
Appeal Decisions

Site visit made on 10 January 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 31 January 2017

Appeal A: APP/G5750/C/16/3157526

111 Grosvenor Road, Forest Gate, London, E7 8JB

- 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 D Hussain against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 15/00132/ENFC, was issued on 5 August 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a roof extension.
- The requirements of the notice are:
 1. Demolish the roof extension (a shown edged in yellow on the photograph attached at Appendix 1¹) and return the roof of the property to its form prior to the unauthorised works being undertaken; and
 2. On completion of step 1, remove all materials and debris from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/G5750/D/16/3157618

111 Grosvenor Road, Forest Gate, London, E7 8JB

- 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 D Hussain against the decision of the Council of the London Borough of Newham.
- The application Ref 16/00257/HH, dated 31 January 2016, was refused by notice dated 28 July 2016.
- The development proposed is described in the application as "loft conversion."*[sic]*

Summary of Decision: The appeal is allowed in part and is dismissed in part, as set out below in the Formal Decision.

Application for costs

1. An application for costs has been made by the Council of the London Borough of Newham against Mr D Hussain. This application is the subject of a separate Decision.

¹ I.e. Appendix 1 of the notice.

Procedural matter

2. Whilst the appeal forms gave the appellant's name as Mr M Hussain, the appellant's agent explained by email of 9 September 2016 that this was his error. The appellant's name is Mr D Hussain. Indeed the planning application the subject of appeal B was made in that name.

Appeal A

Ground (b)

3. To succeed on this ground the appellant must prove on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
4. The appellant contends that the extension is permitted development and also refers to a certificate of lawful development (LDC) Ref 14/01743/CLP. However, there is no dispute that the extension has been constructed. Ground (b) must therefore fail and the question of whether there has been a breach of planning control falls to be considered under ground (c).

Ground (c)

5. To succeed on this ground the appellant must prove on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
6. The Council states that, when it was first constructed and when the enforcement notice was issued, the roof extension could not have constituted permitted development (PD).
7. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is now PD by virtue of Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the 2015 GPDO), which came into force on 15 April 2015. Photographs submitted by the Council indicate that the extension was commenced after June 2014, but before the 2015 GPDO came into force, so that the position would have been governed by the 1995 GPDO, as amended. However, for the purposes of the Council's arguments, the relevant provisions of Class B are the same in the 1995 and 2015 versions of the GPDO.
8. The Council points out that, notwithstanding the description in the notice, the extension, as constructed when the notice was issued, should not be considered as a roof extension under Class B. This is because it was not set within the roof, but was built as an extension to the outrigger walls. In support of this point, my attention is drawn to another appeal decision Ref APP/G5750/X/09/2100436 concerning a site at Gooseley Lane, East Ham. The appellant does not contradict this argument and I see no reason to take a different view from the Council.
9. The Council also asserts that the extension did not comply with the conditions in paragraph B.2 of Class B concerning the maintenance or reinstatement of eaves and a 0.2 metre set back from the eaves. The Council does not explain this further and the position is not entirely clear, as the plans showing the pre-existing position submitted with the LDC application differ from those accompanying the planning application the subject of appeal B. However, it is

