

Appeal Decisions

Site visit made on 28 November 2016

by K R Seward Solicitor

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

Decision date: 8 December 2016

2 Studland Road, Hanwell, London W7 3QX

Appeal A: APP/A5270/C/16/3157370

Appeal B: APP/A5270/C/16/3157371

- 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 Mrs Sandra Richards (Appeal A) & Mr Bill Richards (Appeal B) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 27 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of four dormer roof extensions in the side roof slopes and alterations to the roof including the raising of the height of the ridge and the side eaves.
- The requirements of the notice are:-
 - a. Remove the four (4) side dormer roof extensions in their entirety.
 - b. Restore the roof to its original condition prior to the unauthorised development occurring, including lowering the ridge of the roof and the side eaves to their original height.
 - c. Remove all resultant debris.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (c), (f) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Summary of Decisions: The appeal on ground (a) is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr and Mrs Richards against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The appellant's have argued under ground (c) that the ridge height of the roof has not been raised as alleged in the enforcement notice. Such argument is
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more pertinent to ground (b) which is where the breach of control alleged in the notice has not occurred. The Council has replied to the submissions made and so no prejudice arises from me dealing with this argument as though made under ground (b).

Reasons

Appeals A & B - ground (b)

3. In order to succeed on this ground the burden is on the appellants to demonstrate that the ridge height of the roof has not been raised as alleged in the notice.
4. According to the appellants, the roof alterations maintained the ridge at the same height as before the works.
5. Given the dispute on a point of fact, I asked the parties to take measurements at my site visit. Additionally, I invited the parties to identify in writing the original height, noting that scaled plans had in the past been submitted to the Council for the purposes of securing a Certificate of Lawfulness of Proposed Use or Development (LDC). However, attempts to measure the height on site were unsuccessful. From marks in the rendering, a tapering line can be seen in the front elevation where bricks at the outer edge have been inserted at a later time. The appellant does not dispute that blockwork was replaced during the roofing works, but maintains this was due to its stability rather than to increase the height. There are no physical features to help distinguish whether or not there is a change in overall height.
6. The Council has produced photographs taken by a neighbour of the detached dwelling both before and after the development. These cannot be relied upon for precise measurements in ridge height because they have not been taken from exactly the same position. There is also an element of lens distortion that arises in the images which is evident from some disparity in the measurements of unaltered features.
7. Other photographs of the works in progress have been supplied. Whilst depicting major roof works, it cannot be ascertained from these that the ridge has actually been raised. What is apparent from the photographs is that if there is any increase, it is negligible. Where there does appear to be a slight change is in the pitch of the roof which does not look quite as steep as before. That tallies with the eaves having been raised and explains the tapering line in the render up to the ridge point.
8. From the information before me I am not satisfied that the ridge height has been raised. To this extent the ground (b) appeals succeed and references to the ridge having been raised should be deleted from the notice.

Appeals A & B - ground (c)

9. The appeals on this ground are that the matters alleged in the notice do not constitute a breach of planning control.
10. The appellants contend that there is no breach from the alterations to the eaves because they are very minor falling within 'normal building tolerances' and are therefore '*de minimis*'. The issue arising from this is whether those

works constitute 'development' for the purposes of section 55 of the 1990 Act.

11. Section 55(1) defines 'development' as "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land*".
12. In this instance, the works fall within the ambit of '*building operations*'. These are defined widely to include (a) the demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to a building; and (d) other operations normally undertaken by a person carrying on business as a builder.
13. Section 55(2) excludes from the definition of 'development' a number of operations and uses. These include within section 55(2)(a) the carrying out of the maintenance, improvement or other alteration of any building or works that do not materially affect the external appearance of the building.
14. Case law has established that it is not enough that alterations are made to the exterior of a building or that they affect the external appearance for them to fall within the definition of development. The test, the courts have held, is whether the alterations materially affect the external appearance, not just the effect on the exterior. Such a judgement may involve considerations of the nature of the building and the alterations. The change to the external appearance of the building as a whole must be considered rather than a part taken in isolation. The effect must be more than '*de minimis*'. It is this latter point that has been taken by the appellants.
15. The appeal property is a detached two storey house which is gable fronted. There is no dispute that the roofing works undertaken included raising the eaves. The parties disagree on the extent to which the eaves have been altered. The appellants say that the eaves were raised by 150mm at the front by means of engineering bricks to accommodate a 250mm high ceiling joist. The Council says that the eaves have also been raised on both sides and the measurement is 400mm.
16. Drawings submitted to the Council in 2012 in conjunction with an application for a LDC show the property as it existed before the alterations. Along each side elevation a window is shown just beneath the eaves. There is now a sizeable gap between the top of those windows and the eaves. On the right hand side, external pipework runs horizontally above the window. The appellants suggest that the original gap between the window and eaves was larger than it appeared due to the amount of roof overhang which has now been reduced. That explanation does not correspond with either the drawings or the photographs of the dwelling before it was altered. The appellants account for a line in the side elevation rendering as being where bricks were replaced, but this line broadly correlates with where the eaves appeared in the drawings and photographs.
17. It seems to me that the increase exceeds 150mm, but may not be as much as 400mm. Whatever the precise figure, visually it is very clear that there has been a change in eaves height which can be seen from various vantage points in the street. The right side elevation is particularly exposed to view having no other building close-by, only the neighbour's garden. From the

front, the change is also very apparent as the eaves end notably higher than the window tops. The nature of the change and extent of the visibility does increase the materiality of the effect on the property.

