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## Appeal Decision

Site visit made on 21 July 2015

**by Brian Cook BA (Hons) DipTP MRTPI**

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

**Decision date: 7 August 2015**

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**Appeal Ref: APP/M5450/X/14/3000262**  
**81 West Street, Harrow, Middlesex HA1 3EL**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr M King against the decision of the Council of the London Borough of Harrow.
  - The application Ref P/0193/14, dated 19 January 2014, was refused by notice dated 24 April 2014.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is installation of 6 solar panels on the roof.
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### Decision

1. The appeal is dismissed.

### Reasons

2. The appeal property is within the Harrow on the Hill Village Conservation Area. A Direction under Article 4(2) is in place restricting any alterations to the roof of a house including the installation of roof lights and the replacement of tiles, slates, etc. The appeal property is subject to this Direction. The Council considers the solar panels that are the subject of the appeal to be an alteration to the roof slope and thus within the scope of the Direction. That is the basis on which the application was refused.
3. The appellant argues that the development is permitted by Schedule 2, Part 40 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). There are two strands to the appeal. First, it is argued that the solar panels have been installed on the roof slope and that it is this that is permitted by Part 40 of the GPDO. The development does not therefore amount to an alteration of the roof and thus the Direction does not apply to it. Second, it is argued that the permitted development rights available under Part 40 are not and cannot be removed by a Direction under Article 4(2) of the GPDO. They can only be removed by a new Direction under Article 4(1) and several examples from other local planning authorities are cited. The Council has therefore erred in law in refusing the application.
4. Under s191(2) uses and operations are lawful at any time if:  
(a) no enforcement action may then be taken in respect of them; AND

- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. (my emphasis).
5. Both limbs therefore need to be satisfied for the appeal to succeed. The appellant's case goes to the first limb but, irrespective of the merits of that argument, the planning history confirms that the second limb cannot be met. The appeal must therefore fail and I do not need to consider the appellant's case on the first limb.
  6. The solar panels have been in place for some time. An application seeking retrospective planning permission for their installation was refused by the Council in January 2013 and an appeal against that decision dismissed on 14 October 2013 (APP/M5450/A/13/2195766). On 29 November 2013 the Council issued an enforcement notice alleging 'without planning permission, the installations (*sic*) of six (6) solar panels on the front roof slope of the dwelling.' Requirement 1 was to 'remove the six (6) solar panels sited on the front roof slope.'
  7. The notice took effect on 10 January 2014. The appellant confirms that no appeal was lodged against the notice. It therefore came into force on 10 January 2014, some nine days before the application that is the subject of this appeal was made. In the appeal statement dated 31 December 2014 the appellant states that the Council has agreed to suspend the requirements of the notice subject to the outcome of this appeal. The Council has not commented upon this assertion.
  8. In its report on the application that is the subject of this appeal the 'relevant history' section makes no mention of the enforcement notice. Nor does the appellant refer to it in the initial appeal documents. It is simply included, without any further explanation or comment, among the documents supplied by the Council with the appeal questionnaire. This appears to have been submitted and copied to the appellant on 30 December 2014. It may be that this was the first time that the appellant's agent (who also submitted the application) became aware of the existence of the notice.
  9. All the evidence suggests that the development to which the notice relates and that which is the subject of the appeal is the same. An LDC confirming that the development carried out was lawful would be directly contrary to a requirement of the notice which states that the development must be removed. By virtue of s195(2) neither the original application nor this appeal had any prospect of success.

## **Conclusion**

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of installation of 6 solar panels on the roof was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Brian Cook*

Inspector