- not necessary for me to resolve this question, as the more fundamental point discussed in the previous paragraph establishes that the development was not PD.
10. Since it was first completed, the roof extension has been altered, so that the side walls are now set in a little from the outrigger walls. I also note that the rear elevation is set back from the eaves, but it is not certain how far, and a first floor window has also been removed. However, it is not clear when the alterations were made.
 11. The appellant's own evidence on this is contradictory and confusing. In his final comments on the appeal, the appellant's agent said that the changes were made in April 2016, well before the enforcement notice was issued on 5 August 2016. His later email of 20 January 2017 still indicated that amendments were made before the issue of the notice, but said they were made in early August 2016. The Council states that, during a telephone conversation on 4 August 2016, the appellant's agent was still asking the Council to outline what alterations would be required in order to secure planning permission and did not suggest that changes had already been made. The appellant was given an opportunity to comment on this contradiction, but chose not to. I also note that the appellant's agent's email to the Council on 22 August 2016 still sought guidance on what needed to be done "to comply to[sic] planning." I conclude on the balance of probability that the alterations were not made until after the enforcement notice was issued.
 12. Where, as in this case, a development has been substantially completed, PD rights cannot be claimed retrospectively by the later removal of one or more elements, so as to bring it within the PD class or its tolerances. The appellant cannot say that, because of the alterations, the development does not constitute a breach of planning control.
 13. The appellant also says that "planning has been granted" under Ref 14/01743/CLP and that the development was altered in April 2016² to match the "approved plans". However, this was a lawful development certificate (LDC) and an LDC does not grant planning permission; it merely certifies that the development described in the application would be lawful if begun at the time of the application, which in this case was submitted in 2014. In any event, having regard to my site inspection, photographs and the plans submitted with that LDC application, particularly the "proposed elevations" (sheet No. 04), the LDC scheme differs from what had been constructed at the time the enforcement notice was issued and from what exists on site now. For example, the fenestration differs, along with the line of the western flank wall. Furthermore, given these discrepancies, I cannot be confident that the LDC plans accurately reflect the extent to which the dormer is now set back from the eaves.
 14. In any event, the appellant himself says that the LDC plans, which were provided by the first designer, were incorrect, though he does not say how. They nevertheless define the development for which an LDC exists. It cannot be said that the LDC renders lawful either the development in place at the time of the notice or that which exists now.

² As to which date, see my previous comments and conclusion.

15. The question of what could be built as PD will be relevant to the assessment of the merits of appeal B, but in all the circumstances, the appellant has not proved on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. Ground (c) must therefore fail.

Ground (g)

16. This ground is that the period specified in the notice for compliance with the requirements falls short of what should reasonably be allowed. The appellant contends that it is impossible to comply with the notice within the 3 months specified, but does not explain why and does not suggest an alternative compliance period.
17. In these circumstances, I have no good reason to extend the compliance period. However, I note the Council's reference to its statutory power to extend that period, regardless of my decision, if circumstances render it appropriate. No doubt the Council will consider any specific arguments put forward by the appellant in due course, but the appeal on ground (g) must fail.

Appeal B

Preliminary matters

18. It is clear that the description of the development in the application form was intended to read as "loft conversion". Notwithstanding this, the Council's decision notice and the appeal form for appeal B describe the development as "Retention of loft conversion with rear dormer extension including 2 velux windows to the front elevation and ground floor rear extension." This is a better description than that in the application form, save that "retention" is not an act of development. Whilst the loft conversion was completed and the application was made retrospectively, the development is best described as "the construction of a rear dormer extension and a ground floor rear extension and the installation of 2 velux windows to the front elevation."
19. The roof extension which is now on site differs from the application scheme, in that the first floor window has been removed and eaves have been constructed across the full width of the outrigger; the second floor window is of a different design; and the elevations are tile-hung rather than part brick and render, as stated on the application form³. These changes have not been agreed with the Council and I have not been asked to consider an amended scheme; no amended plans have been submitted. In any event, in the context of a small development such as this, the changes to the submitted scheme outlined above significantly alter its appearance. In all the circumstances, I shall consider the scheme as submitted to the Council, rather than as altered on site.

Main issues

20. The Council states that the ground floor rear extension and the two front skylights are in keeping with the character and appearance of the house. I am satisfied that they cause no harm and, as these elements are severable from the remainder of the development, planning permission can be granted for these in any event. The main issues are the effect of the rear dormer extension on:

³ A note on the section included on drawing no. 111 RE 01 Rev 1 refers to "hanging tiles", but these are not indicated on any elevation drawing.

- the character and appearance of the host property, the terrace and the area; and
- neighbours' living conditions, in terms of visual impact.

