
Appeal Decision

Site visit made on 25 April 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 11 May 2017

Appeal Ref: APP/G5750/C/17/3166700

Land at 107 Dorset Road, Forest Gate, London E7 8PX

- 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 Devji Hirani against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 9 December 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 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.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld

The appeal on ground (c)

1. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The onus of proof is on the appellant to show that the matters alleged in the notice do not constitute a breach of planning control, but in this case the appellant has not expressly stated the basis on which the appeal on this ground has been made. However, on my reading, the appellant appears to suggest that the roof extension constitutes permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I have proceeded on that basis.
 2. Development comprising of the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted under Article 3, Schedule 2, Part 1, Class B of the GPDO, subject to the limitations at Class B.1 and the conditions at Class B.2. There is no definition as to what constitutes a roof for the purposes of Class B set out in the GPDO itself and therefore, for the purposes of interpreting Class B of the GPDO, the term must be given its ordinary meaning.
 3. As originally constructed, the roof to the appeal property was hipped. The main body of the roof extension extends to the ridge of the main roof, but does not exceed the highest part of it. The main body of the roof extension is also set
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up from the eaves of the existing house. No part of the roof extension extends beyond the plane of any existing roof slope that fronts a highway, and it has not been suggested that the cubic content of the roof extension exceeds the limitation at Class B.1(d)(i). In all these respects, therefore, the roof extension accords with the provisions of Article 3, Schedule 2, Part 1, Class B of the GPDO.

4. However, the roof extension subject to the notice has been constructed, in part, by extending the flank wall of the house vertically upwards. Although the view of the roof extension from the rear of the appeal property is somewhat restricted, in my judgement the vertical extension of the flank wall exceeds the height of the highest part of the roof of the existing dwellinghouse. Moreover, I have not been provided with any drawings or other evidence to indicate otherwise. On the information available to me, I am satisfied that the vertical extension of the flank wall fails to accord with the limitation at Class B.1(b) and therefore that the roof extension does not constitute permitted development under Article 3, Schedule 2, Part 1, Class B of the GPDO.
5. The Council has taken a different approach and considers that the vertical extension of the flank wall does not form an addition of alteration to the roof but rather comprises an enlargement, improvement or other alteration of a dwellinghouse and therefore falls to be considered Article 3, Schedule 2, Part 1, Class A. The Council considers that the extension fails to comply with Class A by reason of the excessive ridge height.
6. Class B specifically relates to "the enlargement of a dwellinghouse consisting of an addition or alteration to its roof" and the condition at B.2(b)(i) begins "other than in the case of a hip-to-gable enlargement". It is common for hip-to-gable extensions to involve the vertical extension of the flank wall to form the gable, as demonstrated in some of the photographs provided by the appellant. The reference to hip-to-gable extensions in condition B.2(b)(i) pre-supposes that a hip-to-gable enlargement can be an "enlargement consisting of an addition or alteration to its roof" and therefore falls to be considered under Class B. On that basis, I do not find the Council's approach to be well founded.
7. The appellant explains that the vertical extension of the flank wall was necessary in order to achieve compliance with the Building Regulations. As part of my site inspection, I was able to view inside the roof extension and I have no reason to doubt that the vertical extension of the flank wall was necessary to accommodate the staircase, and thereby accord with the Building Regulations in relation to access and fire escape. Nevertheless, this does not alter the fact that the vertical extension of the flank wall results in express planning permission being required for the roof extension as constructed.
8. The appellant also points out that there are a number of other sites where the Council and other Boroughs have allowed the same form of development as that subject to the enforcement notice. It is not clear whether this statement relates to situations where roof extensions have been found to constitute permitted development or situations where express planning permission has been granted for similar roof extensions. However, I have been provided with no details of those examples and am therefore unable to consider whether they are directly comparable to the development subject to the enforcement notice in terms of assessment against the GPDO.
9. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

10. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the roof extension on the form and character of the original dwelling.
11. The original dwelling is a two-storey end-of-terrace house located towards the western end of Dorset Road. The house is of modest proportions and simple design, and has been previously extended to the rear at ground floor level.
12. The roof extension occupies the full width of the roof and practically the full height, being set only slightly above the eaves of the main house. The extension features prominent projecting eaves, and features a door with balcony and two windows in the rear elevation. However, notwithstanding the presence of these openings, the rear elevation is dominated by the extensive and largely unrelieved dark-coloured tile hanging.
13. In the context of the modest proportions and simple design of the original dwelling, by reason of its size, bulk and design, the roof extension represents an incongruous addition that dominates the host property. The roof extension therefore fails to respect the scale and form of that host property.
14. I conclude that the roof extension unacceptably harms the form and character of the original dwelling. The development is therefore contrary to Policies 7.1, 7.4 and 7.6 of The London Plan; Policies S6, SP1, SP3 and H1 of the London Borough of Newham Core Strategy; and Policy SP8 of the London Borough of Newham Detailed Sites and Policies Development Plan Document. These policies require, amongst other things, that buildings should be of the highest architectural quality and fit with existing urban character and scale. The development also fails to accord with the importance attached to good design in the National Planning Policy Framework (Framework).

Other matters

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the outbuilding fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
16. As indicated above in relation the appeal on ground (c), the appellant points out that there are a number of other sites where the Council and other Boroughs have allowed roof extensions similar to that subject to the enforcement notice. These include examples where the flank wall appears to have been extended vertically to form a hip-to-gable extension in the same manner as the roof extension subject to the enforcement notice.
17. However, although I have been provided with photographs of some of these roof extensions, I have been provided with no further details in terms of the planning history or the circumstances that led to planning permission being granted. In the absence of these further details, I am unable to determine

whether these examples are genuinely comparable with the roof extension subject to the enforcement notice. I therefore cannot discount the possibility that there were site specific circumstances relating to those examples that justified planning permission being granted, but which do not apply to current appeal site. For that reason, I afford the examples referred to by the appellant very little weight.

18. I recognise that the vertical extension of the flank wall was necessary in order to achieve compliance with the Building Regulations, and have taken this into account. However, as well as complying with regulations arising out of the Building Act 1984, it is incumbent upon the householder to comply with all relevant legislation and regulations, including those under the Planning Acts. Compliance with the Buildings Regulations in isolation is therefore not a justification for the granting of planning permission for this development.
19. I note that the occupier of the adjoining property has no objection to the roof extension. This representation weighs in favour of the development although, because the author has not explained the reasons for holding that view, I afford it only limited weight.
20. The appellant refers to a site inspection undertaken by a planning officer from the Council whilst the roof extension was under construction. The outcome of that meeting, I am advised, was that the officer raised no objection to the roof extension and indicated that construction could continue. It was only some time later, once the roof extension was completed, that enforcement action was initiated. The appellant has asked the Council to investigate the matter but was advised to lodge an appeal against the enforcement notice.
21. I have no reason not to believe the appellant's version of events. However, I have no formal record of the exact advice given by the Council officer during that visit and in any event the Council is not bound by that advice. I must therefore determine the appeal before me on the planning merits of the case, having regard to the development plan and all other material considerations.

Conclusion on the ground (a) appeal

22. Having regard to the above, I find that the roof extension is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.
23. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to demolish the roof extension and return the roof of the property to its form prior to the unauthorised works being

undertaken. The purpose of the notice must therefore be to remedy the breach of planning control.

25. The appellant has indicated that he may be prepared to clad the flank wall with wall hung tiles. However, this would not remedy the breach of planning control that has occurred and would not make the development more acceptable in planning terms. I have carefully considered whether there are any other alternatives to the demolition of the roof extension which would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me.
26. Accordingly, the appeal on ground (f) fails.

Conclusion

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

Formal Decision

28. 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.

Paul Freer

INSPECTOR