
Appeal Decision

Site visit made on 26 September 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 18 October 2018

Appeal Ref : APP/K1935/C/17/3187994

Land at 113 The Pastures, Stevenage, SG2 7DF.

- 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 Michael Borrill against an enforcement notice issued by Stevenage Borough Council.
- The notice was issued on 29 September 2017.
- The breach of planning control as alleged in the notice is breach of condition (1) of planning permission reference 15/00671/FPH (the Permission). The Permission is for a single storey rear extension and loft conversion. Condition (1) of the Permission says 'the development hereby permitted shall be carried out in accordance with the following approved plans: 15027-04A; 15027-LP; 15027-SP; 15027-02; 15027-03; 15027-05; 15027-06.' The notice alleges that the condition has not been complied with because the roof lights inserted on the rear roof slope of the property do not comply with approved plans 15027-05 and 15027-06 in respect of their manner of opening.
- The requirements of the notice are to i. remove the VELUX Cabrio roof lights inserted on the rear roof slope of the property; ii. insert replacement central pivot hinged roof lights on the rear roof slope of the property of the size and shape as shown on the approved drawings.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is allowed and the enforcement notice is quashed.

Application for costs

1. The Appellant has made an application for an award of costs against the Council. This is the subject of a separate decision.

Ground (c) appeal

2. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted. The onus of proof rests upon the Appellant and the test of evidence is the balance of probabilities.
3. The Appellant argues that the rear roof lights inserted on the rear roof slope comply with the approved plans and that they have planning permission by virtue of permitted development rights.

Approved plans

4. The appeal site is a semi-detached dwelling located in a cul-de-sac in a residential estate. Planning permission reference 15/00671/FPH (the Permission) has been granted for a single storey rear extension and loft conversion. Condition 1 of the Permission requires the development to be carried out in accordance with the approved plans.
5. It is established law that a planning permission should be construed by reference to the decision notice which grants permission. In this case the permission expressly incorporates the approved drawings. Plan 15027-05 shows the proposed elevations. The west elevation shows two roof lights on the rear roof slope positioned side by side. Each roof lights has two panes the upper pane being bigger than the lower pane with a horizontal division. Plan 15027-06 shows the proposed section. The plans make no reference to the manner of opening of the rooflights.
6. The roof lights in dispute are two Velux Cabrio units positioned side by side. They each contain an upper and lower section. The upper section is hinged at the top with a handle at the bottom to allow opening. I saw at my site visit that the weight of the upper section does not allow the unit to balance open on its centre pivot. The lower section is hinged at the bottom with handles at the top. In its open position the lower section sits vertically and a series of railings open out on the sides with a small bannister.
7. I am not persuaded that the Velux Cabrio units fail to comply with the approved plans. There are two roof lights position side by side each with two panes of different sizes as shown on the approved plans. The sectional drawings are not detailed enough for me to conclude that the mechanism and frame in place are different to the approved plans. There is nothing on the approved plans to indicate central pivot hinged roof lights nor indeed any reference to their manner of opening and I note the Appellant's evidence that such a mechanism is not possible on the facts. The Council did not impose conditions concerning the detail of the rooflights.
8. I note that an earlier application reference 15/00285/FPH for a similar scheme was refused because of the harm caused to the living conditions of neighbours at The Hedgerows by the proposed dormer window. The Council argues that the Appellant should have been aware that concerns would arise from the manner of opening due to the previous refusal of permission. But the Appellant is entitled to rely on the permission granted.
9. I conclude that on the facts of this case the rear slope rooflights accord with the approved plans. I note the concerns of neighbours about overlooking but the Council has granted planning permission for the development and the relevant issue in this case is whether there has been a failure to comply with approved plans not the planning merits of the application for the loft conversion.
10. As I have concluded that there is no failure to comply with the approved plans it is not necessary for me to consider whether the rooflights benefit from permitted development rights.

11. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (g) does not need to be considered.

Formal Decision

12. The appeal is allowed and the enforcement notice is quashed.

S. Prail

Inspector