

Appeal Decision

Site visit made on 14 December 2016

by John Whalley

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

Decision date: 22 December 2016

Appeal ref: APP/R5510/C/16/3149773
94 Hercies Road, Uxbridge UB10 9ND

- The appeal was made by Mrs Olufunso Oshewa under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Hillingdon Council.
- The notice was issued on 6 April 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the erection of a roof extension including side facing dormer extensions.
- The requirements of the notice are to:
 - (i) Demolish and remove the roof extension including side facing dormer extensions and reinstate the dwellinghouse to its condition prior to the unauthorised development as shown on drawing numbered MB/3090/1 received 30 September 2015 submitted with refused planning application 19969/APP/2015/3568.
 - (ii) Remove from the land all materials, debris, plant and equipment associated with requirement (i) above.
- The period for compliance with the requirements is three (3) calendar months.
- The appeal was made on grounds (a), (b), (f) and (g).

Summary of Decision: The enforcement notice is quashed. Planning permission is granted on the deemed application to retain the roof extension

Appeal property

1. The appeal property, No. 94 Hercies Road, Uxbridge, is a detached house with large side dormer windows at first floor level. The dormers extend the full depth and width of the house, effectively forming a full sized floor at first floor level.

The appeal on ground (b)

2. An appeal on ground (b) asserts that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, the Appellant, Mrs Oshewa, said that the side facing front dormer windows described in the enforcement notice benefited from permitted development rights as shown by the lawful development certificate issued by the Council. Those submissions more pertinently come under s.174(2)(c) of the Act, [*ground (c) - that those matters (if they occurred) do not constitute a breach of planning control*].

3. It cannot be said that the construction of the dormer windows did not, as a matter of fact, occur. The appeal on ground (b) must fail. However, as the matters raised amounted to an implied ground (c) appeal, I deal with Mrs Oshewa's points on that basis.
4. Firstly, the roof works at No. 94 and the other extension works were not so insignificant that they did not amount to development. Section 55(1) of the Act sets out the meaning of development. It says: *Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land,* Section 55(1A) says:
For the purposes of this Act "building operations" includes —
 - (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
5. S.55(2)(a)(ii) says operations involving the improvement or alteration of any building which do not materially affect the external appearance of the building shall not be taken for the purposes of the Act to involve development.
6. In my view, the extension works to the house at No. 94 were clearly significant. They materially affected the external appearance of the house. However, Mrs Oshewa said that the side facing dormers benefitted from permitted development rights. The Council had issued a certificate of lawful development to that effect.
7. The certificate of lawful development issued under s.192(1)(b), (proposed operational development), on 17 November 2015 for 2 side dormers under ref: 19969/APP/2015/3567, was shown on submitted drawing No. MB/3090/2. The certificate said the proposed development constituted permitted development by virtue of Schedule 2, Part 1, Class B, (allows the enlargement of a dwellinghouse consisting of an addition or alteration to its roof), of the Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order). Drawing No. MB/3090/2 dated Sept 15 showed the proposal to build 2 large dormer windows on each side of the roof at No. 94. The enclosed volume was said to be 49.56m³ - just under the permitted limit of 50m³, (Class B.1(d)(ii) of Schedule 2, Part 1 of the Order). The new dormers were to be 300mm lower than the main roof ridge and set in by a minimum of 20cm from the original eaves. The MB/3090/2 certificated proposal would have met all the limitations and conditions of Class B at B.1 and B.2.
8. However, the house extensions built at No. 94 were not those shown on drawing MB/3090/2. The works considerably exceeded the Class B limitations. The Council said that the roof had been removed, a box section added on to the walls of the house, thereby adding a new first floor.
9. I note that the MB/3090/2 scheme was to have retained the original 3 bedroom and one bathroom first floor layout. What has been built has extended the first floor to the rear above the deeper ground floor, enlarging the 2 bedrooms at the rear and providing a new study room/bedroom. The original first floor as proposed by the MB/3090/2 scheme of some 8m deep from front to back is now approximately 10m deep. The resulting layout is as shown on drawing No. MB/3090/3 attached to planning application 19969/APP/2016/757. That

application was refused permission on 18 May 2016. (There had been an earlier planning application, 19969/APP/2015/3568, also refused by the Council. That application had included side facing dormer windows at the rear of the 1st floor extension. The later 19969/APP/2016/757 application deleted the extra side facing windows, replacing them with rear facing windows).

10. I agree with the Council that the works as built took the project well outside Class B permitted development concessions. Where a development breaches conditions/provisions/limitations of the Order in any particular, permitted development rights cannot apply – (the case of *Fayrewood Fish Farms v SSE [1984] JPL 287* is authority for that position). The extensions failed to comply with limitation B.1(d)(ii). They also failed to comply with condition B.2(b)(ii) in that the 1st floor enlargement extended beyond the rear face of the original dwellinghouse at first floor level.
11. If the enlargement of the house at No. 94 were to be examined against Class A to the Order, (Class A - enlargement, improvement or other alteration of a dwellinghouse), the appeal project failed to meet all its limitations. That is, at Class A.1 – the enlargement works failed limitation A.1(k)(iv) in that the project included alterations to the roof of the dwellinghouse. The enlargement of the dwelling at No. 94 Hercies Road was not development permitted by the Order. An appeal on ground (c) would have failed.

The appeal on ground (a)

12. The appeal on ground (a) asks that planning permission be granted on the extension works carried out on the house at No. 94.
13. The Council said that the development, by virtue of its size, scale, bulk and proximity, was detrimental to the amenities of the adjoining occupiers by reason of over dominance, visual intrusion, loss of outlook and loss of privacy. The large dormers were closer to the adjoining properties than the subordinate high-level dormers they replaced, resulting in an overbearing relationship to the more diminutive neighbouring properties. Windows had been inserted that included side opening vents which, even if they were to be obscure glazed, were capable of opening, giving rise to loss of privacy due to overlooking, particularly for the occupiers of No. 96, which had a side dormer that appeared to serve a bedroom facing directly towards a window in the unauthorised new dormer. The development was therefore contrary to policies BE 19, BE 20, BE 21 and BE 24 of the Hillingdon Local Plan: Part 2 – saved UDP policies (November 2012) and the adopted Supplementary Planning Document HDAS: Residential extensions.
14. It is necessary to compare the Council's certificate of lawful development proposal, that shown on drawing No. MB/3090/2, with what has been built, effectively that shown on drawing No. MB/3090/3. That is because, although the whole of the extension works at No. 94 were unlawful, (*Garland v MHLG [1968] 20 P and CR 93*), and can be required to be removed, the MB/3090/2 layout could be built in their place. That may be described as the "fall back" position, (*Nolan v SSE & Bury MBC [1988] JPL 872*). The principle being that the existence of a valid planning permission is a vital material consideration.
15. The most significant difference between the lawful development proposals, shown on drawing No. MB/3090/2, with what has been built, shown on drawing No. MB/3090/3, is the inclusion of the rear first floor extension in the latter. It appears that the Council's objections were more based upon comparing what

has been built with what was there before No. 94 was enlarged, rather than with the certificate of lawfulness scheme. The consequence of the face of the dormers being barely set in from the walls below can arise from the application of Class B of the Order. In the case of *Waltham Forest LBC v SSCLG, QBD, (Administrative Court), 18 June 2013* the Judge said the Department's Technical guidance on the then pre-2015 Order was in error. The measurement of 20cm 'from the eaves' meant 20cm from the point at which the eaves started, that is the intersection with the wall, not from where the eaves ended; that is, not from the outer edge of the eaves. The Department subsequently inserted condition B.2(b)(i)(bb) into Class B, the result being that dormers may be flush with walls below - if the eaves project further by at least 200mm. In fact the dormers here are slightly set in from the south facing side wall, increasing a little more at the rear. The north facing dormer is set in slightly more, with a corresponding set in at the rear.

16. Therefore, apart from the rear 1st floor extension, a feature that has not worsening any possible overlooking or loss of privacy to neighbouring properties than would the certificate scheme, no objection of any significance remains to suggest that the appeal scheme should be refused planning permission. I agree with the Council that the result of the appeal scheme is a somewhat top-heavy look to the house, with the dormer windows dominating what remains of the pitched roof. But again, the result is not significantly more harmful to the appearance of the street scene than that which would have been permitted by the Order. All the side facing dormer windows were obscure glazed, thereby minimising any possible overlooking loss of privacy to the houses on either side. Indeed the house to the north, No 92, had no side dormer windows; that to the south, No. 96, had just one obscure glazed small dormer window facing towards the south facing dormer windows at No. 94.
17. The appeal on ground (a) succeeds. Planning permission is granted on the application deemed to have been made to retain the roof extension including side facing dormer extensions at No. 94 Hercies Road, Uxbridge. I attach a planning condition requiring the maintenance of obscure glazing to the side dormer windows to match condition B.2(c)(i) to Class B and to ensure that those next door do not suffer a loss of privacy due to possible overlooking.
18. The appeals on grounds (f) and (g) do not fall to be considered.

FORMAL DECISION

19. The appeal succeeds. The enforcement notice is quashed. Planning permission is granted under s.73A of the Act on the application deemed to have been made for the retention of the roof extension including side facing dormer extensions built on to the dwelling at No. 94 Hercies Road, Uxbridge UB10 9ND, subject to the following condition:

1. the windows in the side facing dormer windows shall be fitted with obscure glazing and maintained as such.

John Whalley

INSPECTOR