
Appeal Decision

Site visit made on 24 October 2016

by B M Campbell BA(Hons) MRTPI

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

Decision date: 4 November 2016

Appeal Ref: APP/G5750/C/16/3153031
48 Ashlin Road, Stratford, London E15 2AP

- 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 C Miah against an enforcement notice issued by the London Borough of Newham.
 - The enforcement notice was issued on 27 May 2016.
 - 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 to:
 1. Demolish the roof extension 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.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a roof extension on land at 48 Ashlin Road, Stratford, London E15 2AP referred to in the notice.

Main issue

2. The main issue is the effect of the extension on the character and appearance of the residential area.

Reasons

3. The appeal property comprises an attractive, modest, two storey Victorian house within a terrace of similar properties. It sits opposite and just to the south of the junction with Walnut Gardens. As such, in addition to a typical view of the front roof slope when standing on the opposite side of the road directly in front of the property, there are clear views of the front roof slope of and of those of its neighbours when approaching Ashlin Road along Walnut Gardens. The front roof slopes of the appeal property and its neighbours are thus fairly prominent elements of the street scene.
4. To the front of the property, the roof extension has involved the insertion of two roof lights and raising the ridge by, the appellant says, 75mm. The Council does not give a dimension but claims the increase in height is greater than

75mm. The fact that the ridge has been raised is discernible from the street when attention is drawn to it as in this appeal. However, the difference in ridge height is very small and the front roof slope is visually separated from its neighbours by projecting party fire walls so that the minor change in height is not particularly noticeable. It is not of such magnitude as to materially affect the rhythm of the pitched roofs and party wall upstands along the terrace. Whatever the true dimension of the increase in height might be, the raised ridge is not a prominent or intrusive feature in the street scene and is unlikely to be immediately apparent to the ordinary man in the street. Rather it is the two roof lights, to which the Council has not objected that are more noticeable.

5. The Appellant has drawn attention to other examples of raised ridges at terraced properties in the area. Some of these have been executed more sympathetically than others but their existence has not influenced my consideration which focuses on the effect of this development on the terrace of which the appeal property forms part and also on the particular street scene.
6. The rear of the terrace is visible from Pine Avenue to the south as is the rear roof extension at the appeal property. The roof extension is a bulky addition when viewed from this direction which does interrupt the rhythm of the main roofs and pairs of handed outriggers along the terrace. However, the Appellant has explained that the extension was designed to benefit from the planning permission granted by the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). It only fell foul of the permitted development tolerances due to a design change to provide better insulation suggested by building control which resulted in an increase in height above the ridge by some 75mm.
7. That accords with the Council's statement that the development would not have been permitted by Class B of Part 1 of Schedule 2 to the GPDO because para.B.1(b) would not have been met as part of the dwellinghouse would, as a result of the works, exceed the highest part of the existing roof. That being the case, a fall back exists whereby the same extension could be built as permitted development and without the need for express planning permission provided the height did not exceed the pre-existing ridge height. The difference between that built and that which could be built is minimal. I have already found that the increase in height at the front of the property has no material effect on the street scene. At the rear, no change would be needed to the extension on the outrigger and only a very small reduction in height of the extension on the main roof would be needed which would have no material effect on its bulk when seen from Pine Avenue or from adjoining properties.
8. The Council, in its response to the appeal on ground (f) is right to say that the whole development is unlawful and that one cannot achieve permitted development retrospectively by subsequently altering an extension. However, it is well established that enforcement action is intended to be remedial and not punitive. Had I found the increase in height to be objectionable I would have varied the requirements of the notice to require a reduction in height of the extension so that it did not exceed the highest part of the pre-existing roof. In that way the extension would have been brought into line with what might have been built as permitted development which would be remedial rather than punitive.

9. In this case I have not found the difference in height to be objectionable but rather found no significant difference between what has been built and that which could have been built as permitted development (the fall back) in terms of the effect on the character and appearance of the residential area. Thus in this case, insofar as the rear roof extension conflicts with the policies of the Development Plan which seek to achieve a high standard of design with respect for the particular setting; other material considerations – that is the available fall back- indicate that the proposal should be determined otherwise than in accordance with the provisions of the Development Plan in this instance.
10. I have had regard to the appeal decisions drawn to my attention by the Council but these are not directly comparable. In particular 472a Katherine Road would not have enjoyed permitted development rights, 21 Wyatt Road exceeded both the volume and height limits set out in Class B of Part 1 of Schedule 2 to the GPDO, and 46 Gooseley Lane was concerned with an application for a Lawful Development Certificate. I have also noted the comments made by a neighbour about potential damage to the adjoining property but this is a private matter to be resolved between the parties involved.
11. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission on the application deemed to have been made granted. The appeal on ground (f) does not therefore need to be formally considered.

B M Campbell

Inspector