
Appeal Decision

Site visit made on 7 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 18 January 2017

Appeal Ref: APP/Q5300/C/16/3149609
22 South Eastern Avenue, London N9 9NS

- The appeal is made by Mary John under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: CON/7002) issued by the Council of the London Borough of Enfield on 5 April 2016.
 - The breach of planning control alleged in the notice is "the unauthorised erection of a first floor rear extension (outlined in blue on the attached plan for identification purposes) and a hip to gable roof extension and rear dormer (outlined in yellow) [*sic*] on the attached plan for identification purposes) to the rear of the Premises".
 - The requirements of the notice are as follows: -
 - "5.1 Remove the hip to gable extension (outlined in yellow on the attached plan for identification purposes) from the Premises.
 - 5.2 Remove the rear dormer (extension [*sic*] (outlined in yellow on the attached plan for identification purposes) from the Premises.
 - 5.3 Remove the first floor rear extension (outlined in blue on the attached plan for identification purposes) from the Premises.
 - 5.4 Make good the roof and rear flank wall with materials and colours that match to the original building.
 - 5.5 Remove all resulting materials from the Premises."
 - The period for compliance with these requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), and (g).
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Decision

1. It is directed that the enforcement notice be varied by replacing paragraph 6 by the following paragraph: -

"6. TIME FOR COMPLIANCE

Nine months after this Notice takes effect."
2. Subject to this direction, the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Ground (c)

3. The notice identifies two alleged breaches of planning control. The appellant accepts that the first-floor extension is not authorised, but maintains that the hip-to-gable roof extension and rear dormer are permitted development. The
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Council maintain that the latter is a breach of planning control as well because the ridge of the main roof of the house has been raised and because there is “no instep to the rear of the roof extension and dormer”. The appellant’s response is that the height of the roof has not been raised and that there is an instep that exceeds the permitted development requirement of 0.2m.

4. When I viewed the works which have been carried out, I compared, from the road, the height of the ridge with the height of the ridge of the adjoining semi and concluded that it was slightly higher. New mortar and flashing indicate that this is probably the result of the construction of the hip-to-gable roof extension and rear dormer. However, the difference in height is not obvious, because it is so small and a central chimneystack separates the two ridges. In my opinion, the increase in height is too minor to amount to a breach of planning control, applying the principle *de minimis non curat lex*.
5. The works have resulted in the removal of the eaves below the rear face of the dormer, although it is apparent from looking at the roof of the adjoining semi, that if the eaves had been retained, the dormer would have been set back 0.2m from them. The reason they were not retained is because the project that has been carried out connects the dormer and the first-floor rear extension, by extending the rear wall of the house upwards through the eaves and joining the flat roof of the extension to the front of the dormer.
6. There are exceptions in the permitted development order that relate to eaves in certain circumstances. However, permitted development rights do not apply at all if building operations involved in the construction of a building are unlawful. The first-floor extension is unlawful, since it has been constructed in breach of planning control, and in my view this means that the dormer does not benefit from the exceptions in the circumstances I have described in paragraph 5. It is therefore not permitted development and, as a result, the appeal on ground (c) has failed.

Ground (a)

7. The main issues in deciding whether planning permission should be granted in respect of the breaches of planning control concern (a) the effect of the first-floor rear extension on the amenities of the occupiers of the adjoining semi and (b) the effect of the hip-to-gable roof extension and rear dormer on the appearance of the house and its surroundings.

The effect of the first-floor rear extension

8. The Council indicate that the first-floor windows of the adjoining semi have lost light and outlook and experienced a sense of enclosure because of the depth and height of the first-floor rear extension. They state that this is contrary to Policy DMD 11 of the Enfield Development Management Document.
9. Policy DMD 11 deals with residential rear extensions. It seeks to protect neighbours’ visual and other amenities. In particular, it indicates that first-floor extensions must not exceed a line taken at 30 degrees from the mid-point of the nearest original first-floor window in any of the adjacent properties.
10. The appellant accepts that the extension infringes a 30-degree line taken from the centre of the neighbour’s nearest first-floor window, but maintains that the

'30-degree rule' is at odds with more recent policy and development orders, that the extension lines up with the neighbour's ground-floor extension and that the window is large, has adequate light and ventilation and an outlook that is already obstructed by trees on the boundary.

