
Appeal Decision

Hearing held on 26 May 2016

by Bridget M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 June 2016

Appeal Ref: APP/X5210/C/15/3136490
22 Frogmal Way, London NW3 6XE

- 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 J San against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 14 September 2015.
 - The breach of planning control as alleged in the notice is without planning permission, the removal of the original roof and fascia boards from the three wings of the dwelling house.
 - The requirements of the notice are to completely reinstate the original roof and fascia boards to the three wings of the dwelling house.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Background

2. The single storey (with basement), architect designed dwelling comprises a central rotunda with three protruding wings each provided with a flat roof. On 28 September 2009 planning permission 2009/3168/P was granted for *extension to existing basement, conservatory extension at ground floor level, insertion of car lift to basement, introduction of green roof, lightwells, lantern light roof extension and associated works to existing dwelling house.*
3. The flat roof coverings and much of the fascia/cornice were removed in the summer of 2012 before the expiry of the 2009 permission. In December 2012 a s215 Notice was issued, one requirement of which was to fit a watertight permanent roof to match that removed or to fit a temporary watertight roof. A temporary roof was fitted and the Council was satisfied that the notice had been complied with.

The appeal on ground (c)

4. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The case for the Appellant is that the removal of the roof and fascia from the three wings forms part of the lawful implementation of planning permission 2009/3168/P.
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5. The Council disagrees, claiming firstly that two pre-commencement conditions have not been discharged and thus implementation of the permission could not have been undertaken lawfully and secondly, even if that is not so, that the works that have been undertaken on the site do not amount to commencement of the approved development.
6. Planning permission 2009/3168/P includes four conditions numbered 3, 4, 5 and 6 which require the submission and approval of further details. On 27 April 2010, the details required by condition 4 (tree protection measures) and condition 5 (construction management plan) were approved. The Council points out that the approval included a reminder that details of windows and facing materials (condition 3) and of green roofs (condition 6) remained outstanding.
7. Taking condition 3 first, this is quite patently not a pre-commencement condition. The wording quite clearly indicates that this is not a condition requiring details to be submitted and approved before the development commences. Rather it requires details of all new window frames and a sample panel of all facing materials to be approved before "*any work is commenced on the relevant part of the development*" and "*before the relevant part of the works commence*" respectively. There is nothing in the condition which prevents commencement of the development as a whole before the required details are approved.
8. Turning then to condition 6, there is nothing unclear in my view with the phrase "*before the development commences*". It quite patently requires the submission of full details of the green roofs before the development commences and cannot be read any other way.
9. However, and as was accepted by both parties, it has been established that in order to amount to a true 'condition precedent' the condition has to go to the heart of the permission. In this case the reason given for the imposition of the condition indicates that it is there to ensure the interests of biodiversity and the water environment are taken into account rather than to require details of the construction of the roof itself. This is indicative of a condition similar to a landscaping condition where details are required to ensure a satisfactory appearance and, as the Council pointed out, to promote the principles of sustainability.
10. No condition should be imposed on a planning permission unless it is necessary to make the development acceptable, but that does not mean that all conditions go to the heart of the development. In this case, given the slope of the land and the prominence of the flat roofs from various locations, its finished appearance is clearly an important matter but the finished detail is not fundamental to the development. The principle of the green roof had been approved and what was required was simply more detail. In practical terms, the whole development, other than the green roof, could be constructed without the required details having been submitted and approved which demonstrates that the condition does not go to its heart. This is further borne out by the second part of the condition in that the approved details do not have to be implemented until the building is ready to be occupied.
11. From a plain reading of the planning permission and accompanying drawings, which include sections through the proposed green roofs, I find the requirement for submission and approval of more detail of the green roofs is

