

Appeal Decisions

Site visit made on 10 August 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 20 October 2016

Appeal 1 - Ref: APP/G5750/C/15/3141045

Appeal 2 - Ref: APP/G5750/W/15/3141047

43 Dickens Road, London, E6 3BX

- The appeals are made by Mr H Patel against decisions of the Council of the London Borough of Newham.
- **Appeal 1** 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 H Patel against an enforcement notice issued by the Council of the London Borough of Newham.
- The Council's reference is 15/00435/ENFC.
- The notice was issued on 20 November 2015.
- The breach of planning control as alleged in the notice is: *"Without planning permission the erection of a roof extension."*
- The requirements of the notice are: *"EITHER 1. Demolish the roof extension (as shown edged in yellow on the photograph attached at Appendix 1) and return the roof of the property to its form prior to the unauthorised works being undertaken. 2. On completion of step 1, remove all materials and debris from the site. OR 1. Modify the roof extension (as shown edged in yellow on the photograph attached at Appendix 1) to bring it in accordance with the plans submitted as part of the Lawful Development Certificate issued by the Council on the 12th January 1915 (Council reference: 14/02110/CLP). 2. On completion of step 1, remove all resulting materials and debris from the site."*
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (d) of the Town and Country Planning Act 1990 as amended.
- **Appeal 2** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application Ref 15/02117/HH, dated 31 July 2015, was refused by a notice dated 17 November 2015.
- The development proposed is described on the application form as: *"reduce the loft to 40 cube (sic)¹ extend the 1st floor in line with next door, change the flats into a family house."*
- The Council's decision notice and the appeal form describe the development as: *"Alterations to dormer, 1st floor extension and conversion to family dwellinghouse."*

¹ 'cubic metres'

Decisions

Appeal 1 - Ref: APP/G5750/C/15/3141045

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal 2 - Ref: APP/G5750/W/15/3141047

2. The appeal is dismissed.

Background

The appeal site and surroundings

3. No. 43 Dickens Road is an end-of-terrace building, originally built as a two-storey single dwellinghouse but subsequently used as flats. It has been significantly altered and enlarged.
4. The building is prominently located at a right-angled bend in the road and its front, rear and southern side elevations are clearly visible from the public highway.

The appeal development

5. Works to alter and extend the roof have been carried out in order to create living accommodation on what has become the 2nd floor of the building. The planning application states that the building would be converted internally to enable it to be used once more as a single dwellinghouse.
6. The works consist of an alteration to the rear roof slope from a pitched roof to a flat roof (referred to on the LDC plan No. 04 as the '*back dormer projection*') and an attached flat roofed 2nd floor extension (referred to on the same plan as the '*dormer at back addition*') above a flat roofed 1st floor extension.
7. As built, the extensions contain clear-glazed side and rear facing windows at 2nd floor level.

Photographs

8. Attached to the enforcement notice is a photograph, taken on 14 April 2015, which shows, edged yellow, the extent of the unauthorised works. The requirements of the notice refer to this photograph.
9. The Council has submitted two other photographs of the building that were taken on 2 December 2015. One shows the front elevation with the ridge line of the roof raised from its original position and skylight windows in the roof slope. The other shows the southern side and rear elevations after some works had been carried out to reduce slightly the size of the unauthorised development.

Relevant planning history

10. On 23 October 2014 the Council confirmed that prior approval (Ref. 14/02139/PREHH) would not be required for a proposed single storey rear extension that would project 4m and 6m beyond the back wall of the original dwellinghouse.
11. On 12 January 2015 the Council certified as lawful (Ref. 14/02110/CLP) a proposed loft conversion with a double dormer (at the rear of the building) and two skylight windows to the front. An application for Building Regulations approval (Ref. 15/01038) was granted on 21 January 2015 for a single storey extension, loft conversion and 2nd floor extension.

12. On 23 April 2015 the Council refused to grant planning permission for the erection of a single storey infill ground floor rear extension and 1st floor back addition rear extension (Ref. 15/00111/HH).
13. On 17 November 2015 the Council refused to grant planning permission for the development that is the subject of Appeal 2 (Ref. 15/02117/HH). The reason for refusal was lengthy, but began by saying that the development “*fails to respect the scale, form and character of the original building and the surrounding properties*”. The decision notice contained two “*Informatives*”, the first of which advised that: “*As the rear dormer development has been undertaken without the benefit of planning permission, the applicant is reminded of the Council’s powers to enforce against breaches of Planning Control under Section 172 of the Town and Country Planning Act 1990*”.
14. On 20 November 2015 the enforcement notice, the subject of Appeal 1, was issued.

General principles regarding the appeals made on grounds (c) and (d)

Evidence and burden of proof

15. Where an appeal is made on legal grounds, the decision depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority.
16. The burden of proof regarding decisive matters of fact rests on the appellant. In this case, the appellant has asserted that the development that has been carried out is lawful, because either it is permitted development or alternatively it has gained immunity from enforcement action through the passage of time. He must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of those assertions. The relevant test of the evidence is ‘the balance of probability’ (i.e., that it is more probable than not).

Appeal 1, ground (c)

17. An appeal on ground (c) is that there has been no breach of planning control, either because (1) no ‘development’ has taken place; or (2) planning permission has been granted; or (3) it is ‘permitted development’. The situation is judged at the time that the enforcement notice was issued, namely 20 November 2015.
18. The appellant’s case is that the development has been erected in accordance with the LDC (Ref. 14/02110/CLP).

The 2015 LDC

19. On the basis of the proposed works shown on the plans that accompanied the LDC application, the Council certified that a proposed loft conversion with a double dormer and two skylight windows would comply with all the provisions of Schedule 2, Part 1, Class B of the Town and Country (General Permitted Development) Order 1995, as amended [the GPDO], which applied at that time.

Permitted development rights under Schedule 2, Part 1, Class B

20. Class B relates to the “*enlargement of a dwellinghouse consisting of an addition or alteration to its roof*”. Permitted development rights under Part B are subject to a series of limitations that are set out in paragraph B.1 and conditions that are set out in paragraph B.2.

Limitations relevant to this appeal

21. Paragraph B.1, sub-section (b) states that development is not permitted if “*any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the roof*”.

22. Paragraph B.1, sub-section (d) states that development is not permitted if “*the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic metres in the case of a terrace house; or (ii) 50 cubic metres in any other case*”.

Conditions relevant to this appeal

23. Paragraph B.2, sub-section (c) states that “*any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse shall be - (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed*”.

The Council’s case

24. The Council says that the appeal development cannot rely upon the 2014 LDC because it deviates from the details shown on the LDC application plans in the following respects:
- 1) The ridge of the original roof has been raised and therefore the development fails to comply with the condition set out in paragraph B.2, sub-section (b).
 - 2) As the proposed roof extension shown on the LDC application plan had a volume of exactly 40 cubic metres, the increased height and depth of the roof extension that has been erected means that the volume of the roof extension exceeds 40 cubic metres. The development therefore fails to comply with the limitation set out in paragraph B.1, sub-section (d). Although the depth of the roof extension was reduced following the issue of the enforcement notice, the increased height of the ridge means that the volume of the roof extension continues to exceed 40 cubic metres.
 - 3) An opening window has been added to the side elevation of the roof extension and therefore the development fails to comply with the condition set out in paragraph B.2, sub-section (c)(i) and (ii).

Reasons and conclusions on ground (c)

25. Any claim of permitted development rights must be measured against each and every one of the sub-clauses of the relevant Class. If any of the limitations, exemptions or provisos are exceeded, then the whole development is unlawful, not just that element in excess of permitted development rights. In this case, the limitations and conditions of Schedule 2, Part 1, Class B have not been met.
26. Permitted development rights cannot be claimed retrospectively by the later removal of one element so as to return the remaining development to the permitted tolerance. The situation must be judged at the date the development was carried out, normally the date when the works or use commenced.
27. The appellant’s ground (c) case is an assertion of lawfulness, but it is unsupported by any reasoned rebuttal of the specific points raised by the Council or by any relevant, clear and unambiguous evidence. As such, the appellant has failed to discharge the burden of proof placed upon him on the balance of probability. I find that development has taken place that required an express grant of planning permission, and that permission for it has been refused. Accordingly, the appeal on ground (c) must fail.

Appeal 1, ground (d)

28. An appeal on ground (d) is that at the date the notice was issued it was too late to take enforcement action in respect of the matters alleged in the notice.
29. This ground of appeal assumes that at some stage there has been a breach of planning control but that it is immune from enforcement, having subsisted for the 4 or 10 year periods laid down by section 171B of the Act.

30. In cases involving operational development, the 4 year period applies and begins to run from the date when the operations are “*substantially completed*”. The relevant date in this case is 20 November 2011.
31. The appellant asserts that the development is immune from enforcement action but offers no evidence to support that assertion. No indication is given as to the date by which the development was substantially completed and no invoices or receipts for the work have been provided.

The Council’s case

32. The Council has submitted an aerial image of the site that is dated 26 May 2012. It shows that no roof extension existed on that date. The Council has also referred to an Approved Building Control Inspector’s Initial Notice of works to be carried out on site, which is dated 12 January 2015. Both post-date 20 November 2011.

Reasons and conclusions on ground (d)

33. As with the appeal on ground (c), the appellant’s ground (d) case is an assertion of lawfulness, unsupported by any reasoned rebuttal of the specific points raised by the Council or by any relevant, clear and unambiguous evidence.
34. As with ground (c), the appellant has failed to discharge the burden of proof placed upon him on the balance of probability. I find that it was not too late to take enforcement action in respect of the matters alleged in the notice. The development that has taken place is not immune from planning control and accordingly, the appeal on ground (d) fails.

Appeal 1, ground (a), the deemed planning application and Appeal 2

35. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the enforcement notice as constituting the breach of planning control.

Appeal 1 - The scope of the deemed planning application

36. The limit on the development which can be granted permission is governed by the wording of section 177(1)(a). The deemed planning application is for the roof extension which has been carried out and an appeal on ground (a) relates to the planning merits of that development.
37. Planning permission may be granted only for those matters. There is no power to grant planning permission for something that is different from that enforced against. This is relevant to situations where further changes are made to unauthorised operational development after an enforcement notice is served.

The main issue

38. The main issue in these appeals is the effect of the development on the character and appearance of the house and the street scene.

Planning policies

39. No special policies, controls or designations apply to the appeal property or the surrounding area. The Council has drawn attention to a number of general policies that seek to achieve a high standard of new development.
40. These include policies 7.1, 7.4, 7.5 and 7.6 of the London Plan (2016) and policies S6, SP1, SP3 and H1 of the adopted Newham Core Strategy (2012). The aim of these policies is to ensure that the design of new development is of a high quality, and that it is based on an analysis of local character and the specific attributes of the site. New development should help to reinforce or enhance the character and local distinctiveness of the neighbourhood.

41. The Council also refers to its Supplementary Planning Guidance document No. 15 (2000) entitled "*Altering and extending your home*" as a material consideration in these appeals. This states that the design of new extensions should relate to the style and character of the existing house and fit in with the street scene.
42. The objectives of these policies and this guidance broadly reflect those set out in the National Planning Policy Framework [NPPF] and the DCLG's web-based Planning Practice Guidance. The NPPF explains that the "*Government attaches great importance to the design of the built environment*" and that "*good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people*".

The appellant's case

43. The appellant has not submitted a statement of case. His representations, as expressed on the two appeal forms and in an email to the Planning Inspectorate of 29 March 2016, make no specific reference to the planning merits of the development.
44. His argument in respect of Appeal 1, ground (a), is that the Council has not carried out a site visit to the property and that if a visit had been carried out the Council would have seen that what had been carried out was legal. His argument in respect of Appeal 2 is that the "*Plans are within permitted development, match streetscape and ... other approved development in the area.*" Both arguments are, in essence, a reiteration of the appellant's ground (c) case.

The Council's case

45. The Council refutes the appellant's claims that Council officers failed to carry out a site visit. The Council states that visits were carried out on 14 April 2015 and 2 December 2015 (dated photographs taken at the time have been submitted), and the Council's Delegated Report of 17 November 2015 also makes mention of the planning application site notice being put up close to the site on 8 October 2015.
46. As regards the planning merits of the development, the Council contends that, because of its bulk and position, the appeal development is out of character with the house. It is a highly visible addition to the rear elevation of the building, when viewed from public vantage points, and the raised ridge is an uncharacteristic feature of the terrace of which the building forms part.
47. The Council accepts that some roof extensions can be acceptable in design terms and can provide useful additional accommodation in a family home. Where roof extensions meet all the conditions and limitations prescribed in the GPDO they are permitted development. However, in this case the roof extension is not acceptable in design terms and does not fall within the ambit of permitted development.

Reasons and conclusions on the roof extension

48. The appellant has provided no evidence to suggest that either he or his professional advisors applied the local and national planning policies, or the Council's design guidance, to this development. It seems to me improbable that an analysis of the characteristics of the original house or the buildings in the locality was carried out to inform the design of the development.
49. The appellant relied upon permitted development rights to construct the roof extension, but failed to comply with all the provisos, limitations and conditions that are set out in the GPDO. Because the roof extension was not built in accordance with the proposed scheme certified as lawful in January 2015, no part of it is permitted development. As a consequence, the design, scale, proportions and materials of the roof extension fall to be considered against the objectives of the local and national planning policies and guidance that apply to development of this type.

50. I find that the size and siting of the roof extension, and the raising of the ridgeline to accommodate the loft conversion, has disrupted the scale and proportions of the house and the terrace. It is an unsightly and incongruous addition to the building that harms its character and appearance and appears discordant in the street scene. The development conflicts with the objectives the Council's planning policies and guidance and the Government's NPPF. No conditions would overcome the harm that it has caused.
51. I have considered the fall-back position; what could be built under permitted development rights were planning permission to be refused. This factor carries little weight in this case, because compliance with the LDC is one of the two options that are set out in the enforcement notice for remedying the breach of planning control that has occurred. Full compliance with that requirement would remedy at least some part of the harm that the development has caused.
52. For the reasons given, Appeal 1 on ground (a) and Appeal 2 fail.

Conclusions

53. I have taken account of my observations at the site and all the matters raised in the written representations. For the reasons given I shall dismiss the appeals and uphold the enforcement notice.

George Mapson

INSPECTOR