

Appeal Decision

Site visit made on 27 September 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 OCTOBER 2024

Appeal Ref: APP/M0655/C/24/3344023

13 Sycamore Drive, Lymm, Warrington, WA13 9AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Steve Higginson against an enforcement notice issued by Warrington Borough Council.
 - The notice was issued on 28 March 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of extended roof dormers.
 - The requirements of the notice are to remove the extended roof dormers and reinstate the roof of the bungalow to its former condition as depicted in the architectural drawing reference P.100.10 pursuant to planning permission reference 2020/38330.
 - The period for compliance with the requirement is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f), (g) of the Town and Country Planning Act 1990 (as amended) (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words *"the period for compliance is three months from the date on which this notice takes effect"* and the substitution with *"the period for compliance is four months from the date on which this notice takes effect"*. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

2. The evidence indicates that planning permission was sought from the Council for the roof dormers in December 2020¹. They were subsequently refused on appeal² on 5 July 2022.

Reasons

Ground (c) appeal

3. The appeal made on ground (c) of section 174(2) of the Act is that those matters (if they occurred) do not constitute a breach of planning control.

¹ Planning application 2020/38330

² APP/M0665/D/22/3295940 – extended roof dormers and rear single storey extension

4. The onus is on the appellant to make his case on legal grounds. He claims that the extended rear dormer and hip to gable roof alteration are permitted development. The justification for this assertion relates to a comment made in a case officer report relating to similar development at 122 Albany Road. I assume that the comment in the officer report is where it says *'Additionally, a hip to gable roof extension and rear dormer would, in many cases, be possible under permitted development rights and this has been taken as a material consideration'*.
5. I do not know what the above comment was based on, but, in any event, it does not in itself offer legal proof that the appeal development is permitted development and hence does not require planning permission. The onus is on the appellant to make his case on legal grounds and the claim made that the unauthorised development does not constitute a breach of planning control has not been suitably substantiated by him.
6. The appellant does not claim that the extended front roof dormer is permitted development. His claim is that the rear dormer extension and hip to gable roof are permitted development.
7. There is no suggestion from the Council that permitted development rights have been removed from the appeal property. It is therefore necessary that the breach of planning control is considered against permitted development rights in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). The relevant class of development is Class B (additions etc to the roof of a dwellinghouse) of Part 1 of Schedule 2 of the Order.
8. The evidence is that the hip to gable roof has facilitated the enlargement of the front and rear roof dormers. Moreover, I have considered the existing and proposed plans which were the subject of planning application 2020/38330 and, as a matter of fact and degree, find that they comprise a single building operation to form an enlarged roofspace of interlinked parts.
9. Paragraph B.1.(d) of Class B states that development is not permitted by class B if *'the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than— (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case'*. There is no evidence from the appellant to support a claim that the resultant roofspace arising from extended roof dormers (built off an associated hip to gable roof) does not exceed the cubic content of the original roof space by more than 50 cubic metres. Moreover, planning permission is required for the single building operation by reason of paragraph B.1. (c) of Class B as the development as a whole extends beyond the plane of the existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
10. For the above reasons, I conclude that the evidence before me does not demonstrate that the breach of planning control is permitted development under Class B of Part 1 of Schedule 2 of the Order. Therefore, I conclude that the ground (c) appeal fails.

Ground (f) appeal

11. An appeal on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. The purpose of the notice is to remedy the breach by removing the extended dormers and reinstating the hipped roof prior to the gabled roof being formed. This requirement is detailed with reference to the existing plans and elevations drawing (P.100.10) submitted as part of planning application 2020/38330. The appellant does not dispute that this drawing depicts the dwellinghouse prior to the breach occurring.
13. The appellant has asked me to consider two alternative developments which in effect would result in smaller extended roof dormers. However, an appeal under ground (a) of section 174(2) of the Act, and hence a deemed planning application, is not before me. Therefore, I am unable to consider the planning merits of the alternative developments in the absence of a deemed planning application.
14. The power afforded to an Inspector to vary the terms of an enforcement notice under section 176(1)(b) of the Act cannot be used to attack the substance of the enforcement notice. Thus, as the enforcement notice alleges the construction of extended roof dormers, and requires that they are removed, the purpose of the enforcement notice is to remedy the breach. Retaining part of the development would not achieve that. As the purpose of the enforcement notice is to remedy the breach, any lesser step that would not remedy the breach cannot be accepted through this ground (f) appeal.
15. As part of the ground (c) appeal, the appellant has drawn my attention to comments made in respect of development at 122 Albany Road and the consideration of possible permitted development rights as a fallback consideration when considering the planning merits of a proposal.
16. In this case, the evidence is that the breach of planning control comprised one single building operation to form enlarged roof dormers. The constructed hip to gable roof enlargement is an integral part of the roof dormer extensions. In other words, without the hip to gable roof extension the extended roof dormers would not exist in their current form.
17. As per my ground (c) appeal reasoning, the breach of planning control is not permitted development given the restrictions imposed in Class B of Part 1 of Schedule 2 of the Order. In this regard, neither the rear dormer, nor the hip to gable roof, constitute a lawful permitted development fallback position. This is because paragraph 3(4) of the Order states that *'the permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful'*.
18. I therefore conclude that the ground (f) appeal fails.

Ground (g) appeal

19. The appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the 1990 Act (as amended) falls short of what should reasonably be allowed.
20. The claim made by the appellant under ground (g) is that the family would need to find alternative accommodation while works were being carried out and hence a compliance period of six months is required. I do not doubt that the required works would lead to some disruption to the family and that they may need to live elsewhere for a temporary period. However, the appellant has not provided any reasoning as to why a period of three months would not provide a reasonable timescale to undertake the required works, while also giving enough time to move to alternative temporary accommodation.
21. Notwithstanding the above, I am not certain whether the Council considered the possibility of the family needing to find alternative accommodation when it issued the enforcement notice and decided on a compliance period of three months. I consider that it is reasonable and proportionate that I afford the family some additional time to find alternative temporary accommodation prior to works commencing. I shall therefore vary the compliance period from three to four months.
22. To the extent that the compliance period has been varied from three to four months, I conclude that the ground (g) appeal succeeds.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

D Hartley

INSPECTOR