
Appeal Decision

Site visit made on 4 December 2017

by Jessica Graham BA (Hons) PgDipL

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

Decision date: 27 February 2018

Appeal Ref: APP/J0350/C/17/3179224

Land at 16 Royston Way, Slough, Berkshire SL1 6ER

- 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 Vijay Chaudhary against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 1 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of side facing dormer windows within the roof of the dwelling.
- The requirements of the notice are
 - 1) Remove the side facing dormer windows
 - 2) Reinstate the roof line as existed prior to the erection of the side facing dormer windows
 - 3) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirements.
- The period for compliance with the requirements is two 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 Decision: The appeal succeeds, but only in terms of the period allowed for compliance, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

The appeal on ground (c)

1. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The onus of proof is on the appellant. The appellant contends that the two side-facing dormer windows benefit from Permitted Development Rights, by virtue of Class B, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"), and so their construction did not require planning permission.
2. Under Article 3 of the GPDO, planning permission is granted for classes of development described as permitted development in Schedule 2. Class B of Part 1 of Schedule 2 permits *the enlargement of a dwellinghouse consisting of an addition or alteration to its roof*, and is subject to a number of conditions and limitations. It is common ground that the development complies with most of these. The difference between the parties is as to whether or not the dormers fall within the limitation of B.1(d), which states that development is not permitted by Class B *if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic*

metres in the case of a terrace house, or (ii) 50 cubic metres in any other case. Since No. 16 is a detached dwelling, the 50m³ measurement is relevant here.

3. The original dwelling at No.16 has been extended to the rear and to the side. On 8 February 2016 the Council determined that prior approval was not required for the erection of a single-storey rear extension¹, and on 11 July 2016 it granted planning permission for a single-storey side extension². There is no dispute that since the definition of "resulting roof space" for the purposes of Class B is cumulative³, any roof space provided by these extensions must be added to that provided by the dormers for the purposes of calculating whether the 50m³ limitation has been exceeded. There is also no dispute that since the side extension has a flat roof, it has not provided any additional roof space.
4. The situation regarding the rear extension is a little more complicated. It has been built with what is described by the appellant as a "mock-pitched roof". The eaves height of this roof matches that of the main dwelling, and the pitched element rises to a height of 1.2m, where it then finishes in a flat roof.
5. A detailed argument has been made by the appellant as to why it would be appropriate to measure the volume of roof space internally. However, setting aside for a moment the question of what actually constitutes roof space, the point about internal or external measurement of volume can be dealt with shortly: Article 2(1) of the GPDO explains that for the purposes of the Order "*cubic content*" means the cubic content of a structure or building measured externally.
6. The appellant has calculated the cubic content of the dormers, based on external measurements taken from dimensioned plans produced for Building Regulations purposes, as 40.8m³ in total. This broadly accords with the calculation made by the Council on the basis of the same plans, which produced a figure of 39.24m³ in total. The appellant has calculated the cubic content of the roof of the rear extension on the basis of internal measurements only, but does not appear to dispute the result of the Council's calculation, which was based on external measurements, and comes to 32.33m³.
7. I return to the question of what constitutes roof space. As the appellant rightly points out, the GPDO does not provide any definition of the term. The Government's "Permitted Development Rights For Householders – Technical Guidance" does not provide any relevant assistance either. The appellant has consulted a variety of dictionaries, and arrived at the not unreasonable position that "roof space" is the area between the roof and the ceiling below.
8. Bearing in mind that planning control over buildings is concerned chiefly with external matters⁴, and that the GPDO requires the volume of enlargements and extensions to be measured externally, it seems to me that the most straightforward approach is as follows. Where operational development has taken place, such that a volume of space not previously enclosed is now enclosed by a built structure, the portion of that enclosed space contained in the roof of the structure is the roof space.

¹ Ref Y/16397/003

² Ref P/16397/005

³ Paragraph B.3 of Schedule 2 to the GPDO provides that for the purposes of Class B, "*resulting roof space*" means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

⁴ S.55(2)(a) of the 1990 Act excludes from the definition of "development" building works which (i) affect only the interior of the building, or (ii) do not materially affect its external appearance.

