

Appeals Decision

Site visit made on 12 April 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: 09 May 2017

Appeal A Ref: APP/G5750/C/16/3160809

Appeal B Ref: APP/G5750/C/16/3160810

Land at 58 Winter Avenue, East Ham, London, E6 1NY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Des Raj Chander and Ms Krishna Kumari Chander against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 16 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) and return the roof of the property to its form prior to the unauthorised works being undertaken.
 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.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the ground set out in section 174(2)(f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.
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Summary of Decisions

1. Appeal A succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision. Appeal B is dismissed.

Ground (a) and the deemed application for planning permission

Main issue and reasons

2. The main issue on this ground is the effect of the development on the character and appearance of the host dwelling and surrounding area.
 3. 58 Winter Avenue is a two-storey terraced dwelling in a residential area. It is not in a conservation area nor is it a listed building. The roofscape in the locality is generally uniform in that either the original roof forms remain or where dormer extensions are added they are set reasonably proportionately within the original roof spaces so as not to dominate the host dwellings. This continuity of development contributes positively to the character and appearance of the street scene and the rear roofscape of the terrace.
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4. As built the roof extension occupies the full area of the roofs of the outrigger and the main roof of the host dwelling. The parapet walls have been built up as part of the development which is not set well back from the ridge or eaves. As a consequence it appears as an over-dominant structure that eclipses any appreciation of the original roof forms. It therefore substantially detracts from the character and appearance of the main property and surrounding roofscape at the rear of the terrace. From the front of the property it is apparent that the ridge height has been raised to accommodate the extension. Within the street the property's roofline is seen as at odds with its neighbours. This alteration further detracts from the character and appearance of the area.
5. The appeal on this ground rests mainly on a number of proposed changes to the dormer which I will come to consider. In considering the development as built, I have taken account of the appellant's reference to encouragement given by the Government to extend their homes, as well as the stated need for extra accommodation at the property. However although the construction may have merited the issue of a building control certificate, as I saw on site, the materials and finishes are not in keeping with similar extensions seen nearby, for example brick and render used on the dormer cheeks and the poor render finish below the altered roof line of the outrigger.
6. Therefore I find that as built, the design including the excessive bulk and disproportionate scale of the dormer extension and raised roof ridge fails to respect the character and appearance of the main dwelling and surrounding properties as seen from the street as well as the rear elevations of the terrace. The resulting harm is contrary to the Newham Core Strategy 2012, Policies S6, SP1, SP3 and H1. These policies aim to achieve a high quality of design in development, whilst respecting local character and the established pattern of local development. They are consistent with the aims of Government guidance in the form of the National Planning Policy Framework, especially section 7 which espouses high quality design in all development.

Alternative proposal

7. The deemed application is for the matters stated in the notice as constituting the breach of planning control. There is power under s177(1)(a) of the Act to grant permission in respect of "the whole or part of" those matters as they are stated in the notice.
8. Drawings have been provided with the appeal proposing modifications to the extension. In essence, the rear and side dormer elements would be set within the original width of the roof, rebuilding the dormer wall with tiles hung on the cheeks. The extended party wall would be returned to its original position and the side wall to the east of the property returned to its original condition so that the dormer would occupy roof space only. The side dormer element, as shown in the submitted plans, would be appropriately set in from the eaves. I note also that the outrigger would be altered so that the roof reverts to its original pitch and height. As the roof of the side dormer element above would remain at the same height, the dormer itself would slightly increase in size and this increase would be visible on the front and side planes.
9. I agree with the Council that overall these changes would be a significant improvement on the current structure. However the submitted drawings do not clarify what if any remedial works would be undertaken to restore the original ridge line of the dwelling. Also, as the Council points out, the windows

would remain unaltered, whereas they currently appear awkwardly located and unbalanced in relation to the fenestration of the rear elevation as a whole. However in the absence of a specific alternative from either party on this matter it is not for me to substitute my own view as to how this matter may be resolved.

10. I am mindful that the permission that may be granted in respect of part or the whole of the matters as constituting the breach of planning control, is any that can be granted under Part III of the Act, and it may therefore be conditioned as advocated by the Council. However the development that can be permitted is still subject to the wording of s177(1)(a). It does not mean that the deemed application is for permission to retain the whole or part of the matters alleged in the notice, or anything else which is not substantially different from those matters but which are not alleged in the notice. On balance I am not persuaded that the totality of changes to the extension proposed and required to make it acceptable in planning terms, come within the meaning of "the whole or part of" the matters constituting the breach, as set out in s177(1)(a).
11. That said, there is every prospect that a roof extension along the lines of the proposed alternative scheme could result in an acceptable design that provides additional living space. In these circumstances there are powers available to me to allow the appeal on ground (g) and extend the period for compliance with the notice so that the planning merits of the alternative can be properly explored. I consider that a further two months would be an adequate period for this to take place. Since to do so would not cause injustice to either party, the notice will be varied accordingly by virtue of s176(1)(b) of the Act.
12. For the reasons given above, the appeal on ground (a) fails.

The appeals on ground (f)

13. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. By requiring complete removal of the extension and restoration of the property to its original form, the notice indicates that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.
14. The "smaller steps" that the appellant regards as a possible alternative, is in reality the proposal included in the appeal on ground (a), but there are no other alternative lesser steps put forward that would provide a remedy to the breach that has occurred. It is therefore necessary and not excessive to require the removal of the extension. The appeal on ground (f) therefore fails.

Overall Conclusion

15. For the reasons given above I conclude that a reasonable period for compliance would be five months and I am varying the enforcement notice accordingly, prior to upholding it and refusing to grant planning permission on the deemed application. The appeal under ground (g) succeeds to that extent.

Formal Decision

16. Appeal A is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of "three months" and the substitution of "five months". Subject to this variation 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.

17. Appeal B is dismissed.

Grahame Kean

INSPECTOR