11. These are not persuasive arguments. The combination of the extension's height, depth and proximity to the boundary far exceeds what would be permitted development or would conform to any planning policy I am aware of. It is clear that as a result of the extension the neighbour's nearest first-floor window has lost significant light and outlook and is affected by a much-increased sense of enclosure. This conflicts with both the principle and the detail of Policy DMD 11. I have therefore concluded that planning permission should not be granted for the first-floor rear extension.

The effect of the hip-to-gable roof extension and rear dormer

12. The Council's concerns relate to the effect the hip-to-gable roof extension has on the symmetry of the pair of semis and the effect the rear dormer has on the character and appearance of the house and its surroundings. The Council's case relies on the provisions of Policies DMD 13 and 37 of the Development Management Document.
13. Policy DMD 37 is concerned with the appropriateness of the design of development to its context and its surroundings. Policy DMD 13 indicates that rear dormers should (i) be of an appropriate size and location within the roof plane, (ii) be inset from the eaves, ridge and edges of the roof, normally by between 500-750mm, (iii) be in keeping with the character of the property and (iv) not be dominant when viewed from the surrounding area.
14. Hip-to-gable roof extensions are not unusual in this area; there are several examples in the Avenue and in nearby Chalfont Road and Pymmes Gardens. There are also examples of large rear dormers. The Council's response to the ground (c) appeal shows that their opposition to hip-to-gable roof extensions based on Policy DMD 37 and to rear dormers based on Policy DMD 13 will often be ineffectual, given the scope of permitted development rights.
15. In this instance, if the issues I have referred to in paragraphs 5 and 6 above had not arisen, I would have been satisfied that planning permission could have been granted for the hip-to-gable roof extension and rear dormer, notwithstanding the provisions of Policies DMD 13 and 37. However, until these issues have been resolved, I consider that permission should be withheld.

Conclusion on ground (a)

16. For the above reasons, the appeal has not succeeded on ground (a) in relation to either of the alleged breaches of planning control.

Ground (f)

17. The submissions made by the appellant under ground (f) put forward points of view that I have already taken into account under grounds (c) and (a). They conclude by indicating that if the first-floor rear extension is considered to be unacceptable, the notice should be varied by deleting Requirements 5.1 and 5.2, with Requirements 5.3, 5.4 and 5.5 being retained. The Council's response

is to assert that none of the requirements exceed what is necessary to remedy the breaches of planning control.

18. The requirements of the notice are the ones normally required in a case where building works have been carried out in breach of planning control. Their purpose is to remedy the breach by restoring the land to its condition before the breach took place.
19. In the present case, the notice treats the first-floor rear extension as one breach and the hip-to-gable roof extension and rear dormer as another; the two are, however, linked together as a project, as I have described in paragraph 5 above. It may be possible to carry out alterations to make parts of the works compliant with permitted development rights or otherwise acceptable for planning purposes. However, there are no proposals before me and it is beyond the scope of this appeal to deal with possible alterations under either ground (a) or ground (f). Under ground (g), I have taken into account the possibility of an acceptable solution being found in consultation with the Council.
20. I have therefore upheld the requirements of the notice as they stand and the appeal under ground (f) has failed.

Ground (g)

21. The appellant seeks an extension of the compliance period from four months to twenty-four months to allow time for family members to find alternative accommodation and the required works then to take place. The Council are opposed to any extension of time, because of the continuing impact of the works, but their response does not take into account the need to relocate. I consider six months would be a reasonable period to allow for total demolition.
22. However, in view of my findings on grounds (c) and (a), I would expect the appellant to approach the Council to explore the possibility of alterations being carried out to make parts of the works acceptable. Additional time should be allowed for this to take place; a reasonable compliance period in all the circumstances would be nine months. I have varied the notice accordingly and the appeal has therefore succeeded on ground (g) to this extent.

D.A.Hainsworth

INSPECTOR