
Appeal Decision

Site visit made on 1 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/G5750/C/18/3215763

Land at 31 Morris Avenue, Manor Park E12 6ER

- 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 Michele Harewood against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 2 November 2018.
 - 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 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. It is directed that the enforcement notice be varied by, in paragraph 5, deletion of 'three months' and substitution of 'six months' as the time for compliance. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The evidence before me refers to the planning merits of the development and the precedent set by nearby extensions. However, as there is no appeal on ground (a) and no deemed planning application for me to consider they are not relevant to my decision. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development.

Ground (c) appeal

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant. She claims that the roof extension respects the allowances and the spirit of permitted development. I acknowledge that the appellant considered that the roof extension did not need planning permission before and during construction.
4. Under Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Class B) (GPDO) the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted, subject to the limitations at B.1 and the conditions at B.2.

5. The limitation at B.1.(b) is that development is not permitted if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. Even though, no measurements have been submitted it is clear from the 'before' and 'after' photographs within the Council's evidence and my observations that the pitch of the main roof slope has been altered. This has meant that it is now not parallel with the pitches of the adjoining fire walls and that the ridge of the roof as constructed exceeds the height of the highest part of the roof as it previously existed. The Government's Technical Guidance on permitted development rights for householders clearly states that '*chimneys, firewalls, parapet walls and other protrusions above the main roof ridge line should not be taken into account when considering the height of the highest part of the roof of the existing house*'.
6. The edge of the enlargement to the rear of the main roof also appears to have been constructed in such close proximity to the eaves that it is highly likely that it is less than 0.2 metres from the eaves as required by the condition at B.2.(b)(i)(bb). There is little evidence before me as to why a set-back from the eaves was not practicable.
7. I observed that the fire wall that forms part of the external side elevation of the dwelling has been vertically extended to form a side wall of the extension and that it has been rendered and painted to match the side elevation. As such, I consider that the development meets the condition at B.2.(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
8. I note that the Inspector considered, in the appeal decisions¹ cited by the appellant, that the extension that was before him was permitted development. However, each case has to be considered on its individual circumstances. Even if I concurred with the view that the extension before me can be treated as an addition or alteration to the roof of the dwelling it does not meet the limitations and conditions of B.1.(b) and B.2.(b)(i)(bb).
9. It follows that the extension subject to the enforcement notice has not been shown to constitute permitted development under Article 3, Schedule 2, Part 1, Class B of the GPDO. I have no evidence before me to indicate that planning permission is not required or is granted for the extension. Accordingly, the appeal on ground (c) fails.

Ground (f) appeal

10. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or to remedy any harm to amenity resulting from the breach. Given that the requirements in paragraph 5 of the notice require the complete removal of the extension, the purpose of the notice is clearly to remedy the breach of planning control.
11. The appellant argues that the requirements of the notice could be amended to ensure that the extension would meet the conditions and limitations of Class B of the GPDO. However, the whole extension is unauthorised not just the parts that exceed the limitations and conditions of that class.

¹ APP/G5750/C/17/3190125 & APP/G5750/C/17/3190126

12. Furthermore, the appellant's argument is not supported by any drawings of that proposal. Consequently, without drawings I am unable to fully assess whether the changes being proposed are possible and would be in line with permitted development tolerances. Neither am I able to vary the notice to the necessary level of precision.
13. For these reasons I find that the requirements of the notice to secure the removal of the unauthorised development go no further than remedying the breach of planning control. As such, the requirements are not excessive and the appeal on ground (f) therefore fails.

Other matters

14. I appreciate that the appellant undertook the works in good faith and did not seek to flout the planning regulations. I also have sympathy with her in relation to the health issues that she states have stemmed from the worry and stress arising from this situation.
15. The period of compliance with the notice is three months. Whilst the appellant has not made an appeal on ground (g), I have the discretion to consider whether or not the period of compliance set out in the notice is reasonable. In this case the additions and alterations that have taken place to the roof are substantial and will need to be removed by a builder. Given the extent of the works that will be required and the logistics of them, I consider that a period of three months is a relatively short period of time within which those services could be engaged, and the work carried out. For these reasons, and given the appellant's health issues, it would be reasonable and proportionate to vary the notice so that she has a period of six months to remove the extension. This would also allow her the time to obtain help and support to submit to the Council an alternative scheme.
16. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol. Article 1 concerns enjoyment of possessions; Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. These are qualified rights, whereby interference may be justified if it is in the public interest; the concept of proportionality is crucial.
17. Dismissing the appeal would interfere with the appellant's rights, but to a limited extent, since she would still have her home. The interference would be in accordance with the law and in pursuance of well-established and legitimate aims: protecting the character of residential areas. However, given the harm identified within the reasons for issuing the notice and taking into account the variation to the notice to increase the time for compliance, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

D. Boffin

INSPECTOR