



Appeal Decision

Site visit made on 8 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29TH September 2021

Appeal Ref: APP/R5510/C/21/3274999

Land at 14 Deane Avenue, Ruislip HA4 6SR

- 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 Viacheslav Blagorodnov against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 16 April 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a rear dormer and hip to gable end roof extension and part two storey part single storey side and rear extensions.
- The requirements of the notice are, either: (i) Demolish the rear dormer and hip to gable end roof extension and part two storey part single storey side and rear extensions to accord with the existing plans named 'H 73/02 Revision a' attached to planning decision reference 10848/APP/2018/323 granted on 14 May 2018 and; (ii) Remove from the land all debris, waste, building materials, fixtures and fittings, plant, equipment and machinery resulting from the demolition works listed in (i) above. Or (i) Demolish the unauthorised rear dormer extension and amend the roofs of the original dwellinghouse and the two storey side/rear extensions to accord with proposed plans named 'H 73/01 Revision 240418' attached to planning decision reference 10848/APP/2018/323 granted on 14 May 2018 and; (ii) Remove from the land all debris, waste, building materials, fixtures and fittings, plant, equipment and machinery resulting from the demolition works listed in (i) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

1. At paragraph 5, the enforcement notice sets out two alternative requirements, the second of which is to make the roof of the extended dwelling accord with the approved drawings accompanying the planning permission granted for conversion of the roof from a hip to gable end and a part two storey part single storey side and rear extension in May 2018¹. That permission was subject to five conditions, including two conditions which imposed ongoing requirements. Condition No 4 removed permitted development rights for the installation of additional windows, doors or other openings on the walls or roof slopes facing adjoining residential property. Condition No 5 required windows facing

¹ Council ref: 10848/APP/2018/323.

adjoining residential property to be permanently fitted with obscure glazing and be non-opening below a height of 1.8 m.

2. However, the effect of s173(11) of the Act is that if the development were to be altered to accord with the approved drawings and the notice requirements complied with, a deemed unconditional planning permission would be granted in respect of the remaining extensions. In that eventuality, the conditions of the 2018 permission would no longer have effect.
3. Therefore, after seeking the views of both main parties, I shall vary the notice in respect of the second alternative requirement, so that what is sought is modification of the development to accord with the terms and conditions of the 2018 permission. It is clear that this was the Council's intention when formulating the requirement. The requirement would not be more onerous for the appellant, as the extent of the remedial works would be no greater. In any event, the appellant raised no objection to the variation. Therefore, there would be no injustice.

Ground (f) appeal

4. The ground of appeal is that the requirements of the enforcement notice are excessive.
5. At s173(4), the Act provides that an enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by making development comply with the terms, including conditions and limitations, of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place. Secondly, a notice can have the purpose of remedying any injury to amenity caused by the breach.
6. The requirement to demolish the rear dormer and hip to gable end roof extension and the part two storey part single storey side and rear extensions would restore the dwelling to its condition before the breach took place. In this regard, I acknowledge the 2018 permission for extending the dwelling referred to above and the single storey rear extension that was permitted at appeal in May 2019². However, what has been built is materially at variance with the approved drawings and includes the substantial dormer spanning almost the entire rear elevation of the extended dwelling. There is no firm evidence to indicate that the development was undertaken other than as one continuous building operation.
7. The alternative requirement of demolishing the dormer and modifying the roofs of the original dwelling and the two storey side/rear extensions to accord with approved drawings would make the development comply with the 2018 permission. Neither alternative provides for retaining a part of the dormer. In either case, compliance with the requirements would mean that no part of the extended roof would be left in place, other than that authorised by planning permission. Therefore, although the notice does not state as such, its purpose insofar as the dormer is concerned is to remedy the breach of planning control.
8. Set in the above context, a requirement which left part of the unauthorised development in situ or alternatively did not make the roof of the extended dwelling comply with the terms of the 2018 permission would not remedy the

² Appeal Ref: APP/R5510/D/19/3226388.

breach. The appellant does not have to totally demolish the unauthorised development to remedy the breach; that is an alternative to complying with the 2018 permission. Therefore, neither requiring the dwelling to revert to its pre-breach condition nor alternatively, requiring it to comply with the 2018 permission, are excessive for the purpose of remedying the breach of planning control.

9. The appellant advanced two revised schemes in which the dormer would be retained but reduced in size. I note that these schemes have been the subject of pre-application enquiries, the latest of which I am given to understand is currently under consideration by the Council. However, where, as in this case, there is an appeal on ground (f) but not on ground (a) and the purpose of the notice is to remedy the breach, general planning considerations cannot be entertained and the notice cannot be varied to attack its substance. Therefore, ground (f) does not provide an alternative route for obtaining planning permission for part of the dormer and I cannot consider the planning merits of the revised schemes. I note that Council officers previously invited a planning application for significant remedial works to the roof of the extended dwelling. Even so, varying the notice to reflect some other unspecified lesser requirement in relation to the dormer would make the notice bad for uncertainty. It follows that there is not an obvious alternative to the notice requirements.
10. For the above reasons, the ground (f) appeal fails.

Ground (g) appeal

11. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
12. In my view, it is highly likely that the appellant would modify the roof of the extended dwelling as the less onerous alternative of the notice requirements. Such works are likely to be relatively small in scale, they would not utilise specialist plant or equipment and are likely to be within the competency of a general building contractor. I was not made aware of a significant difficulty in arranging for such contractors to carry out building works or of any great delays in their availability. Securing any necessary funding for the works is also unlikely to take a great deal of time. Consequently, there is no sound reason why the remedial works could not be completed within a three-month timeframe.
13. Based on the information before me, I cannot be reasonably certain that a revised scheme in respect of the dormer will receive a favourable outcome or indeed, that the Council would not decline to determine a retrospective application, having regard to the power available under s70C of the Act. Therefore, I am not clear what might be achieved by extending the compliance period to nine or twelve months, other than perhaps a significant delay in remedying the breach of planning control. It follows that extending the compliance period would perpetuate the breach and the planning harm identified in the notice unnecessarily. In any event, if it subsequently transpires that a revised scheme is acceptable to the Council, it is open to them to vary the compliance period using the power in s173A(1)(b) of the Act, if deemed appropriate to do so.

14. Consequently, I conclude that the period for compliance is reasonable and the appeal on ground (g) also fails.

Conclusion

15. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

16. It is directed that the enforcement notice be varied by in paragraph 5 after "Or" deleting step (i) and substituting it with the following step (i):

"Alter the dwellinghouse to comply with the terms of the planning permission reference 10848/APP/2018/323 granted on 14 May 2018, including the conditions to which that permission was granted, by demolishing the unauthorised rear dormer extension and amending the roofs of the original dwellinghouse and the two storey side/rear extensions to accord with proposed plans named 'H 73/01 Revision 240418' attached to the above permission, and;"

17. Subject to this variation the appeal is dismissed and the enforcement notice upheld.

Stephen Hawkins

INSPECTOR