



Appeal Decision

Site visit made on 15 September 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2022

Appeal Ref: APP/Y5420/C/21/3282020

48, Mount Pleasant Crescent, Hornsey, London N4 4HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Felix Tanzer against an enforcement notice issued by London Borough of Haringey.
- The notice was issued on 30 July 2021.
- The breach of planning control as alleged in the notice is: without planning permission, the unauthorised enlargement of the roof of the property involving the raising roof ridge line and front roof slope.
- The requirements of the notice are to: 1. Reduce the height of the roof ridgeline and return the roof to its original condition. 2. Reduce the angle of the front roof slope and return the roof (to) its original condition. 3. Remove from the land any debris resulting from the carrying out (of) steps 1 and 2.
- The period for compliance with the requirements is: 5 (five) months.
- The appeal is proceeding on the grounds set out in section 174(2)(f), (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 have lapsed.

Decision

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

Preliminary Matters

2. Planning permission was granted by notice dated 30 January 2020 pursuant to HGY/2019/3247 for 'Construction of rear dormer window, raising ridge towards rear building and creation of roof terrace and associated balustrade on flat roof of existing outrigger' (the 'Original Permission'). Condition 2 states: 'The approved plans comprise drawing nos MP/ 21/B; 22/B; 23/B; 24/B. The development shall be completed in accordance with the approved plans except where conditions attached to this planning permission indicate otherwise or where alternative details have been subsequently approved following an application for a non-material amendment. The reason for the condition was: 'In order to ensure the development is carried out in accordance with the approved details and in the interests of amenity'.
3. Due to engineering difficulties with 'the locating of steelwork', the ridge height was raised by approximately 100mm higher and this resulted in a steeper slope. On completion of the development, it was found that there were inaccuracies on the application drawings which had shown the roof and eaves levels of the adjoining properties incorrectly.

4. To regularise the development, a s73A application Ref HGY/2021/0748, dated 17 February 2021 was submitted to the council to vary condition 2 on the original permission to raise the ridge height of the roof and corresponding height of rear dormer. The appellant sought to replace the approved drawing numbers: MP/21B, MP/22B, MP23/B, MP/24B with drawing numbers MP/33B and MP/34/B. An appeal against the refusal of the application is the subject of a separate appeal decision with the reference APP/Y5420/W/21/3280454.

The appeal on Ground (f)

5. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control¹ or to remedy injury to amenity². The enforcement notice requires the reduction in the height of the roof ridgeline, a reduction in the angle of the front roof slope and the roof returned to its original condition. The purpose of the notice is therefore to remedy the breach of planning control.
6. The appeal under ground (f) is that the requirements of the notice exceed what is necessary and for the consideration of whether lesser steps would overcome the breach of planning control. The appellant argues that as the roof was built just under 100mm higher than the approved drawings, the steps to comply with the notice could have required that the ridge height be lowered to match that within the approved drawings. It is considered excessive to require the complete removal of the development.
7. There is no disagreement between the parties that the drawings for planning permission reference HGY/2019/3247 contained errors which misrepresented the ridge and eaves heights of both adjoining properties. The effect of the errors being a more pronounced height difference between the appeal property and its neighbours either side. Furthermore, there is no disagreement between the parties that the roof has been raised by approximately 100mm and its plane steepened.
8. The council's submissions include a copy of an appeal decision³ for a Certificate of Lawful Development to establish that a development accorded with the terms and conditions of the previous planning permission. The appeal was dismissed on 31 March 2020. A subsequent challenge to that decision in the High Court⁴ was dismissed. It was held that the development was not capable of being implemented in accordance with the approved drawings because it was not capable of being implemented in a manner which replicated the street elevations on the drawing.
9. Drawing MP/24B, which purported to be to scale, rather than merely illustrative, showed the ridge lines and eaves of the neighbouring properties either side of the appeal property as being higher than they are in reality. The discrepancy means that the depicted relationship would therefore be impossible without altering the neighbouring buildings, which would require a new permission in any case. As such, the development would not be able to be completed in accordance with the approved plans and can never replicate the street scene as shown on the approved plan, drawing MP/24B. Accordingly,

¹ s173(4)(a)

² s173(4)(b)

³ APP/N5090/X/19/3240096

⁴ *Choiceplace Properties Limited v SSHCLG*, [2021] EWHC 1070 (Admin)

there is no fall-back position for the development to be built in accordance with that plan or indeed sectional drawing MP/23B.

10. Taking into account the caselaw, the submissions made and received during the course of the appeal, the approved plans and my observations from the site visit, I do not find that the differences in the approved plans can be reconciled. It is also relevant that it is not only the ridge height of the development which is different to that shown on the approved drawings under the Original Permission, the roof slope has also altered significantly. The development overall is therefore materially different to that as shown on the approved drawings, which themselves cannot be replicated on site.
11. Accordingly, the appeal on ground (f) cannot succeed.

The appeal on Ground (g)

12. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed to comply with the notice. The appellant considers 5 months to be insufficient as it is unlikely that the section 78 appeal would be determined in that time. Therefore, an extension of the compliance period to 12 months is requested.
13. As I have dealt with the two appeals together, they will be issued together and thus there is no reason to extend the compliance period.
14. The appeal on ground (g) therefore fails.

S A Hanson

INSPECTOR