



Appeal Decisions

Site visit made on 27 November 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector, appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/Y1945/C/19/3225754 & 3225755 54 York Road, Watford WD18 0BE

- 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 Mrs Melanie Knibb (Appeal A) and Mr John Knibb (Appeal B) against an enforcement notice issued by Watford Borough Council.
 - The enforcement notice, dated 28 February 2019, was issued on 4 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a second floor extension at the property.
 - The requirements of the notice are:
 1. Remove the second floor extension which has been constructed over the outrigger of the dwellinghouse and reinstate the flat roof of the first floor as constructed prior to the development.
 2. Remove from the land and dispose of all rubble, waste materials and debris in relation to compliance with Steps (1) above.
 - The period for compliance with the requirements is six calendar 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.
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Decision

1. The appeal is allowed on ground [f], and it is directed that the enforcement notice be varied at section 5(1):
 - By the deletion of 'Remove the second floor extension which has been constructed over the outrigger of the dwellinghouse and reinstate the flat roof of the first floor as constructed prior to the development.' and the substitution of the following requirement 'Replace the window in the second floor elevation which faces the highway with a non-opening obscure glazed window'.

Procedural Matter

2. Although ground (f) was not cited in the appeal form, the facts provided by the appellants in support of the appeal suggested lesser steps than those required by the notice. That is relevant to ground (f). The appellants have confirmed in writing through the appeal process that they wish for ground (f) to be considered. The Council has had the opportunity to comment on this through the appeal and I am satisfied that my consideration of ground (f) would therefore not cause injustice to the parties.

Ground (c)

3. The appeal property is an end of terrace dwelling which is located on the corner of York Road Hamilton Street. This ground of appeal is that the matters alleged at Section 3 of the enforcement notice, if they occurred, do not constitute a

breach of planning control. The onus of proof in a ground (c) appeal is on the appellants and the test of the evidence is on the balance of probability.

4. The appellant has considered compliance in terms of Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended): The enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The appellant asserts that the loft conversion is not in breach of the GPDO in relation to volume and has provided calculations seeking to demonstrate this. However, the Council dispute that the extension should be considered under Class B and state that it should be considered under Class A¹: The enlargement, improvement or other alteration of a dwellinghouse.
5. The outrigger has previously been extended to create a flat roof. The extension further extends the building upwards to create an additional bedroom at the second floor. The works extend the building directly upwards and extend the building further towards the rear forming an L-shaped dormer. In respect of Class B, the Technical Guidance² advises that *'The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other.'*
6. On the evidence before me, and taking into account the advice contained within the Technical Guidance referred to above, I conclude that the extension does fall to be considered under Class B. The Council has drawn my attention to an appeal decision, APP/T5720/X/14/22208 where the Inspector concluded that a proposal went beyond a loft conversion involving a dormer window, and effectively is [*sic*] adding a rear extension on top of the existing rear outrigger and on this basis, it fell to be considered under Class A. However, the quoted appeal reference appears to be incomplete and I have not been provided with sufficient details regarding the case to demonstrate that it is fully comparable to the appeal scheme before me. Furthermore, given the number "14" included in the given reference, that appeal decision appears to date from a time before the current version of the GPDO but, more particularly, from when the Technical Guidance did not include the advice quoted above and to which I must now have regard.
7. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to certain conditions. B.2 (a) states that 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. The L-shaped dormer is finished in render which is similar to the finish of the exterior of the existing dwellinghouse.
8. By virtue of paragraph B.1 (e), development is not permitted by Class B, if it would consist of or include – (i) the construction or provision of a verandah, balcony or raised platform. The advice within the Technical Guidance is that, a 'Juliet' balcony, where there is no platform and therefore no external access, would normally be permitted development. A 'Juliet' balcony has been erected

¹ Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended)

² Permitted development rights for householders (2019)

which has a very limited platform such that a person would be unable to use the external area. Consequently, I consider that the extension would not breach this requirement.

9. The extension is an enlargement which joins the original roof to the roof of the rear extension and so the requirements set out under B.2(b)(i)(aa) and (bb) do not apply. Nevertheless, the requirements of B.2 (c) would apply, which are that any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be – (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. I saw that the window in the elevation facing the highway comprises clear glass and is openable. The development therefore fails to meet the requirements set out in B.2 (c) (i) and (ii) and is in breach of condition. Moreover, the appellants own supporting statement identifies measures to bring the conversion in line with the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended). Either the development does constitute a breach of control or it does not, there is no scope under ground [c] to require measures are taken to bring a development in line with the GPDO.
10. Thus, for the reasons give above, the appeal on ground (c) fails.

Ground (f)

11. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. The breach is identified as 'without planning permission, the erection of a second floor extension at the property.' The Council assert that to remedy the breach of control the unauthorised development must be removed. However, the Council confirms that it has exercised its right to under enforce by only requiring the removal of the second floor extension on the outrigger roof. Since the extension on the main part of the roof comprises part of the alleged breach, compliance with the notice would result in planning permission being granted under s173(11) of the Act for the remaining extension. It is therefore evident to me that the purpose of the enforcement notice would be to remedy the injury to amenity and not remedy the breach.
13. Although the appellants have not specifically identified why they consider the steps required would exceed what is necessary to remedy the breach, they have put forward steps to bring the conversion in line with the GPDO guidelines, which includes changing the side window for a fixed obscure window. Since this is the only reason that the extension would not be permitted development, were I to dismiss the appeal and uphold the notice the appellants would be able to construct the extension again but with an obscure glazed fixed window. The effect on the character and appearance on the area would be materially the same.
14. I therefore consider it appropriate to vary the notice to allow the appellant to bring the extension in line with permitted development rights, whilst remedying the injury to amenity resulting from the non-conforming window. The appeal on ground (f) therefore succeeds to that extent.

Conclusion

15. For the reasons given above, I conclude that the requirements are excessive, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

M Savage

INSPECTOR