction' by Greg Gilding, a Chartered Building Surveyor, dated 17 September 2017. This report details measures that were undertaken to address structural defects in the roof. To remedy a sag in the ridge plate a steel beam has been installed, about 200mm beneath the ridge plate, that spans between the gable walls of the dwelling. But the principal reason for the steel beam is to support the rafters of the roof over the dormer; without the beam the dormer could not have been constructed. However, the report details how the existing roof was 'dropped' onto the steel beam and how the ridge plate was then propped with "...small timber pieces to take the sag from the ridge...".

16. The report indicates that the ridge of the building had sagged by 40-50mm but there are no photographs to illustrate this. The ridge plate will have sagged over a period of about 50 years and there is no evidence to indicate how such a pronounced sag was remedied in a short space of time so that, as shown in photographs, it is straight again. The report suggests that the 'rafters and ridge (were) dropped towards new steel ridge beam'. There is no explanation, however, about why it was necessary to 'drop' the whole roof and how this was done without affecting the relationship of the roof to the gable walls. The report states that "The eaves line is the same by virtue of two facts" but there is no photographic evidence of the original 'large timber fillet (75mm)' or of the new 'tilt fillet' that is 25mm, and the altered eaves arrangement is now covered up.

17. The report indicates that the original rafters were supported on an inner leaf of the external cavity wall of the dwelling, not on a timber wall plate but on the masonry itself. According to the report the rafters were lowered onto an original timber wall plate on the outer leaf. The installation of a timber wall plate on an

outer leaf is unusual as is the fact that it did not support the lower ends of the rafters. There are no photographs to illustrate this original arrangement. The relationship of a blue painted bargeboard to wet dash render below is referred to in the report and it is suggested that this has not changed. The evidence for this suggestion is unclear because in the photographs the wet dash render has been painted, thus obscuring any patching to the render that might have occurred. In this regard a skilled tradesman could, given the nature and application of wet dash render, achieve a good match between old and new wet dash.

18. Even if the blue painted bargeboard has not been moved, photographic evidence is inconclusive on whether the ridge is higher than it was originally. Notwithstanding the use of a shallower ridge tile and minimal bedding material photograph 6 in the report, which does show the old and planted rafter relationship and the batten ends and roof slates, does not, on the balance of probability, justify a conclusion that the ridge of the building has not been raised. Similarly, there is no photographic or documentary evidence to justify a conclusion that the eaves of the dwelling have not been raised.

19. There is nothing in the evidence submitted with the appeal to justify a conclusion that the overall conclusions of the previous Inspector, that "...the ridge height has been materially increased compared to the original roof..." and that "...the eaves of the original roof have neither been maintained nor reinstated", were incorrect planning judgements. The works carried out to the roof therefore do not accord with the limitations set out at Class B.1(b) and Class B.2(b)(i)(aa). The alterations to the roof do not accord with the provisions of Class B of Part 1 of Schedule 2 of the 2015 GPDO.

20. The Council, in the alleged breach of planning control, refers to paragraph B.1(d)(ii) of Class B of Part 1 of Schedule 2 to the 2015 GPDO. Under the provisions of this paragraph development is not permitted for an addition to the roof of a dwellinghouse if the cubic content of the resultant roof space would exceed the cubic content of the original roof space by 50m³. In their calculations the Council has included the roof space of the garage that is now attached to the dwelling. That roof space is not a result of the works claimed to be permitted dwelling but a roof space that is a result of the implementation of a planning permission. The proviso in the 2015 GPDO is clear; it is the 'resultant' roof space that is to be considered. The garage roof space has been erroneously included in the Council's calculations and the dormer roof extension, itself, does not exceed the limitations of paragraph B.1(d)(ii).

21. The dormer roof extension has been constructed in a single building operation with the alteration works to the roof. The roof alteration works are not permitted development and the dormer roof extension cannot therefore be development permitted under the provisions of Class B of Part 1 of Schedule 2 of the 2015 GPDO. Planning permission has not been granted for the dormer roof extension and the roof alteration works and they are not, either individually or together, development permitted under the provisions of Class B of Part 1 of Schedule 2 of the 2015 GPDO. The ground (c) appeals thus fail.

The ground (e) appeals

22. The Appellants' Agent has misunderstood the matter to be considered under ground (e). The matter is not the content of the enforcement notice or compliance with section 173(3) of the Act, but whether the notice has been physically given to any person or party with an interest in the land; these persons usually being the

owner or occupants of a property, or a party with a financial interest in the property, such as a mortgage provider. No evidence has been submitted to indicate that the notice was not properly served in accordance with the provisions of section 172(2) of the Act. The ground (e) appeals thus fail.

The ground (a) appeals

23. The Council has not suggested that the alterations to the roof of the dwelling, in themselves, cause harm. The main issues are the effect of the dormer roof extension on; first; the amenities of neighbouring residents with regard to overlooking; and second, the setting of a nearby Grade II listed building, Monks Rest, and the character of the nearby Grange over Sands Conservation Area.

