

Appeal Decisions

Site visit made on 7 November 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 5 December 2016

Appeal A and B refs: APP/U5360/C/16/3145399 and 3145400 Land at 79 Darenth Road, London N16 6ES

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr S Cik (Appeal A) and Mrs Deborah Cik (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice, numbered 2014/0140/ENF, was issued on 21 January 2016.
- The breach of planning control as alleged in the notice is unauthorised erection of a rear dormer extension on the top floor level and a rear dormer extension at second floor level and the installation of a water tank on the roof of the property.
- The requirements of the notice are to:
 - (1) Remove two rear dormer roof extensions and the water tank from the property.
 - (2) Make good and damage resulting from the compliance with the requirements of the notice and restore the roof of the property to its condition before the unauthorised development was carried out.
 - (3) Remove all materials, debris, waste and equipment resulting from compliance with the requirements of the notice from the property and its premises.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on grounds (b), (c), (f) and (g). Since the prescribed fees have not been paid within the specified period, the initial ground (a) appeal and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: Both appeals succeed on ground (g) period of compliance, but otherwise the appeals are dismissed and the enforcement notice is upheld as varied in the terms set out below in the formal decisions.

Application for costs

1. The Council against the appellant made an application for costs. This application is the subject of a separate decision.

Appeals A and B - ground (b)

2. In pursuing this ground of appeal, the onus is firmly upon the appellants to show that, at the point of issue, the alleged breach stated in the notice has not as a matter of fact occurred, on the balance of probabilities. During the period leading up to the issue of the notice, building work was happening at no. 79 that resulted in the erection of rear dormer windows and the installation of a water tank. The latter has been removed nevertheless the operational development actually existed at the date of issue.
 3. It therefore follows that the alleged matters occurred in fact. Ground (b) fails.
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Appeals A and B - ground (c)

4. The onus of proof is squarely upon the appellants to show that the alleged matters do not constitute a breach of planning control. Essentially, the claim is the when building work started it benefited from permitted development (PD) rights. Schedule 2, Article 3, Part 1, Class B of the Town and Country Planning (General permitted Development) Order 1995 (GPDO) then in force but amended in 2015, provided for the enlargement of a dwellinghouse consisting of an addition or alteration with the benefit of deemed planning permission. These rights are subject to conditions and limitations.
5. Apart from vague assertions, I am afraid the appellants' evidence does not show, to my satisfaction, how the development satisfies all of the physical criteria in Class B of the GPDO. There is no evidence to counter the Council's claim that the dormer extensions fail to meet limitation in paragraph B.1 sub-section (d)(i). This is because the cubic content of the resulting roof space exceeds the cubic content of the original roof space by more than 40 cubic metres. In addition, there is no explanation as to how it meets condition B.2 (bb), which states that the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.
6. I cannot, on the available evidence, find that the development benefits from a deemed planning permission. On the balance of probabilities the alleged matters constitute a breach of planning control because express planning permission is required. Therefore, ground (c) fails.

Appeal A - ground (a) and the deemed application

7. In January 2014, the Council granted a planning permission for building work comprising alterations and addition to the roof¹. However, the development, as built, is materially different to that scheme because of significant departure in design and layout. A retrospective planning application was refused for the roof extension and a subsequent appeal dismissed².
8. The appellant advances no positive case for the installation of the water tank; the latter was not present at the time of my site visit. Mr Cik seeks a planning permission for the 'as built' rear dormer extensions on the top and second floor level of the dwelling. Given that the previous Inspector dismissed the s.78 appeal having assessed the roof extensions, the Council rely upon that decision. However, there has been a shift in the appellant's personal circumstances, which should be taken into consideration. Whilst the findings of the previous Inspector are material, and there is a need for consistency in the planning process, I am not bound to reach the same conclusions provided there are sound planning reasons for departing from the previous Inspector's approach.

Main issues

9. I consider these are as follows: (1) The effect of the development on the character and appearance of the host building and the surrounding area, and (2) if any harm arises whether it is outweighed by other considerations, including fall-back, personal circumstances and implications for Human Rights.

¹ Council ref: 2013/0727.

² Council ref: 2014/1733 appeal ref: APP/U5360/D/14/2228937, dismissed on 2 March 2015.

