



Appeal Decision

Site visit made on 17 December 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal Ref: APP/W4705/C/19/3234556

Land at 61 Maidstone Street, Bradford BD3 8AP

- 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 Imran Zafar against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 27 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the increase in height of the roof of the building on the land and the construction thereon of one front dormer window and one rear dormer window, as shown on the attached photographs.
 - The requirements of the notice are:
 1. Demolish the unauthorised front dormer window and rear dormer window and reinstate the roof of the building to its former height and appearance.
 2. Remove from the land all materials arising from the requirements of Step 1.
 - The period for compliance with the requirements is two calendar 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. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of "Two calendar months" and the substitution of "Six months" as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal on ground (f)

2. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
3. In summary the appellant's case is that to enforce the complete removal of the dormers is excessive, particularly when you take into account other similar developments in the street, including those permitted at Nos. 63-65 Maidstone Street, and considering what could be constructed as a rear dormer under permitted development rights. However, in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f) and the notice cannot therefore be varied to attack its substance.

4. I have taken into consideration the planning permission¹ which was granted for the construction of single-story side and rear extension, hip to gable roof conversion and dormers windows to the front and rear of the appeal property in November 2014. However, from the evidence before me, the 2014 permission cannot be built without contravening Building Regulations. Indeed, the breach of planning control occurred whilst seeking to implement that consent and realising that the approved design could not be constructed. Reverting to this permission is not therefore an option available to me. In addition, it seems to me that the same problem would occur with the rear dormer if suitable head heights are to be achieved. Moreover, I have not been provided with any designs for a rear dormer that would be permitted development and would be capable of being constructed in compliance with Building Regulations.
5. Therefore, there are no lesser steps available to me which would achieve the statutory purpose behind the notice and the appeal on ground (f) must fail.

Appeal on ground (g)

6. The issue is whether the compliance period of two calendar months is reasonable. The appellant considers that the time period is too short for the appellant to engage specialists to carry out the work or negotiate an alternative scheme with the local planning authority.
7. The dormers are substantial structures which would need to be removed by a builder. Given the extent of the works and the logistics of them, I agree with the appellant that two months is a relatively short period of time within which those services could be engaged, and the work carried out. The conclusion that I have reached is that a period of six months would be more reasonable in this instance. To this extent the appeal on ground (g) succeeds.

Human Rights

8. 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 and understand that the development was carried out to accommodate the needs of a growing family. However, given the harm identified 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 in the public interest and is necessary and proportionate to the situation.

Conclusion

9. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Elizabeth Pleasant

INSPECTOR

¹ Local Planning Authority Ref: 14/03934/HOU