9. The appellant contends that the roof of the rear extension is entirely decorative, having been added to improve the appearance of what could otherwise have been a flat roof, and has no functional roof space. However, in my view the fact that the roof space contains no “usable” areas does not prevent it from being roof space. Neither does the GPDO seek to distinguish, for the purpose of calculating additions to the roof space of the original dwelling, between roof space that is habitable, or accessible, or simply filled with insulation.
10. The appellant also points out that there are two ‘voids’ within the roof section of the rear extension; one beneath the rooflight in the kitchen, and one to create an alcove in which to hang a chandelier. He contends that since these are open areas which are not enclosed between the roof and the ceiling, they cannot be regarded as part of the roof space. I am not convinced by that argument, because these are still part of the space that is enclosed by the roof of the extension, and in external views of the house are part and parcel of the additional roof space provided by the rear extension.
11. Even if I had accepted the appellant’s argument that these voids should be deducted from the calculation of the rear extension’s roof space, on his own measurements their volumes are 1.88m³ and 1.62m³. Deducting their combined total results in a cubic content of 28.83m³ for the rear extension roof space rather than 32.33m³, but when added to the 39.24m³ (40.8m³ on the appellant’s calculation) created by the dormers, this still exceeds the 50m³ limit by a considerable margin.
12. I understand that the two dormers, the rear extension and the side extension were built concurrently, as part of a programme of improvement works, prior to the appellant moving in with his family in January 2017. The rear and side extensions received planning permission, through the Prior Approval process and an express grant respectively, so the otherwise unauthorised dormers could not have benefited from Permitted Development Rights under Class B, because the total resulting roof space of the works as a whole exceeded the 50m³ limit specified by paragraph B.1(d) of the GPDO.
13. I note the appellant’s suggestion that the “mock pitched roof” of the rear extension could be replaced with a flat roof. However, there is no provision for applying the GPDO retrospectively: the time to determine whether the development benefits from the permission granted by the GPDO must be at the time that the development takes place. Replacing the current roof of the rear extension with a flat roof would not, therefore, result in the dormers acquiring planning permission by operation of the GPDO.
14. Taking all of this into account, I conclude that the construction of the two dormer windows did not constitute Permitted Development, and so did amount to a breach of planning control as alleged by the notice. The appeal on ground (c) must therefore fail.

The appeal on ground (a)

15. The appeal on this ground is that planning permission should be granted for the matters alleged by the notice to have breached planning control. The main issues are the effect that the dormers have on the character and appearance of the host dwelling, and their impact on living conditions at neighbouring properties.

16. I note, and share, the appellant's concern that the reasons stated within the enforcement notice for its issue make no reference to the impact of the alleged breach on living conditions at neighbouring properties. However, the matter was raised by one of the occupiers of the neighbouring dwellings, and is clearly a material consideration that I need to take into account in determining this appeal. Since the appellant has had, and taken, the opportunity to respond to the comments made, I am satisfied that my doing so will not result in any prejudice to his interests.

Character and appearance

17. The predominant form of development along Royston Way and the streets off it, including The Spur, Mead Way, Lawrence Way and much of Crosthwaite Way, is mid-twentieth century bungalows of a simple and uniform design, set gable-end on to the road. The side-sloping shallow-pitched roofs of the dwellings, and the generous gaps between them, make a distinctive contribution to the spacious character and appearance of the street scene. While I saw at my site visit that some of the dwellings have been extended to the rear, and alterations and additions to roofs are visible, the majority of the properties on this section of Royston Way do not appear to have been extended at roof level.
18. In views from the street, the side-facing dormers that have been constructed on both roof slopes at No. 16 extend up from just above the eaves to just below the ridge, and so are only marginally short of the full height of the roof. Their flat-roofed, box-like appearance is completely at odds with the shallow slope of the main roof, overwhelming the simple single-storey design of the dwelling and giving it an unbalanced, top-heavy appearance.
19. I appreciate that the elevations of each dormer have been clad in slate to match the finish of the existing roof, but given their boxy shape, excessive mass and the absence of any sympathetic detailing, this serves to emphasise their incongruous bulk and lack of respect for the proportions of the existing house.
20. I also note that the dormers are set back from the front elevation towards the rear of the existing roof, but due to the pattern of sizeable gaps between dwellings they are nevertheless visually prominent as an intrusive addition to the street scene. Further, their presence considerably alters, and reduces, the existing gap between the roof of No. 16 and the dwellings to either side, disrupting the harmonious, uniform appearance and uncluttered character of the roofscape on this side of the street.
21. I conclude that the development causes significant harm to the character and appearance of the dwelling at No. 16, and also to that of the wider street scene. It therefore conflicts with the objectives of Policies H15, EN1 and EN2 of the Slough Local Plan (March 2004) and Core Policy 8 of the Slough Core Strategy 2006-2026 (December 2008), which together seek to ensure that extensions to dwellings are of a high-quality design, are compatible with the scale and layout of their surroundings and have no significant adverse impact on the existing street scene. It also fails to accord with the guidance of the Council's adopted Supplementary Planning Document *Residential Extensions Guidelines* ("the REG SPD"), which advises that dormer windows will normally only be permitted to the rear of the building, and should be in proportion with the size of the original roof.

22. The appellant has criticised the REG SPD, which pre-dates the publication of the government's National Planning Policy Framework (NPPF) and the 2015 GPDO, as unnecessarily prescriptive both in design terms, and in its approach to side dormers. He points out that its advice relates primarily to houses which are set parallel to the street, and ignores the fact that for gable-end on dwellings, side dormers are the most obvious and effective way to extend.
23. The NPPF does state that design policies should avoid unnecessary prescription, but it also advises that guidance should be provided on the scale and massing of new development, and emphasises the importance of reinforcing local distinctiveness. I do not think the REG SPD can reasonably be criticised for seeking to limit the construction of dormers on elevations other than the rear; as it points out, the roof form of a dwelling is an important part of the original character of the house, and as alterations to roofs can be highly visible in the street scene, they should be considered carefully. It is true that the guidance does not deal specifically with dwellings sited gable-end on to the street, but it is not the case that for such properties side dormers will necessarily be the most obvious or effective way to increase the internal living space: the GPDO provides considerable opportunities for rear extensions to the ground floor.
24. The appellant points out that under Class B of the GPDO, dormers very similar to his could be constructed on the roofs of such other properties in the neighbourhood as had not used up their permitted roof-space limit elsewhere, and contends that this must reflect what the Government considered acceptable in design terms. Notably, very few such dormers have in fact been constructed. Should they be built in significant numbers there would come a tipping point at which they became part of the character of the area, but the neighbourhood is a long way from that yet. Further, the NPPF confirms⁵ that the planning system remains plan-led. The fact that the Government drafted the 2015 GPDO to permit a broad range of householder development does not lend weight, in situations where an express grant of planning permission falls to be considered, to allowing work that would conflict with adopted Development Plan policy.
25. As to other properties at which side dormers have been constructed, the appellant drew my attention to No. 23 Royston Rd and two dwellings on "The Spur", a cul-de-sac to the north of Royston Way. The dormers at No. 23 are considerably smaller than those at the appeal site and set further down from the ridge of the roof; I am told by the Council that these were permitted prior to the adoption of both the current Local Plan and the REG SPD. No. 15 The Spur has two dormers on one roof slope and one on the other, while those at No. 31 are similar in bulk and design to those at the appeal site.
26. In my judgment, all of these examples serve to illustrate the visual harm caused by such development. They disrupt the otherwise uniform and spacious appearance of the roofscape, which is a distinctive characteristic of the area. As noted above, side dormers do not exist in such numbers as to have become part of the character of the area, and I consider the presence of the existing examples does nothing to further the cause of granting permission for those built at the appeal site.

⁵ At paragraph 196

Living conditions at neighbouring properties

27. The dwellings which lie to either side of the appeal site, at Nos. 14 and 18 Royston Way, are bungalows of similar original design to No. 16 and both have side windows at ground-floor level. These face the side elevations of No. 16, such that they originally looked towards a single-storey dwelling, with a pitched roof starting at the 3m high eaves and sloping away from them to its 5m high ridge. The construction of the dormers at No. 16 has brought the built form of this dwelling much closer to those windows, which now face on to a solid vertical plane around 4.5m high and 5.9m wide.
28. Given the orientation of the respective dwellings and the fact that the dormers do not exceed the original roof height, I consider it unlikely that the consequent reduction in light received by those windows is so great as to result in significant overshadowing, or loss of sunlight. The development does not conflict with Local Plan Policy EN2 in this respect. However, the overbearing presence of the dormers has had a considerable and detrimental effect on the outlook from the side windows of the two adjoining properties. This results in further conflict with Local Plan Policy H15, which states that extensions to existing dwellings should only be permitted if there is no significant adverse impact on the amenity of adjoining occupiers.

Other matters

29. I note the appellant's point that the Government's stated intentions for the alterations it has made to the Permitted Development Rights regime include the aims of encouraging economic growth, and making it easier for families to undertake home improvements. However, it is also important to note that while the range and scope of Permitted Development has increased, it is still subject to important conditions and limitations. As discussed in my consideration of the appeal under ground (c), the construction of the dormers has been carried out in breach of those. Since the development was unauthorised, I do not agree with the appellant that its claimed economic benefits, in terms of providing work for local builders and assisting the national economic recovery, weigh in favour of granting planning permission.
30. The appellant also contends that the development has environmental and social benefits, in terms of improving the appearance of the house and surrounding area, and increasing the supply of family dwellings with more flexible living space. For the reasons set out above, I consider that the development harms, rather than improves, the appearance of the house and surrounding area. While the enlargement of the originally modest bungalow through the creation of extensive additional living space may make it more suitable for larger families, it makes it less suitable for (and affordable by) smaller families. Thus, in the absence of any evidence that the Borough is over-supplied with small dwellings and has a shortage of larger ones, I am not persuaded that the development has any measurable social, as opposed to personal, benefit.
31. I note the appellant's contention that the Council failed to have proper regard to the Human Rights Act when deciding whether to take enforcement action. However, the appellant's argument concerning conflict between the requirements of the notice and his Human Rights appears to relate to his wish to have more children in the future, with small age gaps between them, and to create sufficient space at No. 16 to accommodate this intention. I give further consideration to the implications of the notice's requirements below, in the

context of the appeal on grounds (f) and (g). For the purposes of assessing the deemed application under ground (a), the appellant's plan for his future family is not a consideration that carries much, if any, weight in favour of granting planning permission: very many growing families have to choose between moving to a bigger property or extending their existing home, and there do not appear to be any special circumstances in this case which would justify permitting a form of extension which conflicts with the adopted Development Plan.

32. I also note the existence of a "fallback position". If planning permission for the existing dormers were refused, it would be open to the appellant to remove them but then replace them under Permitted Development Rights with dormers sufficiently smaller to fall within the limitation on roof space specified by the GPDO. I consider the implications of this further in the context of the appeal on grounds (f) and (g). For the purposes of assessing the deemed planning application, this fallback position does not weigh in favour of granting permission because its implementation would give rise to lesser, rather than greater, harm than allowing the dormers to remain in their current form.

Conclusion

33. For the reasons set out above I have found that the development conflicts with policies of the adopted Development Plan, and I consider that there are no material considerations of sufficient weight to overcome this. I therefore conclude that the appeal on ground (a) should fail, and the deemed application for planning permission be refused.

The appeal on ground (f)

34. The ground of appeal is that the steps required by the notice to be taken are excessive. The Council states that the notice was issued in order to remedy the breach of planning control, and also to remedy the injury to amenity caused by that breach.
35. The appellant's argument is that unless the volume of additional roof space prior to the construction of the dormers had already exceeded the 50m³ limit specified at paragraph B.1(d) of the GPDO, there must be a remaining volume within that limit that it would be lawful to retain. Further, if the volume of one of the dormers on its own would fall within that limit, then requiring both of them to be removed exceeds what is necessary.
36. As discussed in my consideration of the appeal on ground (c) above, there is no provision for the retrospective acquisition of Permitted Development Rights through the making of alterations to development that has already taken place. So reducing the size of the dormers, or removing one of them, so as to bring the total of the roof space added to the original dwelling within the limitation specified by the GPDO would not remedy the breach of planning control.
37. However, in the context of remedying the injury to amenity, it is relevant to note that as the Council accepts, having first removed the existing dormers, the appellant could then use his Permitted Development Rights to replace them with others of smaller volume, such as would not breach the 50m³ limit. That being the case, there is merit in the argument that it appears excessive to require the complete removal of the dormers and the reinstatement of the original roof, since this work could (and in all likelihood would) be immediately

and legitimately followed by the construction of smaller dormers in the same position.

38. This suggests that an alternative course of action, which would achieve the same result without involving the expense and inconvenience of demolition and rebuilding, would be to reduce the size of the existing dormers to that which could legitimately be rebuilt after their removal. The question is whether this can be achieved through the measures available to me in the context of this appeal; that is, either by varying the requirements of the notice, or through a grant of planning permission in connection with the deemed application under ground (a).⁶
39. In my consideration of the appeal on ground (c) above, I found that for the purposes of Class B of the GPDO, the roof space of the rear extension has a cubic content of 32.33m³. This leaves a remaining allowance of 17.67m³. Since each of the dormers has an externally measured cubic content of (on the appellant's calculation) 20.4m³, it is not the case that one of them alone would allow the total additional roof space to remain within the 50m³ limit. There is thus no justification for simply varying the notice to require the removal of only one of the dormers; this would exceed what could lawfully be re-built under Permitted Development Rights, and far from remedying the injury to amenity, would give the dwelling an unfortunate lopsided appearance.
40. The appellant has suggested varying the notice so as to require, rather than the complete removal of the two dormers, that he "Remove sufficient of the two side dormers so that the remaining roof space is no more than XXm³ [Lawful remaining Class B Tolerances, as assessed by the Inspector]". I share the Council's concern that this is not sufficiently precise. In the absence of any worked-out proposal or plan detailing how the intended reduction in size would be achieved, such a requirement would lack clarity as to how exactly the notice was to be complied with.
41. Similarly, granting planning permission for the dormers subject to a condition that a scheme for their reduction in size be submitted to and approved by the Council leaves too much uncertainty, both in terms of the final appearance of the development, and whether it could in fact legitimately be considered "part of" the development already carried out in breach of planning control.
42. Since no lesser steps can be identified which would achieve the purposes of the notice, I conclude that those currently required by the notice are not excessive. The appeal on ground (f) fails, but the fact that the appellant could, having complied with the requirement to remove the dormers, legitimately replace them with slightly smaller ones is a consideration that I will carry forward into my determination of the appeal on ground (g).

The appeal on ground (g)

43. The ground of appeal is that the period for compliance specified in the notice falls short of what is reasonable. The appellant accepts that it might be physically possible to remove the side dormers in two months, but contends that since the internal accommodation of the dwelling is now almost entirely interconnected, the building would need to be vacated during the process and he and his family have no other place to live.

⁶ I have the power, under s177 of the 1990 Act, to grant permission for the whole *or any part* [my emphasis] of the matters constituting the alleged breach of planning control.

44. As discussed above, a further consideration in this context is the fact that once the dormers had been removed, the appellant could legitimately replace them with smaller ones that did not exceed the total additional roof space permitted by the GPDO. The Council accepts this point, and recognises that the existing dormers could potentially be reduced in size so as to achieve the same result, subject to considerable clarification as to how this would actually be achieved.
45. In the light of my findings on the appeal under ground (c) above, the appellant should now have a clearer picture of the volume of permitted additional roof space which has already been used in the construction of the rear extension, and consequently, of the volume remaining. This information would need to inform the scale and design of any proposed replacement dormers. It seems to me therefore reasonable to increase the period for compliance to six months, as this would provide sufficient time for attempts to be made by the appellant to find an amicable solution with the Council, such as altering the dimensions of the existing dormers to accord with those of such replacements as may be found acceptable. In parallel with these attempts, in case they should prove unsuccessful, the appellant would also have time to make alternative arrangements for the accommodation of his family during the removal of the dormers.
46. For the reasons given above I conclude that a compliance period of six months would strike an appropriate balance between the competing private and public interest, such that there would not be a disproportionate burden placed on the appellant. I shall vary the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

47. The appeal is dismissed on grounds (c), (f) and (a) and the deemed application for planning permission is refused. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of two months and the substitution of six months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Jessica Graham

INSPECTOR