



Appeal Decisions

Site visit made on 18 February 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2020

Appeal A Ref: APP/W4705/C/19/3232212

Appeal B Ref: APP/W4705/C/19/3232213

Land at 180 Carr Bottom Road, Little Horton, Bradford BD5 9AQ

- 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 Zabina Bibi and Mr Muhammad Irfan against an enforcement notice issued by the City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 4 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of two dormer windows on the front roof plane of the property on the land which is not in accordance with the terms of planning permission 16/00449/HOU dated 22 March 2016 as shown in a photograph attached to the notice.
- The requirements of the notice are:
 - i) Demolish the two dormer windows on the front roof plane of the property on the land.
 - ii) Re-instate the roof plane using tiles to match the existing roof.
 - iii) Remove all arising materials from the land.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. Planning permission was granted on 22 March 2016 for front dormer windows, application reference 16/00449/HOU. The dormer windows the subject of the enforcement notice have not been constructed in accordance with that planning permission and are a breach of planning control.

The appeals on ground (f)

2. 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, as the case may be, to remedy any injury to amenity resulting from the breach.
3. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
4. In this case the enforcement notice requires the dormer windows to be demolished and the roof plane to be re-instated. As such I find its purpose is to remedy the breach of planning control.

5. That purpose can only be achieved by restoring the land to its condition before the breach took place. No lesser steps, other than those set out in the notice, would achieve that purpose.
6. The appellants have suggested that an amendment to the materials used on the dormers would be more appropriate. This and arguments such as the dormers are not unsightly, that there are other more unsightly alterations to houses in the street and that a neighbour would be inconvenienced by any work, are matters which relate to planning merits.
7. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
8. Since the purposes of the notice are to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeals on ground (f) fail.

The appeals on ground (g)

9. The appeals on ground (g) are that the period for compliance with the notice falls short of what is reasonable. The appellants stated that the one month given in the notice is too short as builders in Bradford require a minimum of six months' notice and they need more time to raise the funds for the work. However, they have not suggested what would be an appropriate period for compliance.
10. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellants' submission largely relates to the time before the works can commence - when funds can be raised, and a contractor can be appointed.
11. Nevertheless, the removal of the dormers and reinstatement of the roof are works that would need to be carried out by a builder or suitably qualified tradesperson. Such works, whilst ongoing and afterwards would undoubtedly have some impact on family life within the dwelling and I have some sympathy with the appellants in this regard.
12. The dwelling is occupied by Mrs Bibi and her family including school age children and Mrs Bibi's disabled mother. I am satisfied that having regard to these circumstances, in particular in the interests of minimising stress and disruption to the family, that even if account is taken of the need to remedy the harm, the notice does not afford the appellants reasonable time to comply with the requirements of the notice. Looking at the case in the round, the requirements to undertake all the works within one month would place a disproportionate burden on the appellants.
13. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the appellants' family circumstances. Taking this and all other matters into account I conclude that the period for compliance should be extended to six months. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need

to resolve the breach of planning control and the interests of the appellants and their family. To this extent, the appeals on ground (g) succeed.

Other Matters

14. I have considered the appellants' comments regarding the actions of the Council, in particular building control. However, this is a matter that is between the appellants and the Council and it is open to them, should they wish, to make use of the Council's own complaint procedure to resolve the matter.

Formal Decision

15. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of six months as the time period for compliance. Subject to this variation the enforcement notice is upheld.

Felicity Thompson

INSPECTOR