

Appeal Decisions

Site visit made on 28 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 19 December 2016

Appeal A Ref: APP/C5690/C/16/3157896 53 Hafton Road, London SE6 1LW

- 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 Philip Mark Lancaster against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 27 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a roof extension to the rear roof of the premises.
 - The requirements of the notice are
 1. Remove the roof extension from the rear roof of the premises.
 2. Reinstate the roof slope to its form which existed prior to the unauthorised development by:
 - a) reinstating the pitched roof slope to the rear of the premises and
 - b) reinstating the interlocking concrete tiles to the pitched roof slope to the rear of the premises to match the tiles on the front roof slope of the premises.
 3. Make good all damage to the premises resulting from compliance with the requirements 1-2.
 4. Remove all materials, debris, waste and equipment resulting from the compliance with requirements 1-3.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/C5690/W/16/3158864 53 Hafton Road, London SE6 1LW

- 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 Mr Philip Mark Lancaster against the decision of the Council of the London Borough of Lewisham.
 - The application, Ref DC/16/096759, dated 23 May 2016, was refused by notice dated 19 July 2016.
 - The development proposed is described as 'Retrospective planning permission for rear loft conversion'.
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Appeal A

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

Decision

2. The appeal is dismissed.
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Preliminary Matter

3. A planning application (Ref: DC/16/096759) for the roof extension that has already been built and is the subject of Appeal A was refused on 19 July 2016 for essentially the same reason that the enforcement notice was issued.
4. The appellant points out that the allegation in the notice makes no reference to the insertion of two roof lights on the front roof slope and that the notice does not require their removal. It is not clear whether this was intentional or an oversight by the Council. In any event, to correct or vary the notice would cause injustice to the appellant and I have therefore proceeded on the basis of the current wording.

Appeal B

Main Issue

5. The main issue is the effect of the development on the character and appearance of the host building and the surrounding area.

Reasons

6. The appeal site lies within a residential area and comprises a two storey, mid terrace, Victorian property. This has been extended to the rear with a single storey addition and there is also a detached outbuilding at the rear of the garden. Hafton Road is built on a small incline and the houses are arranged in small terraces across the contour. The roof ridge lines and raised party walls of the houses are stepped at regular intervals. This feature together with the front two storey bay window details and the open aspect across the long rear gardens at the back and the allotments at the front of this part of the road create an attractive street scene.
7. The appellant has added an extension at roof level to the rear of the property by extending the rear wall of the building, and the raised party walls on both sides, upwards to the height of the ridge. This has created a flat roof addition.
8. This addition, due to its height and width, has resulted in an extremely large extension to the roof which appears top heavy, especially as the appellant has continued the white painted, rendered finish of the lower portion of the building upwards. It is also a significant alteration to the roof and the overall appearance of the rear elevation, particularly as the eaves have been removed and there is now no distinction between the roof and the lower storeys. It appears as an additional storey and any semblance of the original roof has now been lost.
9. The extension is also visible in long distance views from neighbouring properties at the rear where its intrusion into the roofscape of the short terrace is apparent. With roof level windows bearing no relation to the windows below in terms of size or design, overall I consider the extension fails to complement the character of the building and terrace in terms of size, scale and form.
10. The appellant submits that the extension has no impact on the street scene and that there are other similar extensions nearby. However, these submissions do not take into account the requirements for a high standard of design set out in the Council's DM Policy 30, which refers to new buildings as well as extensions to existing buildings. This requirement is also reflected in

the Council's updated Supplementary planning document (SPD)¹ which refers to roof extensions being designed to retain the architectural integrity of the building and not be formed by building up external walls. In addition, I find the roof extension appears to have resulted in an increased ridge height which is visible from the front elevation and is now higher than the ridge height at No 55, which is on higher ground, and disrupts the pattern in the street. Also, my observation of similar roof extensions in the area has only served to reinforce my view that the development is a poor design. Its dominant appearance detracts from the character of the area which Council policies seek to protect.

11. The appellant points out that the extension would benefit from permitted development (PD)² if it were not for the lack of a set-back from the eaves and that PD rights are a material consideration. I consider this submission relates to a fall-back position and case law has established that the likelihood of the fall-back position must be real and not just academic. Furthermore, in order for a comparison to be made, the alternative development must be adequately identified. In the first instance, any such roof extension would involve substantial demolition and I note in the appellant's submissions for Appeal A he argues that it would be impractical to re-instate the required set-back from the eaves. Secondly, I have not been presented with any detailed drawings to illustrate the appearance of a resultant PD roof extension. I therefore give very little weight to this submission as a material consideration.
12. For these reasons it is therefore concluded that the extension has an adverse effect on the character and appearance of the host building and the surrounding area. As such, the development does not accord with Policies 7.4 and 7.6 of The London Plan³, Policy 15 of the Council's Core Strategy⁴, DM Policy 30 and DM Policy 31 of the Council's Development Management Local Plan.⁵ These policies require, amongst other matters, that extensions to existing buildings should respect the form, setting, period and architectural detailing of the original building. The development also fails to have regard to the Council's SPD.

Conclusion

13. For the reasons given above I conclude that the appeal should be dismissed.

Appeal A

The appeal on ground (f)

14. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the roof extension is demolished and removed from the premises. The purpose of the notice must therefore be to remedy the breach of planning control.

¹ Lewisham Residential Standards Supplementary planning document Adopted August 2006 Update notes included May 2012

² Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO)

³ The London Plan, Spatial Development Strategy for Greater London March 2015

⁴ Lewisham Local Development Framework Core Strategy Development Plan Document Adopted June 2011

⁵ Lewisham Local Development Framework Development Management Local Plan Adopted 26 November 2014

15. The appellant only makes two points in terms of what would be a lesser step to comply with the requirements of the notice. These are firstly, that the eaves of the original roof could be re-instated, but that it is not practicable to carry out this work, and secondly that the extension could be modified so it accords with the conditions and limitations of Class B of the GPDO. However, the first suggestion is cancelled by the qualifying remark while in relation to the second PD rights cannot be claimed retrospectively. The appellant's suggestions would therefore not remedy the breach of planning control. This is because the breach of planning control is the action of erecting the extension. Altering the set-back from the rear wall of the dwelling and re-instating the eaves would not undo that initial action and would not address all of the harm caused by the development set out in the reason for issuing the notice.
16. The appellant also submits to set the roof extension back from the rear wall would not make a material difference to the overall appearance of the roof. He extends his argument by stating that the fall-back position of erecting an extension within PD is a real possibility. However, I find he contradicts himself as he argues it would be impractical to carry out this work.
17. He also argues that there is very little difference to the character and appearance of the area between the unauthorised development and a roof extension that was PD. This submission relates to the planning merits of the case and cannot be argued when the Council's purpose in issuing the notice is to remedy the breach of planning control rather than the injury to amenity and there is no appeal on ground (a). In any event, I have already addressed these points in Appeal B.
18. As no other lesser steps have been submitted, I therefore find, for the reasons given, that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

The appeal on ground (g)

19. The ground (g) appeal is that the time given to comply with the requirements is too short. It is therefore limited in its scope to a consideration of the time necessary to carry out those requirements. The appellant requests that the six month period be increased to 12 months due to the complexity of the work. Furthermore, the appellant has another appeal lodged the outcome of which could have an impact on this development.
20. The appellant has not elaborated on what is particularly complex about the removal of a roof extension. Furthermore, it is not clear how the outcome of another appeal could affect the requirements of this enforcement notice and the time needed to comply with it. As any extension of time has not been justified in any detail, I consider six months is a reasonable period of time to carry out the works. The appeal on ground (g) therefore fails.

Conclusion

21. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR