

Appeal Decision

Site visit made on 22 March 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 03 May 2017

Appeal Ref: APP/G5750/C/16/3159903

Land at 55 Stamford Road, East Ham, London, E6 1LP

- 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 B Das against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 2 September 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 rear extension (as shown edged in yellow on the photograph attached at Appendix 1).
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Procedural Matters

2. The validity of the enforcement notice is challenged on the grounds that it is uncertain whether the removal of the chimney and increase in ridge height of the roof are within the scope of the notice. As a general rule it should be possible to determine from the notice whether the recipient can ascertain what is required to be done and vague requirements offend that rule. However the breach of planning control is clearly expressed as the erection of a roof extension, and the requirement to remove it completely is equally clear. I do not therefore regard the notice as so uncertain as to be a nullity.
 3. The appellant's concern derives from the fact that, as part of the development a portion of the chimney was removed but neither this nor the increase in ridge height, is referred to in the notice. However there is an ambiguity in the notice in that it clearly states that the Council will seek to return the land to its former state by which I take to mean its state prior to the breach of planning control.
 4. It not necessary for me to consider whether the notice should specifically refer to these elements in the construction of the dormer, but I must consider whether injustice would result if I were to amend the notice to include wording to clarify that restoration is required of the rear roof of the property to its prior condition before the breach of planning control.
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5. Firstly, it is clear from my observations and the submitted plan showing the pre-existing elevation, that removal of all or much of the chimney would have been a necessary precursor to installing the dormer in its present position.
6. Secondly, as far as concerns the increase in ridge height, the extension as built appears to key into the main roof just below the ridge tiles. Some insight into a possible method of construction is given in plans submitted with the appeal statement. These refer to a dormer proposed in 2014 that would have been about the same time as a previous investigation into a rear extension. That proposal was for a different scheme but shows the ridge beam associated with the then proposed dormer sitting immediately beneath the ridge tiles.
7. No explanation is given for the current increase in height of the ridge and from what I have seen and read it is likely that its height is necessary to maintain the dormer, including the ridge beam and internal structural elements, in its current position. I also note that, from the submitted plans of the proposal in 2014, the pre-existing ridge line was exactly even with the adjoining property.
8. Despite not being referred to in the notice the appellant has included an appraisal of the planning merits of the raised ridge height and alteration of the chimney in his written representations. Given the reasons for the issue of the notice, in my view it was clearly intended that the roof should be reinstated as it was prior to the breach taking place. A developer may be better placed to know what the pre-existing condition of the roof was prior to the breach and therefore what is required to return the property to its original condition. The Council could still refer to relevant evidence it possesses in seeking compliance.
9. I am therefore satisfied that I can vary the notice using the powers available to me by reason of s176(1)(b) of the 1990 Act as amended, without causing injustice to either party.

Ground (a) and the deemed application for planning permission

Main issue and reasons

10. The main issue on this ground is the effect of the development on the character and appearance of the host dwelling and the wider area.
11. 55 Stamford Road is a two-storey terraced dwelling in a long row of terraced properties in a residential area. To the rear of the appeal property the roofscape of the surrounding area is generally uniform. It includes pairs of two-storey original outriggers with undeveloped roof slopes. Despite the occasional exception, as seen from within the rear of No 55, the original roof elevations of the main and outrigger elements of the terrace make a positive contribution to the character and appearance of the area.
12. The unauthorised L-shaped roof extension occupies virtually, if not all of the full area of the outrigger's roof as well as that of the main roof of the host dwelling. As such it is not set back from the eaves, and is built up to and indeed partially over, the distinctive party or fire walls that rise between the roofs of the host and adjoining building. The overall effect is of a poorly designed, incongruous and overly dominant box-like dormer extension that obscures the original roof forms and significantly undermines the character and appearance of its host and the surrounding roofscape.

13. From the front of the appeal property I saw that its ridge rises incongruously above those of the adjoining dwellings and it appears as if the whole of the chimney set on No 55 has been removed. There are several double sets of chimneys astride the party walls along the terraced dwellings on this side of the street, providing solidity and definition to the roofscape. The effect of these changes on the appearance of the front elevation is relatively minor but they serve to detract further from the character and appearance of the area.
14. Note has been taken of the variety of extensions in the wider area around the appeal site, but they do not in my view justify the harm caused by the new extension. I accept that other loft conversions with rear dormers in the area have been granted lawful development certificates. However the appealed extension is built beyond the thresholds for permitted development, not least due to the fact that it is built over firewalls on either side of the property. The result is an unacceptable increase in bulk that appears odd and out of keeping with local context, including other loft conversions built on the roof structure.
15. It is accepted that the development may meet several of the criteria set out in the permitted development legislation for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The enforcement notice seeks the removal of an unauthorised operational development but it does not seek to interfere with lawful development rights exercisable under that legislation.
16. I also have taken into account what has been said about other appeal decisions that are said to relate to similar developments. However I have not been given full details of these appeals so it is not possible to make any meaningful comparison with the present appeal, which I have decided on its own merits.
17. The extra bedrooms created are a benefit supported by Policy S6 of the Newham Core Strategy 2012 (CS) but I am not persuaded that it would be impossible to increase accommodation without the poor quality design of the unauthorised development. I therefore give this matter little weight.
18. To conclude the roof extension causes substantial harm to the character and appearance of the host dwelling by failing to respect its scale and form as well as that of the surrounding rear elevations in the terrace. As a result it appears incongruous, bulky and over-dominant, contrary to CS Policies S6, SP1, SP3 and H1. These policies reflect a key requirement to achieve a high quality of design in development, including housing development, which respects local character and the established pattern of local development.
19. The appeal on ground (a) therefore fails.

Overall Conclusion

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

Formal Decision

21. It is directed that the requirements of the notice be varied by inserting, after "Appendix 1)" the following wording:

"and restore the rear roof of the property to its condition as it existed prior to the breach of planning control"

22. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR