



Appeal Decision

Site visit made on 15 October 2019

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

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

Decision date: 17 October 2019

Appeal Ref: APP/Z5630/C/19/3215005

9 Evesham Terrace, St Andrews Road, Surbiton, Surrey KT6 4DS

- 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 Sebastian Riemann against an enforcement notice issued by the Council of the Royal Borough of Kingston-upon-Thames.
 - The enforcement notice was issued on 22 October 2018.
 - The breach of planning control as alleged in the notice is the erection of a single storey rear extension and a roof extension ("the extensions").
 - The requirements of the notice are 1. Demolish the single storey rear extension; 2. Demolish the roof extension; 3. Return the rear elevation and the rear and side roof slopes to the condition before the unauthorised works commenced; and 4. Remove from the land all materials and debris arising from compliance with 1, 2 and 3 above.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (g) and the enforcement notice is varied by the deletion of '5 months' in section 6 and the substitution instead of '15 months'. Subject to this variation the enforcement notice is upheld.

Reasons

The ground (f) appeal

2. 9 Evesham Terrace is a two storey end-terraced dwelling with a half hipped roof. The Council granted planning permission 14/16621/HOU for a single storey rear extension on 9 December 2014. This permission lapsed on 9 December 2017. The extension, if it had been built, would have a flat roof and would be 3.5 metres deep. The rear extension as built has a pitched roof and it is reported to be 0.3 metres deeper than the permitted extension. The as built extension is therefore materially different to the previously permitted extension and has been built without the benefit of planning permission.

3. The Appellant contends that the pitched roof extension as built is a better design solution than the previously permitted flat roof extension. This is not a contention that can be considered in a ground (f) appeal because the merits of a development can only be considered in a ground (a) appeal, which has not been made. The extension as built does not have planning permission and the only remedy to such an unauthorised development is its demolition. Replacing the pitched roof with a flat roof is not an alternative because, notwithstanding an indication from within the Council that the extension is acceptable, there is no extant planning permission for an extension, with either a flat or pitched roof.

4. The roof extension extends out from the side and rear roof slopes around the half hip. Before the date of issue of the enforcement notice, not after as claimed by the Appellant, the Council granted planning permission 17/16911/HOU, on 25 January 2018, for 'Removal of the existing roof extension and erection of hip to gable roof extension'. But the as built roof extension is fundamentally different to the permitted roof extension in form, design and materials. It is a different development and it cannot, in this regard, be argued that the roof extension as built does not comply with the planning permission, particularly as the permission requires its removal. The remedy to the unauthorised erection of the roof extension must therefore be its demolition.

5. The requirements of the enforcement notice are not excessive and the ground (f) appeal therefore fails.

The ground (g) appeal

6. The Appellant contends, with regard to the roof extension, that the extant planning permission does not expire, on 25 January 2021, until about ten months after the date for compliance with the requirements of the enforcement notice, which will be five months after the date of issue of this decision. The Council has granted planning permission for the removal and replacement of the roof extension that, to comply with condition one of the permission, only needs to be commenced, as opposed to completed, before the aforementioned expiry date.

7. The compliance period of the enforcement notice therefore negates a benefit of the planning permission. In the case of *Tapecrown Limited v First Secretary of State and Another* [2006] EWCA Civ 1744 Lord Justice Carnwath stated that "...the enforcement procedure is intended to be remedial rather than punitive". With regard to the roof extension the extant planning permission, granted before the date of issue of the notice, provided the remedy to the breach of planning control whilst the period for compliance with the requirements of the notice is punitive.

8. The outcome of the appeal, given that it is made under grounds (f) and (g) only, can only be the variation of the notice. Given the specific circumstances of this case, the nature of the breach of planning control and the surroundings of the appeal property, the period for compliance with the requirements of the notice has been varied to be fifteen months. This applies to the rear extension also and will afford the Appellant the opportunity to resubmit the previous application and, if granted, he could then alter the as built extension to comply the permission.

9. The period for compliance with the requirements of the notice is punitive and unreasonable and the ground (g) appeal thus succeeds. The enforcement notice has been varied accordingly.

John Braithwaite

Inspector