
Appeal Decisions

Site visit made on 16 August 2016

by L J O'Brien BA (Hons) MA

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 27 September 2016

Appeal A Ref: APP/C5690/C/15/3142229

Land and premises at 9 Warwickshire Path, London, SE8 4LN as shown edged red on the plan attached to the Enforcement Notice.

- 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 Mrs Min Zhao against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 16 November 2015.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a roof extension in the roof slope of the premises as shown in on the Photograph attached to the notice.
 - The requirements of the notice are 1. Remove the roof extension from the roof slope as shown on the Photograph attached to the notice, 2. Reinstate the roof slope to its form prior to the unauthorised development by; a. reinstating the former pitch of the roof slope, b. reinstating the tiles to the roof slope pitch, 3. Make good all damage to the premises resulting from compliance with requirements 1-2 above, 4. Remove all materials, debris, waste and equipment resulting from compliance with requirements 1-3 above.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal is fee exempt, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does fall to be considered.
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Appeal B Ref: APP/C5690/W/15/3139110

9 Warwickshire Path, London, SE8 4LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Min Zhao against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/15/92892, dated 7 July 2015, was refused by notice dated 30 September 2015.
 - The development proposed is described as "retrospective application for loft conversion, increased dormer height to obtain acceptable headroom height".
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Decisions

Appeal A

1. I direct that the enforcement notice is varied by, under Section 6, Time for compliance, the deletion of the word "6" and its substitution with the word "9". Subject to this variation the appeal is dismissed, the enforcement notice is

upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Appeal A on ground (a) and Appeal B the section 78 planning Appeal.

Main Issue

3. The main issue is the effect of the roof extension on the character and appearance of the host property and the wider street scene.

Reasons

4. No. 9 Warwickshire Path is an end of terrace dwelling in a residential area. The wider area is made up of fairly uniform streets with similar housing and a distinctive undulating roof pattern characterises the terraces. A large roof extension, the subject of these appeals, has been constructed.
5. Due to the layout of the surrounding streets the extension is highly visible from the public realm. Whilst some screening is provided by vegetation and other properties from certain angles, the rear of the extension can be seen clearly from Turnpike Close and Douglas Way where it interrupts the existing roof pattern.
6. The development is also prominent when viewed from the side and front of the property from other locations on Warwickshire Paths. The roof extension effectively fills in the gap created by the original pitched roof form and creates the impression of a flat-roofed dwelling. The extended roof projects above the ridge line of the existing property and this, combined with its scale, results in the extension appearing dominant and incongruous, rather than subservient to its host. I therefore consider that the development causes harm to the character and appearance of the host dwelling and the wider street scene.
7. I appreciate that effort has been taken to ensure that the materials, such as the tiles, are similar to those used elsewhere on the host dwelling. However, this does not mitigate the harm I have identified. I noted a number of other, similar extensions in the area; including several in extremely close proximity to No. 9. However, the majority of these appear smaller in scale and do not extend above the ridge of their host dwellings, thus maintaining the integrity of the original property to a greater degree. I did note another example of a larger extension, similar to that at No. 9. However, I am not aware of the details surrounding that extension and, in any event, it does not justify perpetuating the harm I have identified.
8. I note that, in theory, a similar extension could be built under permitted development (PD) rights. Indeed, a Certificate of Lawful Development (LDC), issued by the Council on the 9 September 2014 certified that a roof extension, of a different design, but in a similar location, would be PD. In relation to Appeal A, ground (a), I have the power to grant planning permission for the whole or any part of the development enforced against. However, the proposal the subject of the LDC would in reality be a similar, but different extension. It would be smaller, with different fenestration and a different internal layout and could not simply be described as part of the development enforced against.

9. The existence of PD rights and the LDC could provide a fall-back position against which to consider the relative harm caused by what has been built. However, the extension that could be built as PD or specifically under the LDC would be smaller than that which has actually been built and would not project above the existing roof line. As such, an extension of this nature would be considerably less harmful than that in situ. Furthermore, the appellant indicates that the extension for which the LDC was granted would not provide the minimum headroom height required by the Building Regulations, so it is unlikely that it would be built¹. In these circumstances, neither the existence of PD rights nor the LDC indicate that planning permission should be granted for what has actually been constructed and the LDC scheme does not constitute an obvious alternative.
10. For the reasons given, the development fails to accord with Policy 15 of the Lewisham Core Strategy, adopted June 2011 and DM Policy 30 and DM Policy 31 of the Lewisham Development Management Local Plan, adopted 2014. Amongst other things, these policies seek to ensure that extensions are of a high, site specific, and sensitive design quality and respect the original building. The Lewisham Residential Standards Supplementary Planning Document (SPD), adopted 2006 and updated 2012, also seeks a high quality of design; expecting roof extensions to be successfully integrated with, and be subordinate to, the host dwelling. More specifically the SPD states that roof extensions will not be permitted where any part of the extension will be above the height of the ridge of the main roof. The development is also in conflict with the SPD.
11. For the reasons detailed above, I consider that appeal B should be dismissed and ground (a) should fail in appeal A so that planning permission will not be granted.

Appeal A on ground (f)

12. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
13. In order to assess an appeal under ground (f) it is necessary to establish the purpose of the notice (i.e. does it seek to remedy the breach or the injury to amenity). The notice in this case alleges the construction of a roof extension without planning permission and requires its complete removal and the reinstatement of the previous roof. It is clear therefore that this notice seeks to remedy the breach and not only the harm to amenity. Where this is the purpose the relevant consideration for an appeal on ground (f) is whether the steps are excessive to remedy the breach.
14. The appellant suggests that the wholesale removal of the roof extension is excessive and, in fact, altering the development so it would correspond with the proposal covered by the LDC and shown on plans 140507 L 001, 140507 L 002 and 14507 L 003 dated 30 May 2014 would be more appropriate.
15. Development which is not lawful cannot be altered so as to become permitted development retrospectively. In this instance, altering the development to that

¹ An informative on the LDC itself highlights the need for separate Building Regulations approval.

shown on the LDC would not remedy the breach. Furthermore, even leaving aside the greater harm caused by the development as built, it cannot be said that it could simply be replaced by the smaller extension covered by the LDC, as the appellant indicates that this would not comply with the Building Regulations. In these circumstances, it would not be appropriate for the notice to be varied to require alteration in line with the LDC and the steps required by the notice are not excessive. For these reasons the appeal under ground (f) fails.

Appeal A on ground (g)

16. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Council have given six months. The appellant holds that a period of twelve months would be a reasonable and practical amount of time to allow for the relocation of the existing tenants, the employment of contractors, and the undertaking of the works.
17. Given that the current tenants must be given a reasonable notice period prior to the commencement of the works to comply with the requirements of the notice, I have some sympathy with the appellant's concerns. In order to ensure that this can be achieved I shall extend the period from six to nine months. I have not been provided with any compelling evidence as to why twelve months should be allowed. In my view, the extension of the period for compliance to nine months provides a sufficient amount of additional time to allow notice to be served on the tenants and for work to commence and be completed following their departure but if, for reasons not made clear to me, this presents genuine difficulties for the appellant, the Council would retain the discretion to extend the compliance period. A period of nine months would also give the appellant an opportunity to apply for planning permission for a scheme that more closely reflects the development proposed by the LDC should they wish to do so and should it be technically feasible.
18. For these reasons the appeal under ground (g) succeeds to this limited extent and I will vary the notice and extend the period for compliance to nine months.

Conclusions

19. I have considered all other matters raised but these do not change my conclusion that the appeals under grounds (a) and (f) and section 78 should be dismissed. The appeal under ground (g) is allowed to the extent set out above.

Laura O'Brien

Appointed person