



Appeal Decision

Site visit made on 9 June 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th July 2020

Appeal Ref: APP/C2741/C/19/3238565

8 Badger Wood Walk, York, YO10 5HN

- 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 Ms Victoria Jack against an enforcement notice issued by City of York Council.
 - The enforcement notice, reference 16/00497/PLANSH, was issued on 9 August 2019.
 - The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 & 3 of a planning permission Ref 16/00789/FUL granted on 10 July 2016.
 - The development to which the permission relates is to increase height of roof and erect dormers to side. The conditions in question are Nos 2 & 3 which state that: "The development hereby permitted shall be carried out in accordance with the following plans and submitted details YB394-002B and YB394-003B" and "The materials to be used externally shall match those of the existing buildings in colour, size, shape and texture". The notice alleges that the conditions have not been complied with in that in breach of condition No 2 there had been the unauthorised installation of four dormers with dimensions not in accordance with the Planning Permission; the unauthorised installation of windows to the faces of the same four dormers with dimensions that do not accord with the Planning Permission; and unauthorised installation of one side opening window in the front dormer window on the north elevation of the property and that in breach of condition No 3 there has been the unauthorised installation of mid-grey UPVC cladding to four dormers and facades.
 - The requirements of the notice are: *EITHER*
 - a) *Replace all four dormers so that the dimensions accord with those shown in drawing YB394-002 Rev B attached at Annex B*
 - b) *Replace the side opening front dormer window in the north elevation with an obscure glazed top hinged window that accords with that shown in drawing YB394-002 Rev B attached at Annex B*
 - c) *Replace the mid-grey UPVC cladding on all four dormer windows cheeks and faces with hanging tiles to accord with that show in drawing YB394-002 Rev B attached at Annex B*
 - d) *Replace the mid-grey UPVC cladding on all facades of the building with horizontal cedar boarding that accords with that shown in drawing YB394-002 Rev B attached at Annex B*
- OR
- i. *Replace the side opening front dormer window in the north elevation with an obscure glazed top hinged window that accords with that shown in drawing YB394-002 Rev B attached at Annex B*
 - ii. *Replace the mid-grey UPVC cladding on all four dormer windows cheeks and faces with hanging tiles to accord with that show in drawing YB394-002 Rev B attached at Annex B*
 - iii. *Replace the mid-grey UPVC cladding on all facades of the building with horizontal cedar boarding that accords with that shown in drawing YB394-002 Rev B attached at Annex B*

- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended ("the TCPA").
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Decision

1. It is directed that the enforcement notice be corrected by: the deletion of the words "Operational Development" in the heading and insertion of the words "Failure to Comply with Conditions" in their place; and by the reference to paragraph (a) of section 171A(1) in paragraph 1 being changed to paragraph (b) of section 171A(1). Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The notice is headed "Enforcement Notice - Operational Development" and paragraph 1 refers to it being issued because it appears that there has been a breach of planning control within paragraph (a) of section 171A(1) of the TCPA. However, the alleged breach of planning control is the failure to comply with conditions attached to a planning permission and the relevant provision is paragraph (b) of section 171A(1). It is clear from within the notice that it alleges a failure to comply with conditions and I can therefore correct the notice without causing an injustice so that it is headed "Enforcement Notice – Failure to Comply with Conditions" and the reference in paragraph 1 is amended to refer to paragraph (b) of section 171A(1).

Ground (f)

3. To succeed on this ground the appellant must show 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 the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by such a breach.
4. In this case the purpose of the requirements appears in part to be to remedy injury to amenity. However, the reasons given on the notice cover wider issues than solely the injury to amenity. The reasons include other planning objections to the development, including it being contrary to draft local policies including Policies D1 and D11 of the City of York Local Plan Publication Draft 2018 ("the Draft Local Plan") and paragraph 127 of the National Planning Policy Framework ("the Framework"), which seek to achieve good design and improve the character and appearance of the area. Whilst I accept that limited weight would be attached to the emerging Draft Local Plan when considering the planning merits of the development, it is clear from the Council's reference to both it and the Framework that the purpose of the notice is not solely to remedy any injury to amenity. The notice also seeks to remedy the breach of planning control.
5. Where the purpose of the notice is not solely concerned with remedying any injury to amenity, in the absence of an appeal on ground (a)¹ it is not

¹ An appeal may be brought under Section 174(2)(a) of the TCPA: "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged".

permissible to consider the planning merits under ground (f). The appellant's case is that the UPVC cladding should be allowed to remain and that this would be the lesser step. However, this argument requires consideration of the effect on the character and appearance of the building and surrounding area, matters of planning merit which fall squarely within the realm of planning policy and planning judgement. Given the limited scope of this ground of appeal these are not matters that I am able to consider.

6. I am satisfied that the requirements do fulfil the purpose of the notice without exceeding what is necessary to remedy both the breach of planning control and injury to amenity which has been caused. For these reasons I consider that the appeal on ground (f) should not succeed.

Zoë Franks

INSPECTOR