24. Even if the LDC granted in June 2015 had referred to the correct Class of Part 1 of Schedule 2 of the 1995 GPDO it only established what would have been lawful on the date of the application. Circumstances have changed; the 2015 GPDO is now in force and the works to the roof of the dwelling and the rear dormer extension have been found not to be in accordance with its provisions. The 2015 LDC is not therefore a fallback position.

The first issue – the amenities of neighbouring residents

25. The dormer roof extension, which is an open plan living/dining/kitchen space, is about 9.3 metres wide and its main east elevation is almost wholly glazed and is sub-divided into eight windows. The three southernmost windows are to a kitchen area and opaque film has been applied to the inside of the windows to prevent any overlooking of neighbouring properties. The other five windows, to a living area, are clear glazed and there is an outlook from these windows in an arc of about 150 degrees to the north-east round to the south. Dwellings to the east, south-east and south of Monton are at a lower level and there are views down and towards these properties from the five clear glazed windows.

26. 14 Cart Lane is to the east of Monton and its rear elevation is about 35 metres from the dormer. The rear garden of this two storey semi-detached dwelling is about 29 metres long and slopes gradually up to a fenced boundary to the appeal property. There are clear uninterrupted downward views from the living space in the dormer of almost the whole of the rear garden of 14 Cart Lane and of, and into, a sun room at the rear of the dwelling. Overlooking from the five windows in the dormer will be intermittent but the possibility of overlooking occurring will be permanent resulting in a constant feeling, for the residents of this residential property, of being overlooked. The dormer roof extension has resulted in a severe loss of privacy and amenity for the residents of 14 Cart Lane.

27. 16 Cart Lane is to the south-east of Monton and its rear elevation is about 28 metres from the dormer. There are clear downward views from the living space in the dormer of the majority of the rear garden of 16 Cart Lane and into a dining room window at the rear of the dwelling. Overlooking from the five windows in the dormer will be intermittent but the possibility of overlooking occurring will be permanent resulting in a constant feeling, for the residents of this residential property, of being overlooked. The dormer roof extension has resulted in a serious loss of privacy and amenity for the residents of 16 Cart Lane.

28. Ashgarth is 1 The Orchard and is a two storey semi-detached dwelling to the south of Monton and its rear elevation is about 15 metres from the clear windows in the dormer. There are oblique downward views from the living space in the

dormer into the rear garden of Ashgarth and into rear ground floor room, and close oblique views into a first floor bedroom window. Overlooking from the five windows in the dormer will be intermittent but the possibility of overlooking occurring will be permanent resulting in a constant feeling, for the residents of this residential property, of being overlooked. The dormer roof extension has resulted in a serious loss of privacy and amenity for the residents of Ashgarth.

29. There are oblique downward views from the clear windows in the dormer towards the rear gardens and elevations of 18 Cart Lane and 2 The Orchard. Overlooking experienced and felt by the residents of these dwellings will not be as serious as it is at other nearby properties but will be significant nevertheless.

30. Overlooking from the dormer roof extension has caused a severe or serious or significant loss of privacy and amenity for the residents of 14, 16 and 18 Cart Lane and 1 and 2 The Orchard. There are no conditions that would overcome the harm caused and planning permission must be withheld for this reason alone.

The second issue – the listed building and the Conservation Area

31. Monks Rest, 12 Cart Lane, is a Grade II listed building and is situated in the Grange over Sands Conservation Area (GSCA). Monton is outside the GSCA and is one of a group of dwellings that were built in the 1960's. These dwellings are rightly excluded from the GSCA because they do not display any historic character. Monton itself is a typical rendered house of the 1960's. It does not have any architectural features of note and has an ordinary character. The addition of the dormer roof extension to the dwelling has not changed its character and has not caused any harm to the setting of Monks Rest or to the character of the GSCA. The dormer does not therefore conflict with policies CS8.6 and CS8.10 of the Council's Core Strategy, which was adopted in October 2010, or with saved policy S2 of the Council's Local Plan, which was adopted in 1997.

Conclusion

32. The dormer roof extension does not harm the setting of Monks Rest or the character of the GSCA. The dormer does, however, cause severe or serious or significant loss of privacy and amenity for the residents of 14, 16 and 18 Cart Lane and 1 and 2 The Orchard. Planning permission must therefore be withheld for the dormer roof extension and the ground (a) appeals thus fail.

The ground (f) appeal

33. Planning permission has been granted for the breach of planning control except in relation to the dormer roof extension, and the enforcement notice has been varied so that the breach of planning control is 'the construction of a box dormer window roof extension of the house known as Monton' and the requirement of the notice is 'remove all the window frames and framing to create the box dormer window roof extension from the land and complete the east roof plane of the dwelling using matching materials, and to the profile, of the roof below and to the sides of the removed dormer'. This requirement is the minimum necessary to remedy the varied breach of planning control. The ground (f) appeals thus fail.

John Braithwaite

Inspector