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## Appeal Decision

Site visit made on 8 June 2021

**by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 June 2021**

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**Appeal Ref: APP/W4705/C/20/3264048**

**Flat 1, 2 Alexandra Crescent, Ilkley, West Yorkshire LS29 9ER**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Knight against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 15 October 2020.
- The breach of planning control as alleged in the notice is without planning permission, the refurbishment of an existing dormer window extension to remove stone work and corbels from the existing south elevation of the building and insert a door and Juliet balcony.
- The requirements of the notice are:
  - i. Demolish the dormer window extension on the south elevation and remove the door and Juliet balcony;
  - ii. Reinstall the south (side) roof plane and reinstall the stone work and corbels to the existing south elevation to its former appearance;
  - iii. Remove all arising materials from the land;
  - iv. Make good any damage caused to the property as a result of compliance with the requirements of this notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act as amended.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. The appellant advises that the unauthorised works were carried out in March 2017. I understand that planning permission was sought retrospectively but that application was refused<sup>1</sup> and a subsequent appeal was dismissed<sup>2</sup>. The enforcement notice was issued in October 2020. The Council explains the delay was as a result of its decision not to serve notices during the initial lockdown period, which was part of the UK government's response to the Covid-19 pandemic.
2. For the avoidance of doubt, the planning merits of the development are not relevant to an appeal on grounds (f) and (g). I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. Neither can I take account of whether the Council communicated effectively with the appellant to seek alternative ways forward, as expediency to take enforcement action is a matter for the Council.

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<sup>1</sup> Ref 19/0574/FULL dated 27 June 2019.

<sup>2</sup> Ref APP/W4705/W/19/3241106 dated 14 February 2020.

3. The appellant indicates that there is a lack of clarity in the notice as it is not clear what is meant by extension in requirement (i). The requirement specifies the dormer window extension on the south elevation and seeks its demolition. There is only one such extension and there is no ambiguity. I find no lack of clarity in the notice.

### **The ground (f) appeal**

4. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the reasons for issuing the notice refer to the effect of the development on the character and appearance of the Ilkley Conservation Area. It is apparent that the purpose of the notice is to remedy the breach of planning control. What must be considered is whether the requirements exceed what is necessary to achieve that purpose.
5. The property previously had a large, flat-roofed dormer extension with white upvc windows and a white fascia board, prior to the unauthorised works being undertaken. This extension reflected a similar structure on the south facing roof of the adjoining property.
6. The appellant argues that the obligation in law is for the appellant to restore the building to its former state and reinstate the original dormer rather than remove it entirely, as required by the notice. It is claimed that the pre-existing dormer was the 'original' building design and it was not considered to be unauthorised. Also, it is argued that to require the demolition of the dormer window is excessive and unreasonable, as the replacement dormer window was essential maintenance to the property.
7. As explained above, the statutory purpose behind the notice is to remedy the breach of planning control. Section 173(4)(a) states – *remedying the breach by making any development comply with the terms 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*. As far as I am aware, there is no planning permission for the previous dormer and there is no evidence that it was otherwise lawful. It was evidently not an 'original' structure given its materials and method of construction, which post-date the stone built, terraced building on which it was positioned.
8. Nonetheless, the alleged breach is "the refurbishment of an existing dormer window extension to remove stonework and corbels from the existing south elevation of the building and insert a door and Juliet balcony". This acknowledges the pre-existing dormer, however, the corresponding requirements seek the removal of the dormer in its entirety and the reinstatement of the roof plane, stonework and corbels. This goes beyond what is necessary to remedy the breach alleged, which is confined to "refurbishment". Given the specific wording of the allegation, it follows that the appellant must 'undo' the refurbishment. This would be achieved if a window, stonework and corbels were reinstated to match those which existed previously and the new door and Juliet balcony were removed. These works would restore the land to its condition before the breach took place and achieve the statutory purpose behind the notice.

9. If the Council considered the whole dormer to be the breach of planning control, the notice should have stated construction of a dormer window extension, rather than describe the unauthorised development as refurbishment of an existing dormer window extension.
10. I conclude, therefore, that the steps required by the notice exceed what is necessary to remedy the breach of planning control and the appeal on ground (f) succeeds. I shall vary the requirements of the notice accordingly.

### **The ground (g) appeal**

11. The ground (g) appeal is that the compliance period specified in the notice falls short of what should reasonably be allowed. A longer period is requested to allow for the engagement of suitable contractors and to ensure the works take place during the summer months.
12. I accept that one of the effects of the pandemic is that suitably qualified tradespeople are likely to be in short supply. I therefore find that a longer timescale for compliance would be reasonable and proportionate in this instance. I shall vary the notice to allow a compliance period of nine months.

### **Conclusion**

13. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

### **Formal Decision**

14. It is directed that the enforcement notice is varied by:
  - (i) the replacement of requirement (i) in paragraph 5 with the following requirement - "Remove the door and Juliet balcony from the dormer window extension on the south elevation";
  - (ii) the replacement of requirement (ii) in paragraph 5 with the following requirement - "Reinstate a dormer window, stonework and corbels to the south elevation to match their former appearance";
  - (iii) the deletion of three months and the substitution of nine months as the period for compliance.

Subject to these variations, the enforcement notice is upheld.

*Debbie Moore*

Inspector