



Appeal Decision

Site visit made on 28 June 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/V2255/C/21/3287191

61 Playstool Road, Newington, Sittingbourne, ME9 7NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Rosaria Rodrigues against an enforcement notice issued by Swale Borough Council.
 - The notice was issued on 3 November 2021.
 - The breach of planning control as alleged in the notice is Without planning permission the following development has taken place:
A first floor rear extension not built in accordance with approved plans under application 16/503414/FULL.
A sloped tile roof above the existing rear ground floor extension extending up to the original eaves height of the existing dwelling.
A 'lean to' roof to the front and side elevations of the dwelling which is not in accordance with the plans approved under application 16/503414/FULL.
A single storey extension to the rear of the dwelling which projects 3 metres from the rear wall and across the full width of the dwelling.
The requirements of the notice are
 - (i) Dismantle and remove the first floor rear extension.
 - (ii) Dismantle and remove the sloped tile roof located above the existing rear ground floor extension.
 - (iii) Dismantle and remove the lean to roof from the front and side elevations of the dwelling.
 - (iv) Dismantle remove the single storey rear extension.
 - (v) Remove all materials rubble and debris caused in complying with steps (i) to (iv) above from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - i) Deleting the allegation in full and replacing it with "Erection of a first floor rear extension and a sloped tile roof above the existing rear ground floor extension extending up to the original eaves height of the existing dwelling."
 - ii) Deleting requirements (iii) and (iv) of the notice in full and replacing the wording "steps (i) and (iv)" with "steps (i) and (ii) in the last requirement."
2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

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Preliminary Matters

3. The appeal is made under ground (f) only. In the absence of an appeal under ground (a), the planning considerations of the development are not matters that are before me for determination.

The Notice

4. Irrespective of the grounds of appeal, the Inspector has a duty to put the notice in order. There are four elements to the allegation. However, the reasons for the notice do not include the lean to roof, the single storey rear extension or the sloped tile roof. The Council has subsequently indicated that the lean to roof and the single storey rear extension are not harmful to visual or residential amenity.
5. This view accords with the Council's delegated report for '*Retrospective application for the erection of a single storey rear extension, first floor rear extension, loft extension and lean to roof at front and side of dwelling (resubmission of 18/502531/FULL)*'. I will therefore remove the lean to roof and the single storey rear extension from the allegation and the requirements. As the appellant considers the sloped tile roof to be part of the first floor extension and the reasons for that extension are the same as for the sloped tile roof, no further amendments are necessary. I do not consider that the amendments cause injustice to any party and will amend the notice accordingly.

The appeal under ground (f)

6. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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. As the notice as amended requires the removal of the first floor extension and the sloped tile roof, the purpose of the notice is to remedy the breach.
7. With regard to the requirement to remove the extension, the appellant proposes 'modifying the existing roof to a hipped end which would be no higher than the existing roof and that should be in compliance with planning regulations.' However, the appellant's proposal includes an assessment of planning merits of an alternative scheme which I am unable to assess under ground (f).
8. The appellant also proposes dismantling the sloped tile roof in accordance with the requirement and installing a sloped roof in accordance with the approved plan. Planning permission was granted on the 1 July 2016 for "erection of a first floor extension, roof alterations to extend the existing loft conversion and lean to roof to the front and side of dwelling." There is a new smaller section of roof shown on the single approved plan of the previous planning permission but the Council states that the planning permission lapsed in July 2019.
9. However, the Council also refers to the enforcement notice being issued as the appellant would not revert back to the previous planning permission. Reverting to the previous planning permission was also referred to as an option after the

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issue of the appeal decision for the appeal site in February 2020. The position with regard to the previous planning permission is further complicated by the appellant only wishing to rely upon the approved plan for the sloped tile roof and not for the extension itself. Any alternative needs to address what is proposed for the whole of the roof not just part of it and involves consideration of planning merits which are outside the remit of this appeal.

10. The requirements of the notice in requiring removal of the extension and the sloped tile roof are not excessive when the purpose of the notice is to remedy the breach. The appeal under ground (f) therefore fails.

Other matters

11. There are objections from nearby residents which relate largely to planning matters. Whilst some objectors assume that the appellant will be reverting to the previously approved scheme, the requirements of the notice are limited to the removal of the development within the compliance period.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall correct and vary the notice prior to upholding it.

E Griffin

INSPECTOR