
Appeal Decisions

Site visit made on 10 January 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 26 January 2017

Appeal A - Ref: APP/Y1945/C/16/3151202 50 Orchard Drive, Watford, WD17 3DY

- 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 1990 Act").
- The appeal is made by Oscar Goldman ("the Appellant") against an Enforcement Notice issued by Watford Borough Council ("the Council").
- The Enforcement Notice, numbered EN15/00203/NTP, was issued on 4 May 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the erection of a part two storey, part single storey side and rear extension. Loft conversion involving the installation of a hip to gable extension, two rear dormers and front and rear roof lights.
- The requirements of the Enforcement Notice are: (1) Remove the part two storey, part single storey side and rear extension. (2) Remove from the land all building materials, rubble and waste resulting from compliance with requirements of (1) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2) (a), (b), (c) & (f) of the 1990 Act.

Summary of Decision: The appeal on Grounds (c) and (a) fail. The appeal succeeds on Ground (f) and the Enforcement Notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B - Ref: APP/Y1945/W/16/3151243 50 Orchard Drive, Watford, WD17 3DY

- The appeal is made under Section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by the Appellant against the decision of the Council.
- The application Ref 16/00215/FULH, dated 15 February 2016, was refused by notice dated 7 April 2016.
- The development proposed is the erection of a part two storey, part single storey rear extension and a single storey side extension. Loft conversion involving the installation of a hip to gable extension, two rear dormers and front and rear roof lights. Installation of a pitched roof to the outrigger element whilst reducing the outrigger soffit level to match the original roof soffit.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the Appellant against the Council. This application will be the subject of a separate Decision.
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Procedural Matters – Appeal A

2. The Appellant withdrew the Ground (b) appeal by way of an e-mail dated 7 July 2016.

Relevant Background Matters

3. No. 50 is a semi-detached dwelling house.
4. In April 2014 the Council granted conditional planning permission for the erection of a part two storey, part single-storey rear extension and single-storey side extension at No. 50 ("the 2014 Planning Permission"). The 2014 Planning Permission was not implemented.
5. In April 2014 the Council certified that the development identified on Drawing 3029/LDC1, being a rear dormer window and side roof light, was lawful ("the Dormer LDC"). The dormer proposed by the Dormer LDC has not been built.
6. The development that has been carried out is that which is described in the Enforcement Notice. The works comprised within this development were carried out as a single building operation. The Council have not sought to enforce against the following parts of the development, namely the loft conversion involving the installation of a hip to gable extension, two rear dormers and front and rear roof lights ("the Loft Conversion Elements"). This is because the Council accept that the Loft Conversion Elements would be permitted development had they been carried out as discrete building operations.
7. In October 2014 the Council became aware that building operations were being carried out at No. 50 which did not accord with the 2014 Planning Permission or the Dormer LDC. In March 2015 an application was received by the Council seeking retrospective planning permission for the erection of a part two-storey, part single-storey rear extension, single-storey side extension and the Loft Conversion Elements. The Council refused planning permission in April 2015.
8. The Appellant appealed that refusal and the resulting appeal was dismissed in November 2015 by Inspector Alison Roland ("the Inspector Roland Decision").
9. In paragraph 6 of the Inspector Roland Decision she states:

"The Council's concerns in relation to the first main issue¹ are confined to the design of the two storey rear extension which has been built with a flat roof. To my mind, it has a crude, boxy and bolted on appearance, exacerbated by the fact that its eaves sit higher than those on the host dwelling. I appreciate that situated to the rear of the property, it is not visible from the public domain, but it is nonetheless clearly visible from the rear gardens of adjoining properties to either side, wherefrom it will appear as an unwieldy addition to the property."
10. Following the dismissal of the appeal the Appellant informally suggested to the Council two alternative designs for the two storey extension. Option A proposed reducing the height of the two storey extension so that its eaves were at the same level as the original house and then erecting a four way pitched roof on top of the extension. Option B is the Appeal B proposal.

¹ The implications of the proposal for the character and appearance of the area

11. The Council responded to both options explaining that neither would achieve an acceptable level of appearance. The Council suggested that the rear dormers should be removed and the 2014 Planning Permission implemented.
12. In December 2015 the Appellant applied for planning permission to carry out the Option A proposal explained above. In early February 2016 that application was refused. No appeal against that decision was made.
13. The Appellant therefore made a planning application for Option B i.e. the Appeal B proposal. That application was refused because the Council considered that the pitched roof on the two storey extension would not integrate satisfactorily with the existing dwelling as it would have an awkward relationship with the rear dormer

Main Issue – Appeal A (Ground (a)) and Appeal B

14. I consider the main issue is whether the proposal would harm the character or appearance of the host dwelling or the surrounding area.

Policy

15. The Development Plan for the area includes Policies SD1 and UD1 of the Watford Local Plan Core Strategy 2006-31 ("the Local Plan"). I have also been referred to:
 - a) Part of the Council's "Residential Design Guide" ("the Design Guide ") which is Supplementary Planning Guidance.
 - b) Parts of the National Planning Policy Framework² ("the NPPF").
16. The Local Plan explains, amongst other things, that:
 - a) New development should respect and enhance the local character of the area in which it is located.
 - b) Good urban design is at the centre of any strategy for delivering a high quality environment.
17. The Design Guide explains, amongst other things, that extensions should respect the character and scale of the host building.
18. The NPPF explains, amongst other things, that:
 - a) The Government attaches great importance to the design of the built environment.
 - b) Good design is indivisible from good planning.
 - c) Design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, and layout of new development in relation to neighbouring buildings and the local area more generally.
 - d) Planning decisions should not attempt to impose architectural styles or particular tastes through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

² Section 7

- e) Visual appearance of individual buildings is a very important factor.
- f) Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

Reasons

Appeal A - Ground (c) that those matters referred to in the Enforcement Notice do not constitute a breach of planning control

- 19. Section 171A of the 1990 Act explains that a breach of planning control includes the carrying out of development without the required planning permission.
- 20. The onus of proving on the balance of probabilities that the matters referred to in the Enforcement Notice do not constitute a breach of planning control rest with the Appellant.
- 21. There is no doubt that the works carried out at No. 50 comprise "development" and "building operations" as defined in Section 55 of the 1990 Act.
- 22. Accordingly, the Appellant has to show that the development carried out at No. 50 is either permitted development or has the benefit of an express grant of planning permission for it not to be breach of planning control.
- 23. I have explained that the Council accept that certain parts of the development that have been carried out, namely the Loft Conversion Elements would be permitted development had they been carried out in isolation from the rest of the development. This is why the Council have not sought within the requirements of the Enforcement Notice the removal of the Loft Conversion Elements.
- 24. I do not accept the Appellant's argument that just because some of the other building operations which have been carried out at No. 50 would have complied with parts of the 2014 Planning Permission then these parts are lawful. The correct approach is to look at the finished building operations and ask oneself whether that is the implementation of the 2014 Planning Permission.
- 25. It was clear from my site visit that the development which has been carried out is not the implementation of the 2014 Planning Permission. Further still, the building operations which the Council seek the removal of are not permitted development.
- 26. I therefore conclude that the development which the Council require to be removed at No. 50 constitutes a breach of planning control. The appeal on Ground (c) therefore fails.

Appeal A - Ground (a) and the deemed planning application – that in respect of the breach of planning control stated in the Enforcement Notice, planning permission ought to be granted

- 27. The breach of planning control alleged in the Enforcement Notice is the development which was the subject of the Inspector Roland Decision.

28. The Appellant does not seek, via the Ground (a) appeal, planning permission for the development that has been carried out but seeks planning permission for the development to be modified to accord with the Appeal B proposal.
29. I consider that the alterations proposed by Appeal B are most properly addressed under Ground (f). This is because the Appellant is in effect seeking the implementation of the Appeal B proposal as a lesser step to the total demolition of parts of the building operations carried out at No. 50.
30. I therefore conclude that the appeal of Ground (a) should be dismissed for the reasons stated in the Inspector Roland Decision. I conclude that the breach of planning control alleged in the Enforcement Notice materially harms the character or appearance of the host dwelling or the surrounding area. Accordingly, it is contrary to the Local Plan, the Design Guide and the NPPF.

Appeal B

31. I have carefully considered the dimensions and shape of the two storey element of the building works approved by the 2014 Planning Permission and compared those approved works to that which is now proposed by the Appeal B proposal.
32. There are some minor differences in terms of the dimensions between the development approved by the 2014 Planning Permission and that that which is proposed by Appeal B.
33. The Council's stated concerns relate to how the roof of the two-storey element relates to one of the dormer windows which have erected within the original roof slope. I am aware that the 2014 Planning Permission indicated that the two storey extension would relate to the single dormer shown on the Dormer LDC.
34. The Appeal B proposal indicates that the door within one of the existing dormers would be removed and part of the resulting opening would have a window inserted within it. Having regard to other developments in the rear roof slopes of nearby dwellings I do not share the Council's concerns about the relationship between the proposed roof and the existing dormer. I consider that the Appeal B proposal is an appropriate design solution that mitigates the harm caused by the existing two storey extension as explained in the Inspector Roland Decision.
35. I therefore conclude that if the changes proposed by the Appeal B proposal are carried out then the resulting building works would not cause any material harm the character or appearance of the host dwelling or the surrounding area. Accordingly, the Appeal B proposal would accord with the relevant parts of the Local Plan, the Design Guide and the NPPF.

Conditions

36. I consider that it is reasonable and necessary to impose conditions requiring:
- a) The development to be carried out in accordance with the application plan. This is necessary to ensure proper planning in the area.
 - b) That the hours of work are controlled so as to protect the living conditions of the occupiers of the adjoining properties.

- c) That the materials used match the existing so that the completed development harmonises with the host dwelling.

Conclusion – Appeal B

37. For the reasons given above I conclude that the appeal should be allowed.

Appeal A - Ground (f) that the steps required by the Enforcement Notice to be taken, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters

38. I have explained above that if the Appeal B proposal was implemented it would, in my judgement, result in an extension that accorded with the Local Plan, the Design Guide and the NPPF.

39. I therefore consider that the Enforcement Notice should be varied so as to require the planning permission that will be granted pursuant to Appeal B to be implemented in full within the six month compliance period.

Conclusion – Appeal A

40. For the reasons given above I conclude that the requirements are excessive and I am varying the Enforcement Notice accordingly, prior to upholding it. The appeal under Ground (f) succeeds to that extent.

Formal Decision – Appeal A

41. The appeal is allowed on Ground (f), and it is directed that the Enforcement Notice be varied by the deletion of paragraphs 5(1) and 5(2) and the substitution of the following requirement:

- (1) Implement in full planning permission reference 16/00215/FULH.

Subject to this variation the Enforcement Notice is upheld.

Formal Decision – Appeal B

42. The appeal is allowed and planning permission is granted for:

- a) The erection of a part two storey, part single storey rear extension and a single storey side extension.
- b) The erection of a loft conversion involving the installation of a hip to gable extension, two rear dormers and front and rear roof lights.
- c) The installation of a pitched roof to the outrigger element whilst reducing the outrigger soffit level to match the original roof soffit.

at 50 Orchard Drive, Watford, WD17 3DY accordance with the terms of the application, Ref 16/00215/FULH, dated 15 February 2016, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3029/PA3 dated 2.2.2016 – Title: “Plans and elevations Revised rear outrigger roof”.
- 3) Construction of the development hereby permitted shall not take place:

- a) Before 08:00 or after 18:00 on Mondays to Fridays.
 - b) Before 08:00 or after 13:00 on Saturdays.
 - c) At all on Sundays or Bank Holidays.
- 4) All of the external materials of the development shall be finished in materials to match the colour, texture and style of the existing building.

Tim Belcher

Inspector