- not fundamental to the development permitted and thus does not go to its heart so as to amount to a pre-commencement condition where a failure to comply with it would prevent lawful implementation of the permission.
12. Even had I found the permission on its face to be ambiguous in relation to this matter, which I have not, the officer's delegated report makes clear that the further details required are of plant species, substrate depth and maintenance – commensurate with a landscaping condition and not fundamental to the overall scheme. Although the Council has pointed out that informatives attached to subsequent approvals drew attention to the outstanding conditions requiring the submission of further details, this does not assist as they were clearly included simply as a reminder.
 13. I therefore find the failure to discharge conditions 3 and 6 prior to commencement of the development did not, of itself, prevent the lawful implementation of planning permission 2009/3168/P.
 14. The Council goes on to argue that, even if conditions 3 and 6 are not true pre-commencement conditions, the works undertaken on the site (by the former owner) are not material operations comprised in the development but rather that any similarity to the development permitted is a coincidence. I cannot agree. Section 56(4)(aa) of the Act makes clear that any work of demolition of a building is a material operation. The porch and garage have been demolished and this formed part of the development permitted. In addition, I saw that substantial works of excavation had been undertaken which would be necessary to facilitate the provision of a lower ground floor and extension to the building. I understand that these works were undertaken about a year after the permission was granted but in any event well within the three year commencement time limit. The rearrangement of rooms within the building also formed part of the approved scheme so that removal of internal walls, as has occurred, would have been necessary.
 15. The Council points out that there was no application for consent under the building regulations and that a contractor had not been appointed. However, neither matter prevents commencement of the development granted planning permission. Furthermore the pre-commencement conditions requiring details of tree protection works (condition 4) and submission of a construction management plan (condition 5) were discharged. Commencement of development is addressed by objective test rather than by subjective matters such as the developer's intentions but even so there is no evidence that it was the former owner's intention from the outset to run the building into a state of irretrievable disrepair as was suggested at the hearing. Indeed, evidence suggests quite the opposite; for example when excavations were carried out, poor quality non-matching brickwork was exposed which necessitated significant efforts to find an acceptable replacement brick ultimately leading to an amendment to the permission being approved in March 2012.
 16. As a matter of fact and degree I find that planning permission 2009/3168/P has been commenced. Material operations comprised in the development were carried out within 3 years of the grant of the permission such that condition 1 has been met and the permission has thus not time expired, albeit that all work subsequently ceased and the building has fallen into a state of disrepair.
 17. At the hearing, the Council agreed that, in the event that it was found that the development approved under 2009/3168/P had lawfully commenced, the

removal of the roof and fascia boards as alleged in the notice would form part of that development. I find no reason to disagree.

18. In conclusion, the matter alleged in the notice – the removal of the roof from the three wings of the dwellinghouse – does not constitute a breach of planning control since it comprises part of the development granted planning permission under ref:2009/3168/P and that permission has been lawfully commenced and remains extant. The appeal on ground (c) succeeds and the notice is quashed. The appeal on grounds (a), (f) and (g) do not, therefore, fall to be considered.

Bridget M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr R Warren QC	Appointed by Breacher Solicitors
Mr R Soloman	Architect
Mr J San	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Sheehy	Senior Planning Enforcement Officer
Ms C Bond	Principal Planner – Heritage and Conservation
Mr P Mistry	Legal Officer
Ms Z Haji-Ismail	Senior Planning Officer

INTERESTED PERSONS:

Mr D Milne	Church Row and Perrins Walk Neighbourhood Forum
Mr M Patchett-Joyce	Church Row Residents' Association

DOCUMENTS submitted at the hearing

- 1 Planning permission 2009/3168/P and accompanying drawings
- 2 Planning permission 2011/0924 with associated documents
- 3 Sales particulars
- 4 Extract from Appendix 3 to document accompanying planning application 2010/2938/P
- 5 Delegated report for application 2009/3168/P
- 6 Approval of details 2010/0915/P
- 7 3 photographs provided by Mr Milne
- 8 Appellant's suggested conditions/alternative requirements
- 9 Heritage report in support of objection to application 2015/3530/P
- 10 Appeal decision APP/X5210/A/08/2069663
- 11 Council's suggested conditions