
Appeal Decision

Site visit made on 27 October 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/G5750/C/19/3240854

8 Monega Road London E7 8EW

- 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 Mujeeb Mohammed against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 11 October 2019.
- The breach of planning control as alleged in the notice is *Without planning permission the erection of a roof extension*.
- The requirements of the notice are:
 - (1) Demolish the roof extension (as shown edged in yellow on the photograph attached at Appendix 1) and return the roof of the property to its form prior to the unauthorised works being undertaken.
 - (2) On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Main Issue

1. An appeal on ground (b), that the matters stated in the notice have not occurred, has been withdrawn. The remaining ground of appeal, ground (c), is that the matters stated in the notice, if they have occurred, do not constitute a breach of planning control. Whether the works require planning permission and, if they do, whether they benefit from a permission or are lawful for some other reason is therefore the main issue in the appeal.

Reasons

The appeal on ground (c)

2. There is no dispute between the parties that works to extend the roof of the property have been carried out, amounting to development requiring planning permission. Permitted development rights are conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the 2015 Order") for various householder developments including, by article 3 and Part 1 of Schedule 1, alterations and extensions to dwellinghouses including roof extensions. The issue in dispute here is whether the works that have been carried out are authorised by the 2015 Order.

3. The appellant says they are authorised, having sought and obtained a lawful development certificate ("LDC") for the then-proposed works in December 2018. He describes a number of visits by, and negotiations with, the Council's officers in early 2019 during which he was asked by the Council to lower the height of the loft then under construction. Correspondence of March 2019 from the Council stated that "[t]he photographs looks fine", referring to photographs sent by the appellant showing the roof works then underway. The appellant appears to have surmised from that correspondence that the works were authorised.
4. However, whether or not the works were in fact authorised is the relevant question in this appeal, irrespective of what may or may not have been said by the Council's officer. Comparing the LDC plans with what has been built on site, I saw a number of differences including the different position of the roof lights, the removal of the monopitched rear outrigger, and the differing size of one of the rear windows. Importantly the overall ridge height of the property's roof has been increased, with changes to the adjacent parapet walls and one of the rooflights also protruding above the resulting ridge line.
5. These changes mean that the development on site does not conform to the plans for which the LDC was granted, and they also mean that the development is not authorised by the 2015 Order. The 2015 Order does not confer permission for roof alterations that result in an increase to the height of the roof. For the avoidance of doubt, I agree with the Council that the parapet walls do not form part of the roof but rather that they form part of the party walls to each side of the dwelling. As no planning permission has been granted for the works, it follows that the appeal on ground (c) must fail.

Other Matters

6. As no appeal is brought on ground (a) I am unable to consider the merits of the works that have been carried out, including the consideration of the symmetry with the neighbouring development or the relationship with other dormer roof extensions in the street. Nonetheless I have given consideration to what the notice requires.
7. No appeal is expressly brought on ground (f), which is to say 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 the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. However the appellant makes reference to a lawful development certificate that has been granted in respect of a roof extension at the property, and queries the wisdom of the requirements of the enforcement notice that has been issued, which seek the demolition of the roof extension in its entirety and the restoration of the land to its previous condition.
8. However, even if I were to treat this reference as a hidden appeal on ground (f), Section 173(4) sets out that the purpose of remedying a breach of planning control may be achieved, wholly or partly, by making any development comply with the terms of any planning permission granted in respect of the land or restoring the land to its condition before the breach took place. The Council here seeks to achieve the purpose of the notice to wholly remedy the breach by requiring the restoration of the land to its condition before the breach took place. Complying with those requirements would not however mean that the

appellant could not subsequently rely on permitted development rights to extend the roof of the property consistently with the 2015 Order.

9. The appellant has not suggested any scheme of works that might bring the development into line with the LDC plans (or otherwise to comply with the limitations of the 2015 Order) without the demolition required by the notice first taking place. Accordingly, I would be unable to vary the requirements of the notice with sufficient precision to enable an alternative roof extension to be built.

Conclusion

10. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

Decision

11. The appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR