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## Appeal Decisions

Site visit made on 27 March 2017

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 21 April 2017**

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### **Appeal A: Appeal Ref: APP/Y5420/C/16/3162244 16 Seaford Road, London, N15 5DY**

- 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 Mrs Adrienne Crossley against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice, reference EXT/2016/00666, was issued on 5 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear roof extension.
- The requirements of the notice are:
  1. Demolish the rear roof extension in its entirety;
  2. Make good the roof to the original roof profile, design and slope;
  3. Remove from the land any materials associated with carrying out step 1.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### **Appeal B: Appeal Ref: APP/Y5420/X/16/3167760 16 Seaford Road, London, N15 5DY**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Adrienne Crossley against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2016/4004, dated 3 November 2016, was refused by notice dated 7 December 2016.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a loft conversion to single family dwellinghouse Use Class C3.

**Summary of Decision: The appeal is dismissed.**

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### **Appeals A and B: The appeal on ground (c) and the LDC appeal**

1. In a ground (c) appeal the Appellant is saying that the matters alleged in the notice do not constitute a breach of planning control and the main issue in the LDC appeal is whether the loft conversion that has been built and as shown on the application drawings<sup>1</sup> would have been lawful at the date on which the

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<sup>1</sup> Drawing Nos 14/30/03 and 14/30/01C

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application was made, that is, on 3 November 2016. In appeals such as this the planning merits of the development do not fall to be considered.

*The statutory provisions*

2. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land<sup>2</sup>. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
3. Although the LDC application is dated 3 November 2016 the plans are dated March 2014 and the Appellant says that the loft conversion was substantially completed by September 2014. The LDC appeal has to be determined on the basis of the GPDO in force at the time the development was substantially completed which in this case was the 1995 GPDO as amended. The outcome of the LDC appeal determines the outcome of the ground (c) appeal.

*The development*

4. The description of the development in the notice is a rear roof extension and in the LDC application it is described as a loft conversion. No.16 is a two storey mid-terraced house with a hipped roof and a two storey flat roofed outrigger to the rear. The development that has taken place is agreed by the Parties as an 'L' shaped dormer but for the reasons given below I question this as a matter of fact. The main part of the house had a sloping roof with eaves and the outrigger had a flat roof. The Appellant maintains that the development falls within Class B of the GPDO whereas the Council's reason for refusal is that it does not.
5. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B.2 sets out a number of conditions to which Class B development is subject. The relevant part for the purposes of these appeals states that '(b) the enlargement shall be constructed so that (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension (aa) the eaves of the original roof are maintained or reinstated; and (bb) the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20cm from the eaves, measured along the roof slope from the outside edge of the eaves; and (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse'.
6. There is no dispute between the Parties that the dormer element on the main roof has been set back the minimum 20cm. What is disputed is the lack of a set-back on the outrigger; the Council maintains that 'the development projecting over the rear outrigger is not set away from the side elevation eaves by 0.2m'. The Appellant's view is that this is wrong because the flat roof had no eaves and therefore the set-back cannot be applied where there is an 'L' shaped dormer in these circumstances. In addition, even if the roof to an

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<sup>2</sup> S.57 of the 1990 Act

- outrigger had eaves the exception in B.2(b)(ii) applies which, in the Appellant's view, makes it clear that no set back is required.
7. The part of the extension that has been built on the outrigger is not set back from the walls and therefore the first question seems to me to be whether the flat roof outrigger had eaves.
  8. There is no assistance in either the GPDO or the Technical Guidance<sup>3</sup> with regard to the definition of 'eaves'. However, in considering A.1(c) and the measurement of eaves the Guidance states "For the purpose of measuring height, the eaves of a house are the point where the **lowest point of a roof slope, or a flat roof, meets the outside wall**. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height. **Where there is a flat roof, a similar approach should be taken for measuring eaves: Eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof** - the overhang and the parapet wall should be ignored for the purposes of measurement" (my emphasis).
  9. The Appellant has provided a number of appeal decisions in which the meaning of eaves is considered. These views differ but I note in particular the reference in one appeal decisions to the dictionary definition from "the Shorter Oxford English Dictionary which says 'The projecting edge of a roof, etc., which overhangs the side'. At a more technical level, the Oxford Dictionary of Architecture and Landscape Architecture (James Stevens Curl OUP 1999) says:- "Eave (pl. eaves). Sheltered area under eaves. Eaves Lowest part of a pitched roof projecting beyond the naked\* of the wall below. \*Naked. Unadorned plain surface of anything, but especially the main plane of a building's façade."<sup>4</sup>; and a reference in another decision to the Technical Guidance<sup>5</sup>. Whilst the latter is in the context of how to measure a Class A enlargement, in the absence of other assistance I find that a flat roof can have eaves and condition B.2(b)(i)(bb) is not satisfied in the development that is the subject of these appeals because there is no set-back.
  10. If I had come to a different conclusion and the flat roof did not have eaves I note that the flat roof of the outrigger was at a slightly lower level than the eaves level of the main part of the dwelling<sup>6</sup> and thus there was a section of rear facing wall above the flat roof and below the eaves level of the main part of the house. The extension that has been built projects over the outrigger beyond this external face of the rear wall and therefore it does not comply with condition B.2(b)(ii).
  11. I have taken into account the Technical Guidance which advises that 'The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or

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<sup>3</sup> DCLG – Permitted Development for Householders

<sup>4</sup> APP/G2245/X/09/2111266 Appendix 5 to the Appellant's statement

<sup>5</sup> APP/T5150/X/12/2181645 Appendix 8 to the Appellant's statement

<sup>6</sup> Drawing No 14/30/01C 'Typical cross section existing'

the shape or level of the pitch of the roofs are different in relation to each other'. However, I do not consider the development to be an 'L' shaped dormer because in my opinion a dormer does not include a large cubic extension such as that which has been built on the outrigger.

12. Development can be subject to more than one Class within the permitted development rights granted by the GPDO. The rear dormer is an addition to the main roof and clearly falls within Class B, but the rear projection over the outrigger seems to me to be more than an "addition or alteration to the roof" because it is, in effect, another storey placed on top of the flat roof. In my view, as a matter of fact, from the drawings and from what I saw on my visit the extension on the flat roof is effectively a new storey added to the outrigger and so it falls within Class A which permits the enlargement of a dwellinghouse subject to a number of tolerances, limitations and conditions, all of which have to be satisfied.
13. Class A.1(c) of the relevant GPDO provides that development is not permitted by Class A if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. In this case, the height of the eaves of the enlarged part of the dwellinghouse is the height of the new flat roofed extension on top of the existing outrigger and this significantly exceeds the height of the eaves of the existing dwelling house.
14. The Appellant has referred to the grant of an LDC by the Council in respect of 168 Seaford Road<sup>7</sup>. The plans of that proposal appear to me to show the extent of the proposed floor space being inside the walls of the house but whether this is correct or not it is not for me to say in this decision. I also note that the proposed design of the extension is different from the development in this appeal. In these respects the two developments do not appear to me to be comparable.
15. The LDC appeal and the appeal on ground (c) and both fail.

### **Appeal A: The appeal on ground (a)**

16. In an appeal on ground (a) the Appellant is saying that planning permission should be granted for the matter stated in the notice, that is, the erection of the rear roof extension as built.
17. The main issues in this ground of appeal are the effect of the rear roof extension on the character and appearance of the area and on the host building.
18. The appeal property is a modest mid-terraced two storey house in a residential area of largely similar dwellings. The roof extension that has been built extends over the full width of the main rear roof slope and across the whole of the original two storey outrigger. It is a structure of considerable mass and bulk and it is not in scale with the proportions of the original house. Because the extension on the outrigger is not set back from the walls it has the appearance of a third storey which results in the building being over dominant in the surrounding area and within its own plot. I note that there is no dispute between the Council and the Appellant that the dormer on the rear slope is set

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<sup>7</sup> Ref HGY/2016/2366 Appendix 10 to the Appellant's statement

back the required distance but from my visit it appeared to me that, because of the location of the gutter, that part of the extension also rose straight up from the rear wall and it also had the appearance of a third storey on the dwellinghouse thus compounding the over-dominant appearance of the total extension.

19. The large box-like structure is clearly visible in views from nearby properties and given its size, design and appearance it has an adverse impact on the outlook from neighbouring properties. I accept that there are many examples of other dormer extensions in the area but none that I saw were as large or dominant as the subject of this appeal. I noted, in particular, that other roof extensions in the area were set back and were therefore not as dominant as the one at No 16.
20. I therefore conclude that the rear roof extension has a harmful effect on the character and appearance of the area and on the host building and that it is contrary to Policies 7.4 and 7.6 of the London Plan; Policy SP11 of the Haringey Local Plan; saved Policy UD3 of the Haringey Unitary Development Plan; and Policy DM1 of the Haringey Development Management Plan DPD which seek, among other things, to ensure that development has regard to the scale and mass of the original building and respects local context and character.
21. The appeal on ground (a) fails

#### **Appeal A: The appeal on ground (f)**

22. An appeal on ground (f) is on the basis that the steps required by the notice exceed what is necessary to remedy the breach of planning control. It is the Appellant's case that only minor alterations, that is, the movement back of the side south facing wall, need be made for the development to comply with permitted development rights.
23. The notice requires the demolition of the rear roof extension in its entirety which would be in accordance with the statutory purpose of the requirements which is to remedy the breach by restoring the land to its condition before the breach took place<sup>8</sup>. In this respect I do not consider that the requirement to demolish the development is unreasonable. It may be possible for the rear roof extension to be altered so that it complies with permitted development rights but I have not been provided with any plans which show, or any details of, how this could be achieved. Therefore I am not able to frame any requirement with the required certainty and specificity to enable any such alteration to be a proper requirement on the notice.
24. The issuance of a notice, once the requirements have been complied with, does not prevent the owner/occupier of a property doing what he/she is lawfully entitled to do. I therefore consider that the requirement to 'make good the roof to the original roof profile, design and slope' is excessive and I will vary the notice by deleting it.
25. To this limited extent the appeal on ground (f) succeeds.

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<sup>8</sup> S.173(4) of the 1990 Act

### **The appeal on ground (g)**

26. The notice requires compliance within three months and the Appellant says in this ground of appeal that this is too short and that because it is a family home she needs and asks for six months.
27. Whilst I understand the Appellant's wishes, the actual demolition of the rear roof extension is not to my mind work that would take longer than three months. I therefore consider this to be a reasonable for period for compliance with the notice.
28. I do, however, point out to the Council it's power in s.173A of the 1990 Act to extend any period of compliance should it prove necessary to do so.
29. The appeal on ground (g) fails.

### **Appeal A: Conclusions**

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

### **Appeal B: Conclusions**

31. For the reasons given above, although in some respects different from those of the Council, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion to single family dwellinghouse Use Class C3 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

### **Decisions**

#### **Appeal A: Appeal Ref: APP/Y5420/C/16/3162244**

32. It is directed that the enforcement notice is varied by:

- a) The deletion of requirement 2) in part 5 of the notice in its entirety; and
- b) The consequent re-numbering of requirement 3) as 2) in part 5 of the notice.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Appeal B: Appeal Ref: APP/Y5420/X/16/3167760**

33. The appeal is dismissed.

*Gloria McFarlane*

Inspector