The Planning Inspectorate

Appeal Decision

Site visit made on 28 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/B5480/C/18/3210411
19 Cross Road, Mawneys, Romford RM7 8AT

- 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 Gary Morris against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 3 August 2018.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the enlargement of a dormer window to the front elevation of the dwelling.
- The requirements of the notice are: 1. Remove entirely the unauthorised dormer from the front of the property; or 2. Alter the front dormer and its fenestration to that as it existed prior to its replacement in accordance with 'Existing East Elevation' and 'Existing North Elevation' of drawing GM-PA05 as submitted in application P1751.17. Clad the external surfaces of the sides and front with tiles matching that of the main roof of the dwelling; and 3. Remove all materials and debris accumulated as a result of taking either step 1 or step 2 above.
- The period for compliance with the requirements is two months.
- 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. 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 upheld as varied in the terms set out below in the Formal Decision.

Background

1. The appeal property contains a substantial detached chalet bungalow. A dormer occupies most of the front roof slope of the bungalow. The dormer has a pitched roof which rises to a ridge in the centre to create a high gable facing the street. The dormer walls are rendered. There is an elongated central front window lighting the bungalow stairs and landing, with smaller windows lighting bedrooms on either side. An appeal against the Council's refusal of planning permission for the dormer was dismissed in July 2018[1].

Ground (f) appeal

2. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.

3. At s173, the Act sets out two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4 (a)) is to remedy

[1] Ref: APP/B5480/D/18/3197936.

the breach of planning control that has occurred by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach.

4. The Council did not specify in the notice whether it was one or both above purposes that it sought to achieve. However, the notice required removal of the dormer or alternatively, undertaking alterations to return it to the flat roof treatment, window arrangement and external materials of the pre-existing lawful front dormer. The pre-existing dormer was shown on the 'existing' front and side elevations of the bungalow, reproduced within the notice. The requirement to alter the dormer would necessitate removing the pitched roof as well as the elongated central window and replacing render on the walls with tile hanging matching the main roof of the bungalow. The notice did not require steps which modified the dormer in a way that stopped short of removing the pitched roof, central window and render in their entirety. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the property to its condition before the breach took place.

5. The appellant suggested alternatives to the notice requirements, including using alternative roof forms and reducing the size of the central window, as well as reinstating tile hanging on the walls. I note that in November last year, the appellant had pre-application discussions with the Council regarding three alternative schemes for modifying the dormer, details of which were supplied. However, there is no ground (a) appeal before me. The Courts have held that where as in this case, there is an appeal on ground (f) but not on ground (a) and the purpose of the notice is to remedy the breach, general planning considerations cannot be entertained and the notice cannot be varied to attack its substance[2]. Therefore, ground (f) does not provide an alternative route for obtaining planning permission for modifications to the dormer and I cannot consider the planning merits of the alternative schemes.

6. In any event, the varying forms of pitched roof shown in the submitted schemes were all similar in scale to the current roof treatment of the dormer. They all involved an enlargement over the pre-existing dormer. As a result, varying the notice to require accordance with any of those schemes would not restore the property to its condition before the breach took place. It follows that none of the schemes represent an obvious alternative to the requirements of the notice.

7. Consequently, I find that remedying the breach can only be achieved by the notice requirements. It follows that those requirements are not excessive for their purpose and the ground (f) appeal must fail.

Ground (g) appeal

8. The ground of appeal is that the time for compliance is unreasonably short.

9. The notice specified a two month compliance period. The appellant did not suggest a longer period which he considered more reasonable. Although the remedial works required by the notice are likely to take place at a time of year more susceptible to inclement weather conditions, there was no firm evidence

[2] *Wyatt Brothers (Oxford) Ltd v SSETR* [2001] PLCR 161; *Stamatios Miaris v SSCLG and Bath and North East Somerset Council* [2016] EWCA 1564 (Admin); *Keenan v SSCLG & Woking BC* [2016] EWCA Civ 438.

to suggest that this would impose a significantly greater risk of property damage, particularly if the works were undertaken with sufficient care.

10. However, as the enlarged dormer forms an integral part of the living accommodation in the bungalow, I am mindful that undertaking the remedial works could cause significant disruption and inconvenience to the appellant and his family. It is entirely possible that two front bedrooms would be at least partly uninhabitable and the stairs and landing difficult to access, at times during the remedial works. Undertaking the remedial works over a slightly longer timescale might enable them to be programmed and carried out in such a way that the relevant parts of the living accommodation were not all affected at the same time. Consequently, in my view a four month compliance period would be more reasonable, as it would strike an appropriate balance between remedying the planning harm whilst minimising the burden placed on the appellant.

11. Although the Council referred to the time which had elapsed since the notice was issued, that is not a relevant matter in terms of determining the reasonableness of the period for compliance after the notice takes effect. This is because the appellant is entitled to assume that his appeal would have a successful outcome.

12. As a result, to this limited extent the ground (g) appeal succeeds.

Formal Decision

13. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by in paragraphs 5 and 6 the deletion of 2 months and the substitution of 4 months for the period for compliance. Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR