
Appeal Decision

Site visit made on 27 February 2018

by Simon Hand MA

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

Decision date: 15 March 2018

Appeal Ref: APP/T5150/C/17/3179031
29 Kingsley Road, London, NW6 7RH

- 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 Molnar against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/15/0568, was issued on 19 May 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear dormer window on the main roof and out rigger projection to the premises.
 - The requirements of the notice are STEP 1 Demolish the unauthorised rear dormer window on the main roof and out rigger projection. STEP 2 Remove all associated debris, items and materials arising from that demolition and all materials associated with the unauthorised development from the premises. STEP 3 Re-instate the premises to its former condition before the unauthorised development took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear dormer window on the main roof and out rigger projection to the premises on land at 29 Kingsley Road, London, NW6 7RH referred to in the notice.

Costs Application

2. An application for an award of costs was made by the appellant against the Council and is the subject of a separate decision.

The Appeal on Ground (a)

3. No 29 is a typical two storey, terraced house with an original outrigger rear extension. The neighbouring properties all seem to be of the same design. The appellant has a linked 'L' shaped dormer constructed to create a new third floor in the roof spanning across the outrigger. Although there is a complex planning history to the site, involving 4 LDC applications, the end result is that the Council consider the dormer as constructed to have a volume that is 0.49m³ larger than allowed for by Class B.1(d)(i) of the General Permitted Development (England) Order 2015. In order to reduce the size of the dormer

so that it would come within the permitted development tolerances 1m would need to be taken off the length of the section above the outrigger.

4. The Council argue that the permitted development dormer is not a genuine fallback as the notice is directed against the unlawful structure and it is not possible to gain permitted development retrospectively. However, given there is a ground (a) and (f) combined and given the now well-worn dictum that enforcement should be remedial rather than punitive it is quite reasonable to consider under ground (f) the possibility of reducing the dormer to that which would have been permitted development. As I have detailed plans for this and it has been granted a LDC by the Council it would seem to be entirely reasonable, should the ground (f) fall to be considered, to vary the notice accordingly. Consequently, this then forms a fallback for the ground (a) appeal.
5. I was able to see that a large number of other houses in the street and in the street behind had dormer extensions of various designs and styles, including several nearby that were very similar. However, according to the Council those that were similar to the appeal structure fell within the permitted development limits. Nevertheless, given the context of the street, the dormer as built does not look out of place or excessively large. I note a new SPD is emerging which would not normally permit 'L' shaped dormers but I am also aware the appellant could build a dormer that was nearly as large using his permitted development rights. The difference between the two, that is the extra metre length over the roof of the outrigger, has little impact on the character and appearance of the area or the host building. Consequently I do not consider the dormer as built to be harmful and so is not contrary to the emerging SPD or DMP1 of Brent's Development Management Policies which requires, amongst other things, good design.
6. The Council also are concerned about the impact on the windows to the rear of the neighbour at No 27. The matching outrigger extensions create a narrow rear yard for each house that is little more than an access to the back of the houses, which is not unusual in these sorts of terraced streets. The neighbour has already added a small outbuilding that blocks this access so the ground floor windows of no 27 are already hemmed in by buildings and the dormer would seem to add little extra harm. The first floor windows are more directly affected but given the relationship of the two buildings, the pre-existing roof would already block some daylight and sunlight and the extra bulk of the dormer would seem to have only a small extra impact.
7. I was able to look out of the dormer windows, particularly the Juliet balcony which looks down into the small rear access area. It is possible to see the first floor windows of the neighbour, especially the one on the side of their outrigger, but the buildings are so close that looking down and sideways it is not possible to see into the window, which appeared to be obscure glazed, suggesting it was a bathroom. There are views into the rear gardens, but these are available from the first floor windows and would be from any lawful dormers that could be constructed. Indeed, if the dormer that would be permitted development was built the effect on the neighbour in terms of daylight, sunlight and overlooking would be very similar.
8. The appellant has provided a report on daylight and sunlight from GVA Bilfinger, who are apparently experts in the field. The Council discounted this

report as it appeared to be for a different property. I agree there are some oddities as the report is for "29 Kingsley Street SW11" and is addressed to the appellant at that address with a postcode of SW11 6QP. There is a Kingsley Street at SW11, but not at the full postcode on the letter, and the description of the properties investigated and the 3D representation of the dormers is correct for the appeal site. It would seem therefore the results are for the correct property. Nevertheless, I shall treat this report with some caution, but it does show there would be little extra impact on No 27, which is in line with my own common-sense observations.

9. Taking this altogether, I do not consider that the dormer as built has any impact on the character and appearance of the area or the host property, nor does it unduly harm the amenity of the neighbour at no 27 by way of overlooking or reduction in daylight or sunlight. These conclusions are reinforced when I take into account the fallback position of a dormer 1m shorter, which would have a very similar impact to the dormer as built.
10. The Council refer to an appeal decision at Victoria Road¹ but that roof extension appeared isolated and incongruous unlike this appeal development. I shall allow the appeal on ground (a), quash the notice and grant planning permission for the development as built. No conditions have been suggested and none are required. The appeals on grounds (f) and (g) do not need to be considered further.

Simon Hand

Inspector

¹ APP/T5150/W/15/3133228