Reasons - Character and appearance

10. Tree-lined streets with terraced houses define the character of the area. The architectural style emphasised by hipped roofs and turreted bay windows. No. 79 is located in a residential street of 2-4 storey terraced houses and flats. The property is a split-level 3/4 storey house, and is the end terrace in a small group of three properties. It lies close to the junction of Darenth Road and Portland Avenue, and the rear of a number of properties on Portland Avenue face towards its flank side. The property has a back garden and there is a block of flats to the rear.
11. The roof extensions appear as substantial additions. The top floor extension is similar in height to the main ridgeline and virtually extends over the rear roof slope; it is not set into the pitched roof and forms a bulky box-like flat roofed addition. The second floor dormer is virtually flush with the vertical elevation of the floor below. The added complexity is the addition of a *succah* roof. While the type and texture of materials utilised in the external elevations correspond with the host building, the roof extensions dominate the rear elevation and cause visual harm to the external appearance of the building. The sheer mass and scale of the additions result in a top-heavy appearance and visually unbalance the symmetry of the terrace. Cumulatively, they form discordant and overtly dominant features on the host building and detract from the simple architectural style of the block.
12. Dormer extensions of varying size and shapes exist in the locality and are part of the residential character. However, the majority appear subservient and set into the plane of the roof. In comparison, the top floor extension's side elevation is noticeable from the road, and the additions are visible from properties to the rear, including amenity areas to flats and a car park, because of their elevated position. The dormer windows appear as ugly additions because of their size. The scale of development draws the naked eye and planting does not, and would not, screen or reduce the visual impact of the development. This type of roof alteration, if repeated, would significantly change the architectural style of buildings and character of the street scene. I find the roof extensions out of keeping with the local architectural vernacular because of their design.
13. The development has a significant adverse visual effect upon the character and appearance of the host building and that of the surrounding area. It does not meet with design guidance for such extensions found in Supplementary Planning Document on *Residential Extensions and Alterations* (2009). Accordingly, the development conflicts with policy 24 of the London Borough of Hackney's Core Strategy (2010), policy DM1 of the Development Management Local Plan (2015), and policies 7.4 and 7.6 of the London Plan (2015). These seek high quality development and are consistent with national policy found in paragraph 56, 57, 61 and 64 to the National Planning Policy Framework (NPPF). I shall next evaluate arguments made in support, which I shall briefly outline and underline.

Other considerations

14. The unchallenged personal circumstances of the appellant and his family: When planning permission was granted for the extensions in 2014, the family comprised the appellant, his wife and 14 children of which three were married with their own homes; 11 resided at no. 79. Accommodation for 13 beds

was required. In March 2014, building work pursuant to the approved scheme started. Circumstances changed during that period because the appellant's wife expected the birth of two more children. A carer assists in the upbringing of the children and additional bedroom and washroom was immediately required. The approved scheme was drastically modified to provide additional space, as it did not meet the family's accommodation needs.

15. The appellant considers there is a lack of family dwellings to meet the needs of large families in an area where there is a particular demand. The contention is there is a need for the top and second floor dormer extensions in order to meet the personal accommodation need of the appellant and his family, given their particular circumstances.
16. I understand that the appellant does not have the financial means to relocate to a bigger property and there is no large property in the area. However, there is imprecise evidence to back up the claim that there is no suitable alternative accommodation available in the locality. There is no plausible explanation as to why the family needs to remain in this particular area. In addition, there is no cogent evidence to show the design, size and scale of the roof extensions, as built, is the only solution to meet the need for additional floor space. While I have much sympathy with the appellant's predicament, the personal circumstances presented carry moderate weight in support.
17. Best interests of the children: This is a primary consideration for me³. I am very much aware of the fact that additional accommodation is required to meet the needs of the appellant's family. More space would certainly meet the needs of this growing family in a stable environment. This factor weighs in favour of the appellant.
18. Human rights implications: The appellant and occupiers' rights including each child, under Article 1 of the First Protocol, Article 8 and Article 14 of the European Convention on Human Rights (ECHR)⁴ must be taken into consideration. A consequence of my decision to dismiss the ground (a) appeal is demolition of the rear roof dormers and restoration of the building at considerable expense. While there is no risk of homelessness, there is potential for disruption to, and interference with, family life.
19. That said, however, local and national planning policies seek good design in the public interest to improve the built environment, whereas the development causes visual harm the impact of which cannot be mitigated by planning conditions. There is a need for development management policies to be applied to proposals and this is an appropriate proportional response to that need. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal

³ The Department's Planning Practice Guidance (PPG) [Ref 21b-028-2015091] states that; *Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.*

⁴ The ECHR protections have been codified into UK law by the Human Rights Act 1998.

would have a disproportionate effect on the appellant and occupiers of the site in my overall conclusions.

20. Public Sector Equality Duty: The claim is that large family homes are required for cultural reasons. The inference being that a particular section of the community with protected characteristics requires large family homes due to specific cultural reasons. The assertion is that this development is in response to that specific need. For the avoidance of any doubt, I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I shall consider whether dismissal of the appeal would be proportionate in the light of any potential equality impacts in my overall conclusions.
21. There is a fall-back which would result in similar dormer extensions: The claim is that dormer windows could be constructed as PD, but the resultant development would potentially be reduced in scale, because of limitations and conditions imposed by Class B of Part 1 to the GPDO. In comparison, the as built dormer windows have a visually greater impact.
22. An alternative to demolition might be to grant planning permission for smaller roof extensions as part of the alleged matters. However, there is no specific scheme showing how the development could actually be modified so as to address the visual harm caused by the design, size and scale of the roof extensions. To all of these arguments, I attach limited weight.
23. There is support for the development from local residents: I find nothing in them to suggest planning permission ought to be granted for visually harmful development. In any event, support for a particular development is not determinative and each application should be assessed upon its individual merits. This matter is given little weight.
24. Enforcement action is discretionary⁵ and that it does not serve any purpose to require the demolition of the roof extensions: Deciding whether it is expedient to take enforcement action is within the purview of the Council. Given the perceived harm caused to the appearance of the host building and character of the area, it decided to issue the notice. It is not for me to assess the merits of that decision. I have, however, examined the reasons for issuing the notice and found harm to matters of acknowledged importance. A breach of planning control has occurred and, as paragraph 207 of the NPPF states, effective enforcement is important as a means of maintaining public confidence in the planning system. I attach limited weight to this line of argument.