Reasons

21. The appeal property is set towards the middle of a long terrace of modest 2-storey houses. To the north, rear gardens separate it from a lengthy terrace on Kitchener Road. The neighbouring houses are not all of a uniform design, but many have subservient outriggers and they form a reasonably harmonious ensemble.
22. There are other dormer extensions visible from the rear of the appeal property, but these are generally set back into the roof slopes of their host properties. None of those existing extensions is comparable to that shown on the application plans in terms of overall scale, bulk and rearward projection. Rather than appearing as a loft extension or a subservient addition to the roof slope, the appeal scheme would amount to the creation of a second storey, with large sections of uncharacteristically shallow pitched roof, and it would fail to respect the character of the host property. The extension would be visible from a significant number of neighbouring properties, from which it would strike a discordant note, dominating the host property and the terrace and appearing incongruous.
23. For the reasons given, I conclude on the first main issue, that the appeal scheme would harm the character and appearance of the host property, the terrace and the area. As a result, the scheme represents poor quality design and conflicts with Policy 7.4 of the London Plan Spatial Development Strategy for London (consolidated with alterations since 2011), published March 2016 (LP). It similarly conflicts with Policies S6, SP1, SP3 and H1 of the London Borough of Newham Local Plan: Core Strategy, adopted January 2012 (CS) and Policy SP8 of the London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document, adopted 20 October 2016. All of these policies are consistent with the National Planning Policy Framework (the Framework), which attaches great importance to the design of the built environment. In particular, the Framework indicates that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
24. Although the Council has referred to its Supplementary Planning Guidance (SPG) 'Altering and Extending Your Home', the Council has not explained the status of this document. It is not dated, but appears to have been produced to supplement the Unitary Development Plan, rather than the plans referred to above. In these circumstances, I have not attached weight to it in this decision.
25. Turning to the second main issue, I note that the occupier of one of the adjoining dwellings, No 113 Grosvenor Road, says that he has no objection to the development and has not lost any daylight as a result of the existing works. I respect his views, and no one else has commented. Nevertheless, I have to determine the appeal in the public interest and having regard to the impact on future occupiers. Given its position on the north side of the appeal property, the proposal is not likely to have a significant overshadowing impact. However, because of the factors outlined under the first main issue, I consider that the

dominance of the appeal scheme would still have an overbearing visual impact on neighbours, to the detriment of their living conditions.

26. As such, the appeal scheme conflicts with LP Policy 7.1, which among other things, seeks to ensure that development creates a positive relationship with those surrounding it and that people feel comfortable with their surroundings. This factor also gives rise to conflict with CS Policy SP1, which includes a requirement for high quality development to enhance the borough and its attractiveness as a place to live. The Framework also looks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

27. In order to consider whether there is a fall-back position, against which I could compare the proposal, I asked the Council to confirm whether what now exists on site could be built as PD. The Council's view is that it could not, for a number of reasons including that it considers the dormer to be insufficiently set back from the eaves of the original roof. The appellant did not challenge that view when given an opportunity. In the absence of agreement between the parties, it is not for me to determine issues of lawfulness in a section 78 appeal and I cannot attach significant weight to any fall-back position based on PD rights. Nevertheless, my decision does not affect the existence of PD rights.

Overall conclusion

28. Having regard to my conclusions on the main issues and all other matters raised, I am satisfied that the appeal should fail in respect of the rear dormer extension, but it should succeed in part; namely in relation to the ground floor rear extension and the two front skylights.

Decision

Appeal A: APP/G5750/C/16/3157526

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

Appeal B: APP/G5750/D/16/3157618

30. The appeal is dismissed insofar as it relates to the construction of a rear dormer extension. The appeal is allowed insofar as it relates to the construction of a ground floor rear extension and the installation of 2 velux windows to the front elevation and planning permission is granted for the construction of a ground floor rear extension and the installation of 2 velux windows to the front elevation at 111 Grosvenor Road, Forest Gate, London, E7 8JB in accordance with the terms of the application, Ref 16/00257/HH, dated 31 January 2016, and the plans submitted with it and numbered 111 OS 01; 111 OS 02; 111 SE 01; 111 RE 01 Rev 1; and 111 FP 01, so far as relevant to those parts of the development hereby permitted.

J A Murray

INSPECTOR