



Appeal Decision

Site visit made on 5 July 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal Ref: APP/M2372/C/23/3314223

Land at 10 Brantfell Road, Blackburn, Lancashire BB1 8DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Yasin Khonat against an enforcement notice issued by Blackburn with Darwen Borough Council.
 - The notice was issued on 7 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear dormer roof extension.
 - The requirements of the notice are to: (i) remove the rear dormer roof extension and re-instate the roof consistent to as it was prior to the erection of the dormer.
 - The period for compliance with the requirement is: 06 months from the date this notice takes effect.
 - 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.
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Decision

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

Background

2. The enforcement notice that is subject of this appeal follows an appeal that was dismissed for “the retention of dormer to rear roof space” on 30 March 2022.

The appeal on ground (f)

3. An appeal under ground (f) is that the appellant considers that the notice’s remedial steps go beyond what is reasonably necessary to remedy the identified harm. The notice seeks to remedy the breach.
4. The appellant says that the complete removal of the dormer extension would be excessive and go beyond what is necessary to remedy any injury to amenity which has been caused by the breach of planning control. After the notice was issued, a planning application was submitted to and refused by the Council. However, subsequently, the appellant submitted a new planning application (Ref: 10/23/0460) to the Council for a dormer extension with a reduced size, and with, according to the appellant, a more sympathetic design that accords with the Residential Design Guide and Corporation Park Supplementary Planning Document.
5. It is for the Council to consider the planning merits of the planning application. Although the development proposed in that application may be similar to the development subject of the notice, I am not able to consider planning merits under ground (f), particularly as no ground (a) appeal has been made in this case. Neither can I vary the terms of the notice to attack the substance of the notice itself, which would effectively be granting planning permission for operations that did not exist when the notice was issued. In short, therefore, a dormer extension of reduced size would not remedy the breach.

6. I note the appellant's points about the household being caused hardship if the dormer extension is completely removed, and the need for the bedroom that it serves. However, there is no substantive evidence before me to support the appellant's points.
7. Although examples of dormer extensions and development plan policies are cited, neither are relevant to this ground of appeal as I am not considering the planning merits of the dormer extension.
8. For the reasons set out, ground (f) fails because the requirements are necessary to remedy the breach of planning controls.

The appeal on ground (g)

9. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
10. The appellant says that the compliance period is insufficient for two reasons. The first is that it does not allow time for pre-application discussions with the Council, a revised proposal to be drawn up and submitted to the Council, and then decided. The second reason relates to the availability of builders due to labour and material shortages, which the appellant says are leading to delays, and for the works to be carried out. An alternative twelve-month period is suggested by the appellant.
11. The new planning application was submitted to the Council at the end of May. Therefore, the appellant has already been able to draw up a revised proposal, in part, negating the extra time sought for the first reason. In any event, any compliance period would run from the date of my decision and the Council have now refused that application.
12. Insofar as the second reason is concerned, whilst the builder who built the dormer extension may be unavailable, there is no substantive evidence of the availability of any other builder before me to support the proposition that the works required by the notice could not be carried out within the six-month compliance period. I am therefore not satisfied that the compliance period should be extended. That said, the Council does have discretionary powers under s173A(1)(b) to extend any period for compliance. That would be a matter for the Council to consider if issues arise in the future. Nonetheless, for the reasons set out, the appeal on ground (g) fails.

Other Matter

13. I note the points made by a neighbouring resident, but given the grounds of appeal in this case, I am unable to consider the planning merits of the development or the surrounding area. If there are concerns about the consistency of the Council's decision making, that should be raised with the Council in the first instance.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andrew McGlone

INSPECTOR