18. When considering the building in its entirety the proportions have altered which is most apparent in the relationship between upper level windows and the roof. The effect is not dramatic, but it is to my mind material.
19. Thus, I consider that as a matter of fact and degree the alterations do materially affect the external appearance of the building. As such, the raising of the eaves was 'development' for which planning permission was required.
20. Turning to the dormer roof extensions. A LDC was issued by the Council on 26 November 2012 for various proposed works at the appeal property including two dormer extensions to both side roof slopes. The issue of a LDC is not a grant of planning permission, but the lawfulness of the operations undertaken for which a LDC is in force is conclusively presumed unless there is a material change in relevant circumstances before the operations are begun.
21. The appellants accept that the works were not carried out in full accordance with the approved plans. Accordingly, the development undertaken is not that for which the LDC was issued and it cannot be relied upon. In any event, there had been a change in circumstance since the LDC was issued, namely the introduction of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which is set out in different terms to the 1995 Order previously in force.
22. The appellants argue that the roof dormers still fall within the parameters of permitted development by virtue of the provisions of Schedule 2, Part 1, Class B of the GPDO. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain conditions and limitations.
23. The roof dormers will not have been constructed in isolation, but clearly form part of a single building operation involving other alterations to the roof. Paragraph B.1. provides that development is not permitted by Class B *if any part of the dwellinghouse, would as a result of the works, exceed the height of the highest part of the existing roof.* In accordance with my findings above, the enlarged roof does not appear to exceed the existing roof height to be excluded by paragraph B.1.(b). However, the condition in paragraph B.2.(b)(i)(aa) requires the eaves of the original roof to be maintained or reinstated. As the original eaves have been raised this condition is not met meaning that the roof dormers cannot be permitted development.
24. The appeals on ground (c) fail.

Appeal B only – ground (a) and the deemed planning application

Main Issues

25. While the Council's reasons for issuing the notice do not identify any concerns regarding the effect on neighbouring living conditions, the Council has in its Appeal Statement made reference to the impact on privacy. This, and other matters, has been raised by a neighbour. The appellant is aware of these

submissions and has taken the opportunity to comment. No prejudice therefore arises from my dealing with this issue.

26. The main issues are:-

- the effect of the development on the character and appearance of the host dwelling and the surrounding area; and
- the effect on the living conditions of neighbouring occupants with particular reference to privacy.

Reasons

Character and appearance

27. The appeal property is the first dwelling encountered on the right hand side upon entering Studland Road. One side boundary abuts the rear garden of No 262 Greenford Avenue which occupies the corner position. No 2 is at the top of an incline giving it a level of prominence enhanced by its exposed position.

28. The road is composed of mainly reasonably large two storey detached houses with small front gardens. There is a wide variety of architectural styles. In the part of the road where No 2 is located, no two houses are alike. A number have been extended in various ways including examples of large roof dormers. The appeal property is of relatively simple design with upper and lower side bay windows. It has previously been extended at the front and side with the addition of a porch and wrap around extension beneath a shallow pitch roof. Due to the ground levels, the dwelling is at a higher level than the pavement, as are neighbouring properties.

29. Aside from alterations to the eaves, four box roof dormers have been added, two to each roof plane. These are set back from the eaves and are below the ridge height. All differ in size, their proximity to the eaves and gable ends and the separation distance between each pair. They also differ in size and position from those proposed in the LDC.

30. Given their size and number occupying a large part of each roof slope, the dormers are a bulky addition to the roof. Because of the elevated height and exposed position, they do appear somewhat obtrusive. The balance of the host property has also been upset to a degree by the smallest right side dormer being set closer to the front gable end than the left side dormer. This gives the visual impression of differing heights which detracts from the appearance of the dwelling as does the variance with all four dormers in their positions on the roof.

31. The window styles are not the same in each of the dormers nor do they match the host dwelling which creates a rather haphazard appearance. However, this matter could be addressed by replacement windows secured through a planning condition. As such, I find no harm in this regard.

32. The circumstances giving rise to the other roof dormers in the road is unclear. Whilst the Council points out that they may not benefit from planning permission, I have been given no reason to believe that is so. Those that I saw did not look new. The presence of other large roof dormers in the vicinity illustrates that roof additions are not untypical for the area. None are

alike and in this context it is not notable that there are no others similar to those at No 2. The wide mix of property styles means that the nature of the extensions is not out of character for the surroundings.

33. It is the factors previously identified above that adversely affect the character and appearance of the dwelling and surrounding area to bring the development into conflict with Policies 7.4 and 7B of the Development Management Development Plan Document (DPD) 2013, Policies 7.1, 7.4 and 7.6 of the London Plan, 2015 insofar as they all seek high quality design. The extensions are also contrary to the similar aims of Paragraph 56 of the National Planning Policy Framework (the Framework).
34. However, whilst the development is contrary to the development plan, I am mindful of what could be built as permitted development and the fallback position advanced by the appellant. As set out above, the development is not permitted development as built. Nonetheless, once the eaves and roof have been reinstated to comply with the notice, the roof dormers could be rebuilt in the same way but using obscure glazed windows under Schedule 2, Part 1, Class B of the GPDO. It seems to me that there is a realistic prospect that the appellants would take such an approach.
35. The comparable harm from the eaves having been raised is not so significant to be cause to refuse planning permission, bearing in mind also that obscure glazed windows for the existing development could be achieved by condition. This is a very significant factor to be weighed in the balance.

Privacy

36. The appeal property is sited perpendicular to the rear elevation and garden of No 262 Greenford Avenue. In consequence the right side roof dormers directly face the rear of this property.
37. The windows are non-opening at eye level. One window serves a bathroom and is already obscure glazed so no overlooking of neighbouring property can occur. The other window is clear glazed, but an opaque covering has been affixed to the window panes. This could easily be removed. If it were, there would be direct views over the neighbour's garden which would cause an adverse effect on the occupiers' privacy. This situation can be prevented by the imposition of a condition requiring obscure glazed windows instead.
38. Subject to the imposition of a condition, I find no harm to the living conditions of neighbouring occupiers in terms of privacy to cause conflict with DPD Policy 7B which requires development to ensure good levels of privacy. Nor do I find conflict with Paragraph 17 of the Framework which, amongst other things, seeks a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

39. Concerns have also been raised regarding the effect on sunlight to the house and garden at No 262. I have found on the evidence that the ridge height has not increased. The position of the roof dormers will not cause a material rise in overshadowing of the neighbouring garden and they are too far away from the dwelling to affect sunlight to its rear windows.

40. How the development emerged in its current form is not a factor that influences the planning merits which is what my decision must be based on. As each and every application and appeal must be determined on its individual merits, a grant of planning permission would not set a precedent for future development.

Planning balance

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of development to be made in accordance with the development plan unless there are material considerations that indicate otherwise. I have found no harm to living conditions that cannot be addressed by planning conditions. In terms of character and appearance, the development does not accord with the development plan. However, the fallback position described above is a very significant consideration which in the individual circumstances of the case outweighs the development plan conflict. In reaching this view I have taken account of all the representations received including those from the ward councillor and Member of Parliament, but they do not cause me to alter my decision.

Conclusion on ground (a) and the deemed planning application

42. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Conditions

43. The Council has suggested two conditions in this eventuality which I have considered in accordance with Paragraph 206 of the Framework and the national Planning Practice Guidance. The appellant contests the conditions as being unnecessary.
44. To prevent harmful overlooking, a condition must be imposed to require the windows to be obscure-glazed and of a specification approved by the Council and retained as such. Without such a condition the development would not be acceptable. This approach also accords with condition B.2.(c) of Class B which requires any window inserted on a roof slope forming a side elevation to be obscure-glazed.
45. A condition is reasonable and necessary to prevent the use of permitted development rights to create any additional windows or openings. That is necessary to give the Council control over any such further development to protect neighbouring privacy.
46. The conditions need some redrafting for greater clarity and precision and to reflect the fact that the development has already been built. Unlike an application for planning permission for development yet to commence, it is not possible to use a negatively worded condition precedent to secure the replacement windows because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the development authorised by the grant of planning permission may only remain if there is compliance with each one of a series of requirements.

Formal Decisions

Appeal A

47. It is directed that the enforcement notice be corrected by deletion of the words "ridge and the" from paragraph 3 and "the ridge of the roof and" from the requirements in paragraph 5.
48. Subject to these corrections, the appeal is allowed and the enforcement notice is quashed. 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 four dormer roof extensions in the side roof slopes and alterations to the roof including the raising of the height of the side eaves at 2 Studland Road, Hanwell, London W7 3QX referred to in the notice, subject to the following conditions:-
- (1) The dormer roof extensions hereby permitted shall be removed, the roof restored to its original condition prior to the development occurring, including lowering the side eaves to their original height and all resultant debris removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - (i) within 3 months of the date of this decision, a scheme for the replacement of all upper floor windows in the dormer roof extensions with obscure-glazed windows to be fixed shut to an internal height of 1.7m, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - (ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - (2) The windows fitted in accordance with condition 1 shall be retained permanently as such thereafter.
 - (3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015, (or any Order revoking, re-enacting or modifying that Order), no additional windows or openings shall be formed in the walls or roof of the building.

Appeal B

49. I take no further action in respect of this appeal.

KR Seward

INSPECTOR