Overall conclusion on ground (a)

25. The development causes adverse visual harm to the character and appearance of the host building and that of the surrounding area to which I attach significant weight. Accordingly, there is conflict with local planning policies referred to above.
26. On the other side of the scales, limited weight is given to the fall-back arguments, little weight to the suggestion that local residents living in and

⁵ Reference is made to the case of *R v Leominster District Council* [1998] CoA 76 P. & C. R. 346, considered.

around the site support the appellant. Moderate weight I attach to the personal circumstances.

27. The best interests of the children are of considerable importance but as the PPG makes clear these interests do not always outweigh other considerations. The best interests of the children involved would clearly be served if the roof extensions remain in place given the need for additional accommodation. Clearly, grant of planning permission for the development alleged has the potential to limit disruption to family life. However, there may well be other design solutions for the roof extensions that have less visual impact. It appears to me that the latter has not been properly explored.
28. I am mindful that the appellant's family would suffer a disadvantage if the appeal is dismissed. In such circumstances, the decision would not promote equality of opportunity or assist in facilitating cultural need for a large family home. The seriousness of this concern is less severe because the appellant and his family would not become homeless, though there is likely to be considerable disruption to their daily routine but only for the duration of the building work if the notice is ultimately upheld. For all of the reasons given in the preceding paragraphs, I consider that not fulfilling the objectives set out in section 149 of the 2010 Act weighs only moderately against refusal of planning permission in this case.
29. Any interference in this regard must be balanced against the public interest in upholding planning policy to protect the environment. In the light of the same factors that have informed my consideration of equality impacts, I am of the firm view that dismissal of the appeal would be a proportionate response and would not lead to an unacceptable violation of any of the appellant or his family's Human Rights, which thus carry only some weight.
30. The case in favour of planning permission has been elegantly and forcefully put. Nevertheless, in my planning judgement, the advanced considerations in support of this ground (a) appeal, whether taken individually to cumulatively, do not, on balance, outweigh my findings on the main issue above.

Appeals A and B - ground (f)

31. The notice's aim is to remedy the breach of planning control. I note the argument that visual impact could be reduced if the dormer windows were altered. However, in the context of ground (a), there is no detailed scheme advanced for my consideration. In the absence of any properly formulated and presented scheme, it is difficult to examine whether any alternative to demolition would potentially overcome the planning difficulties at less expense and cost.
32. The appellants consider that the notice should require alterations to the dormer windows so that they meet physical criteria in Class B, Part 1 of the GPDO. But PD rights do not apply retrospectively; a deemed planning permission is provided for prospective development. In any event, the appellants fail to advance any lesser step to show how two very large roof extensions can physically and practically be reduced to comply with PD tolerances. Significant work is necessary to alter their built form. Varying the notice to require such alterations is likely to introduce imprecision in its terms because of the nature and scale of the operations. Ambiguity is likely to create interpretative

problems. Such an outcome is unacceptable given the potential liability that comes with a failure to comply with the notice.

33. I find that the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, ground (f) fails.

Appeals A and B - ground (g)

34. It is necessary to consider whether the specified compliance period, six months, falls short of what should reasonably be allowed. Two years as a period of compliance would be excessive given the nature of the building work required. Notwithstanding this finding, quotations would need to be obtained for the work required by the notice. It would need to be arranged. All of this is likely to take considerable time and result in significant disruption and hardship to the family as affordable temporary accommodation would need to be found while the work is carried out. And a slightly extended period would assist. I am of the firm opinion 12 months is reasonable and appropriate. This is a just and proportionate response to the particular circumstances presented, and strikes a fair balance between the competing interests of the wider public and individuals involved in this case. Therefore, ground (g) succeeds.

Appeals A and B - overall conclusions

35. For all of the above reasons and having regard to all other matters, my inescapable conclusions are as follows. Grounds (b), (c) and (f) fail. Ground (a) in appeal A fails and planning permission will be refused on the deemed application. A reasonable period of compliance is 12 months so ground (g) succeeds. The enforcement notice will be upheld subject to a variation.

Formal decisions - Appeal A APP/U5360/C/16/3145399

36. The appeal succeeds on ground (g), and the enforcement notice is varied by the deletion of the text and number *six (6) months* in section 6, time for compliance, and substituted therefor by the following period of compliance: *12 months*.
37. Subject to the variation above, 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 B APP/U5360/C/16/3145400

38. The appeal succeeds on ground (g), and the enforcement notice is varied by the deletion of the text and number *six (6) months* in section 6, time for compliance, and substituted therefor by the following period of compliance: *12 months*.
39. Subject to the variation above, the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector