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## Appeal Decision

Site visit made on 9 November 2021

**by Stephen Hawkins MA MRTPI**

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

**Decision date: 19<sup>th</sup> November 2021**

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**Appeal Ref: APP/Z1775/C/21/3278986**

**45 Lindley Avenue, Portsmouth PO4 9NT**

- 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 Stuart Maun against an enforcement notice issued by Portsmouth City Council.
- The enforcement notice was issued on 14 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, operational development comprising of: (1) The construction of a rear dormer clad in non-matching materials to the recipient roof tile of the property, and; (2) The alteration of the first floor rear projection, so as to facilitate the creation of the rear dormer, by: (a) the replacement of the pitched roof with a flat roof and (b) the increase in the height of the eaves by 0.1 m; on the land.
- The requirements of the notice are: (1) Reinstate the pitched roof to the rear projection and finish in tile and brick to match the recipient roof slope of the property and rear projection and reduce the eaves height of the rear projection by 0.1 m. 2) Set back the dormer so that it is 0.2 m from the ridge of the reinstated pitched roof on the rear projection, as required by step 1; and clad it in tile to match the tiles of the recipient roof of the property. 3) Remove from the land all associated building materials, rubble and fixtures and fittings arising from compliance with the enforcement notice.
- The period for compliance with the requirements is six 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. 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 succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. As there is no deemed planning application arising from a ground (a) appeal, planning merits considerations are not before me.
2. The appellant's comments were sought on whether their appeal was also being made on ground (c)-that the matters stated in the enforcement notice did not constitute a breach of planning control. However, as far as I was made aware, no definitive response was received. In any event, the matters raised by the appellant in respect of the appeal are relevant to ground (f).

### Ground (f) appeal

3. The ground of appeal is that the requirements of the notice are excessive.

4. The appeal concerns a two storey mid-terrace dwelling. There is a two storey projection or outrigger at the rear of the dwelling. The notice attacks a box dormer erected along most of the dwelling's main rear roof slope, together with the alteration of the dual pitch outrigger roof to a flat roof and an increase in the outrigger height to eaves by around 0.1 m.
5. An enforcement notice can have two purposes. Firstly, it can remedy a breach of planning control, including by restoring land to its condition before the breach took place. Secondly, a notice can remedy any injury to amenity caused by the breach. The notice seeks to restore the outrigger to its condition before the breach took place. Alterations to the dormer are also required, including a reduction in its size. However, this represents under-enforcement insofar as the dormer is concerned. As part of the dormer would remain following compliance with the notice, the dwelling would not be restored to its pre-breach condition. Accordingly, although the notice does not state as such, its purpose must be partly to remedy the breach and in part to remedy an injury to amenity.
6. Retaining a flat roof on the outrigger, albeit with the eaves reinstated to their pre-existing height, would not remedy the breach of planning control in that respect and so would not achieve the purpose of that part of the notice. Undertaking similar alterations to the outrigger immediately following compliance with the notice, by relying on the GPDO<sup>1</sup> at Article 3, Schedule 2, Part 1, Class C, does not represent a realistic fallback position. The outrigger works and erection of the dormer are integral to and part and parcel of the same development. Where the limitations and conditions of the GPDO are exceeded, all of a development is unauthorised, not just that part in excess of the permitted limits. Therefore, the requirement to reinstate the dual pitch roof on the outrigger as well as reinstating the eaves height is not an excessive remedy.
7. The notice requirements also include setting back the dormer by at least 0.2 m from the ridge of the reinstated outrigger roof. This is likely to involve a considerable reduction in the size of the dormer, as well as significant and possibly complex structural alterations to the dwelling. Provided the outrigger roof can be reinstated however, reducing the size of the dormer would make little difference in terms of remedying the injury to amenity. Replacing the light grey cladding on the dormer walls with tiles similar to those used on the main roof of the dwelling, together with reinstating the outrigger roof, would be a sufficient remedy in that regard.
8. It is likely that the reinstated outrigger roof would require cutting in to part of the dormer structure, to tie it to the main roof of the dwelling. Even so, and whilst detailed plans were not submitted, in my estimation the reinstated outrigger roof could be accommodated physically, even if the dormer were not otherwise reduced in size. Consequently, I am not aware of a sound reason why it would not be practicable to reinstate the outrigger roof if the dormer is retained at its current dimensions, with modifications to the dormer fenestration and walls made where necessary.
9. Therefore, when also taken together with the other notice requirements, retaining the dormer at its current dimensions represents an obvious alternative to reducing it in size, as this would overcome the planning

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<sup>1</sup> The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

difficulties at less cost and disruption. I am satisfied that there would be no injustice to the Council in varying the notice to reflect my findings.

### **Conclusion**

10. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

### **Formal Decision**

11. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by the substitution of step 2 at paragraph 5 with the following requirement:

*"Clad the external walls of the dormer with tiles of a similar appearance to the tiles used on the main roof of the dwelling."*

12. Subject to this variation the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR