



Appeal Decision

Site visit made on 1 April 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2025

Appeal Ref: APP/H5960/C/23/3329155

172 Nimrod Road, London SW16 6TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Shaikh Afaq Elahi against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The notice was issued on 31 July 2023.
- The breach of planning control as alleged in the notice is: *Without planning permission and within the last four years, the unauthorised erection of a dormer roof extension to main rear roof, the raising of the main roof ridge and changes to the front roof slope (the "Unauthorised Works")*.
- The requirements of the notice are:
 1. *Remove the unauthorised dormer roof extension and return the roof ridge and front roof slope back to its previous condition;*
Or
 2. *Remodel the dormer, the roof ridge and the front roof slope so that they comply with drawing number 2014/24-04 of the Certificate of Lawfulness granted by the Council on 29 July 2021 under reference 2021/2304* so that it accords with the requirements of permitted development under Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended);*

** for ease of reference the plan and decision notice are annexed to this Notice.*

And

 3. *Remove from the Property all debris arising from the compliance with steps 1 or 2 above.*
- The period for compliance with the requirements are: *Five months after the date on which this notice takes effect.*
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld subject to the correction and variation in the terms set out in the Formal Decision below.

Formal Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting requirement 2) in section 5 of the enforcement notice.
 - Substituting the wording of requirement 3) in section 5 of the enforcement notice with the following replacement description:

"Remove from the property all debris arising from the compliance with the step above."
2. Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. S173(4) of the Town and Country Planning Act 1990 (the Act) sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.
4. Having regard to its requirements, it is clear that the purpose of this enforcement notice (EN) is to remedy the breach of planning control, as requirement 1) in section 5 of the EN provides for the removal of the unauthorised dormer roof extension and returning the roof ridge and front roof slope back to its previous condition before the breach took place.
5. Requirement 2) in section 5 of the EN, seeks the development to be remodelled to comply with a lawful development certificate (LDC)¹ issued by the Council, under Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This would retain most of the existing development at the roof level, whilst altering the ridge height and amending the roof slope at the front of the development, which would provide an obvious alternative to its complete removal.
6. However, Article 3(5)(a) of the GPDO states permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Neither party disputes that the alterations to the roof are either existing or unlawful. As such, requirement 2) in section 5 of the EN cannot be achieved, as the LDC has been lost by the implementation of a wholly different scheme.
7. Case law² indicates that the requirements of an EN cannot be varied so as to result in a grant of deemed planning consent under s173(11) of the Act for operations that were not in existence when the enforcement notice was issued. In this instance given its existing and unlawful status, the operations could not benefit as permitted development and would require planning permission. As the appellant has not lodged a ground (a) appeal, there is no deemed planning application, and as such, I cannot consider the planning merits of the case.
8. Consequently, as the development subject to this appeal is a materially different scheme to that contained in the LDC, I will correct the EN to remove requirement 2).

Appeal on ground (f)

9. The appeal on ground (f) is that the requirements of the EN exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice, which as established in this case, is to remedy the breach of planning control. However, the appellant considers lesser steps could be taken which would still remedy the breach of planning control.
10. These measures include: the reduction of the ridge height to 300mm; the removal of the 'cant' strip; and bevelling off the 'stepped' effect of the raised ridge, to soften

¹ London Borough of Wandsworth Planning Ref: 2021/2304

² Ioannou v SSCLG & Enfield LBC [2014] EWCA Civ 1432

the appearance at the ridge line. The appellant also suggests an alternative arrangement for the front roof slope, as it cannot be lowered without significant disruption to the property given it is fixed into an I-beam which is integral to the build and cannot be removed. The appellant further proposes raising the lower part of the roof by 170mm, where it meets the eaves, to provide a roof slope at a consistent angle with those of the existing terrace, albeit slightly higher than the adjoining property. The resulting difference in height between the front roof slopes are proposed to be screened through the imposition of a small parapet wall.

11. It is acknowledged that these measures would provide an alternative scheme to the requirements stated in the notice, which would provide less cost and disruption to the appellant. However, these measures would not achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred. These changes would also require planning permission, through a deemed planning application which is made through a ground (a) appeal, which as previously stated is not what is before me.
12. However, this does not preclude the appellant from exploring the alternative scheme with the Council via an appropriate planning application. I note the period of compliance is five months and this should be sufficient to gauge whether any agreement on such an alternative scheme is likely.
13. The appellant also has directed me to examples in the area where properties have altered their front roof slopes and increased their ridge heights, notably at numbers 223, 237 and 239 Nimrod Road and 143 Lavender Hill. Nevertheless, I have limited evidence in respect to the planning history associated with these developments or indeed whether they are lawful, and therefore have negligible weight in regard to this ground (f) appeal.
14. Overall, subject to the correction and variation above, the steps set out in the enforcement notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place. Consequently, the ground (f) appeal fails.

Conclusion

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

Robert Naylor

INSPECTOR