



Appeal Decision

Site visit made on 7 July 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

19th July 2021

Appeal Ref: APP/M5450/C/20/3257755

104 Long Elmes, Harrow Weald, Harrow, HA3 5JY

- 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 Noel Murphy against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice, numbered ENF/0326/18/P/5827, was issued on 3 July 2020.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised construction of a roof extension comprising a raised roof ridged, hip to gable and a rear dormer ("Unauthorised Development").
- The requirements of the notice are 1. Demolish the Unauthorised Development; 2. Modify and reduce the roof ridge to match the height of the ridge line of the adjoining property at 102 Long Elmes and reinstate the hipped roof; 3. Make good any damage sustained to the existing dwellinghouse after compliance with above steps by using materials that match those used in the existing building; and 4. Remove from the Land all materials and debris arising from compliance with the aforementioned requirement of the notice.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by the removal of the letter 'd' from the word 'ridged' in section 3. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

The notice

2. The appellant argues that the notice is defective as it is not clear what steps are required to be taken to remedy the breach of planning control and that clarification is required regarding the meaning of 'Unauthorised Development' in the notice.
3. Requirement 2 (in section 5 of the notice) is 'Modify and reduce the roof ridge to match the height of the ridge line of the adjoining property'. This makes it clear that the allegation in section 3 of the notice should have read 'the unauthorised construction of a roof extension comprising a raised roof ridge' rather than 'raised roof ridged' and the requirement to demolish the Unauthorised Development is precise. This is a minor error that does not cause confusion when the notice is read as a whole. The notice can therefore be corrected to remove the letter 'd' from the word ridged in the allegation without causing injustice.

Ground (c)

4. An appeal on this ground is that the matters stated in the notice do not constitute a breach of planning control. The appellant's case is that some of the works undertaken would have benefitted from development rights pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO') and should not have been included in the steps required to remedy the breach.
5. The GPDO does not grant retrospective planning permission and development is only permitted if it met all of the relevant conditions and limitations when it was constructed. If the development exceeds the limitations set out in the relevant class of the GPDO when it was constructed it will not be permitted under the GPDO if it is altered later.
6. The description of the development as constructed (as reflected in the corrected allegation in the notice) does not comply with Schedule 2, Part 1 of the GPDO and does not benefit from the permitted development rights. As it is not possible to make it comply subsequently a new application for permission would be required regarding any future changes. In addition, varying the notice so that the development would comply with the limitations set out in the GPDO would not serve to remedy the breach of planning control as the development as a whole is unlawful, not just the part of it that exceeds the permitted development limits.
7. The matters stated in the notice constitute a breach of planning control and the appeal on this ground cannot therefore succeed.

Ground (f)

8. To succeed on this ground the appellant must show that the steps required by the notice to be taken 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.
9. In this case the purpose of the requirements is to remedy the breach of planning control which is causing harm to the character and appearance of the area. The notice also states that its purpose is to safeguard the amenities of the occupiers of the Land and the locality, but it is not limited to remedying any injury to amenity caused by the breach.
10. In a case such as this, in the absence of a ground (a) appeal, it is not possible to consider the planning merits under ground (f). The appellant's case is that works to reduce the ridge height to match with the adjacent property, step back the rear dormer by 200mm, provide a new 400mm eaves and the formation of one front roof light would be a lesser step which would overcome the objection but I am unable to consider this without considering the planning merits of the proposed works.
11. I am satisfied that the requirements do fulfil the purpose of the notice without exceeding what is necessary to remedy the breach of planning control. For these reasons I consider that the appeal on ground (f) should not succeed.

Zoë Franks

INSPECTOR