



Appeal Decisions

Site visit made on 12 February 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal A: APP/W4705/C/19/3225590

Appeal B: APP/W4705/C/19/3225591

43 Hawes Road, Bradford BD5 9AW

- 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 Mrs Assima Hussain (Appeal A) and Mr Muhammad Saqib (Appeal B) against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice, numbered 18/00325/ENFAPP was issued on 14 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a first floor extension on the rear (south) roof plane of the property on the land, that does not accord strictly with the terms of planning permission 17/06635/HOU dated 9 February 2018 as shown in the attached photographs.
 - The requirements of the notice are i) demolish the unauthorised first floor extension on the rear (south) roof plane of the property on the land; ii) reinstate the rear (south) roof plane of the property to its former appearance; iii) remove all arising materials from the land.
 - The period for compliance with the requirements is six 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 (the Act).
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Appeal C: APP/W4705/C/19/3227545

Appeal D: APP/W4705/C/19/3227546

43 Hawes Road, Bradford BD5 9AW

- 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 Mrs Assima Hussain (Appeal C) and Mr Muhammad Saqib (Appeal D) against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice, numbered 18/00325/ENFAPP was issued on 14 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a first floor extension on the front (north) roof plane of the property on the land, that does not accord strictly with the terms of planning permission 17/06635/HOU dated 9 February 2018 as shown in the attached photographs.
 - The requirements of the notice are i) demolish the unauthorised first floor extension on the front (north) roof plane of the property on the land; ii) reinstate the front (north) roof plane of the property to its former appearance; iii) remove all arising materials from the land.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Act.
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Appeals A to D - Decisions

1. The appeal is allowed on ground (f) and it is directed that the enforcement notices be varied by the insertion of the following words at the end of paragraph 5. What you are required to do following iii) remove all arising materials from the land:

“**OR** iv) carry out remedial works to the roof of the property so as to comply with the terms of the planning permission 17/06635/HOU, granted 9 February 2018, including its conditions and limitations and remove all constituent materials resulting from compliance with this requirement from the property.”

2. Subject to this variation the enforcement notices are upheld.

Preliminary Matter

3. Because there is no ground (a) appeal and consequently no deemed planning application, the merits of the development are not relevant to my deliberations.

Appeals A, B, C and D - ground (f)

4. The appeals on ground (f) are that the requirements of the notices exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. The objective of the notices is to return the roof of the property to its condition before the breach of planning control took place.
5. S173(4)(a) of the Act provides that the purposes of an enforcement notice are to remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
6. S173(3) of the Act requires that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to remedy, wholly or partly, the breach of planning control set out in section 3 of the notices. The enforcement notices refer to ‘significant harm to visual amenity’ and ‘being out of character and incongruous in the street scene’. The steps required by the notices, stipulate the complete removal of the first floor extensions on the front and rear roof planes of the property and the reinstatement of the roof planes to their former appearance, to remedy the breach of planning control. This requirement is in accordance with a173(4)(a) of the Act. However, enforcement should be *remedial rather than punitive*¹.
7. The notices are derived from the use of materials on the first floor extensions to the front and rear roof planes, which are not in compliance with planning permission 17/06635/HOU² dated 9 February 2018. The appellants, in their statement, propose that an ‘amendment’ to the materials used on the roof extensions ‘would be more appropriate rather than demolition’.
8. A case has not been made by the Council that it would not be possible to modify the materials used on the roof extensions in order to comply with

¹ *Tapecrown Ltd v FSS & Anr [2006] EWCA Civ 1744*

² Proposal: Hip to gable roof with front and rear dormer windows and side porch with veranda.

planning permission 17/06635/HOU. Nor has there been any indication from the Council that this permission is no longer extant.

9. While the issued requirement does not exceed the purpose behind the notices, an alternative is to make the development comply with an extant planning permission which would remedy the breach of planning controls. I therefore find that it would be reasonable to vary the notices, in line with s173(4)(a) to require that either the development be demolished or that it is modified to comply with the aforementioned planning permission. Varying the notice on this basis would cause no injustice to either party.
10. On ground (f), the steps, as varied, do not exceed what is necessary to remedy the breach.

Appeals A, B, C and D - Ground (g)

11. The appeals on ground (g) are that the period for compliance with the notices falls short of what is reasonable. The appellants consider that a compliance period of 6 months is insufficient and that it should be extended due to the availability of builders and to financial matters.
12. I consider that the stated compliance period of 6 months is reasonable in the circumstances. Given the appellants' apparent willingness to make modifications to the roof extensions, this would be an adequate period for implementing the works to comply with the extant permission. The appeal on ground (g) therefore fails accordingly.

Conclusion

13. I conclude that the requirements of the notices are not excessive to remedy the breach, but it is reasonable to require the development to comply with the extant planning permission. I shall vary the notice and the appeal on ground (f) succeeds to that extent. The compliance period is considered reasonable and the appeals on ground (g) do not succeed.

S Hanson

INSPECTOR