



Appeal Decision

Site visit made on 11 July 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/Y5420/C/18/3203722

36 Roslyn Road, Tottenham, London N15 5ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Jon Judah against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 24 April 2018 under ref. DEP/2017/00287.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, erection of a roof extension on the rear outrigger."*
 - The requirements of the notice are to:
 - 1. *Demolish the rear roof extension on the rear outrigger.*
 - 2. *Make good the roof to match the roof profile, design and slope that existed prior to the erection of the rear roof extension on the outrigger.*
 - 3. *Remove from the site any debris resulting from carrying out steps 1 and 2 above."*
 - The period for compliance with these requirements is three 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed on ground (a), the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the erection of a roof extension on the rear outrigger at 36 Roslyn Road, Tottenham, London N15 5ET referred to in the notice.

Matters of clarification and background

2. Unfortunately, due to unforeseen circumstances the Council's representative could not attend the site visit. I was able to access the rear garden and the loft floor of no. 36 on an unaccompanied basis. The appellant and others stood in the street outside the property for the duration of my site inspection.
3. An appeal on ground (b) – that the breach of planning control alleged in the notice has not occurred – was withdrawn by the appellant by letter dated 28 July 2018.
4. The appeal property is a two-storey terraced house with further rooms in the loft space. Like many other properties in the terrace it has an original two-

storey back addition (outrigger) with a flat roof. The outrigger at no. 36 is paired with the one at no. 38.

5. A certificate of lawfulness was issued by the Council in March 1993 under ref. HGY/1993/0157 for the erection of a roof extension across the full width of the main rear roof. There would appear to be no dispute that this extension was built soon after.
6. The Council issued another certificate of lawfulness in January 2017 under ref. HGY/2017/0178 for a rear dormer roof extension over the outrigger, linking with the main rear roof and the dormer the subject of the 1993 certificate. The plans showed a 0.2 metre setback from the rear and open side of the outrigger's flat roof. The roof extension the subject of the enforcement notice does not comply with the plans, as there is no setback along the open side of the outrigger and only a negligible one at the rear. All the evidence would suggest that this extension was substantially completed by the end of May 2017.

The appeal on ground (c)

7. In appealing on ground (c), the onus is on the appellant to demonstrate on the balance of probabilities that the matter stated in the enforcement notice, when it occurred, did not amount to a breach of planning control. The development plan policies listed in the notice are not relevant to this ground of appeal but that does not mean they should be removed from the notice. This ground turns on whether the **roof extension on the rear outrigger** would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
8. Article 3(1) and Class B of Part 1 of Schedule 2 to the GPDO permit the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions. There is no dispute that the appeal property is a dwellinghouse or that Class B provides for the erection of dormer roof or loft extensions.
9. The Council points to a failure to comply with Condition B.2 (b) (i) of Class B, whilst the appellant takes the opposite view. This is the only area of dispute.
10. Condition B.2 (b) (i) states:
"the enlargement must be constructed so that –
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves;..."
11. The Council acknowledges that it is possible that a certificate may have been issued incorrectly in the past at another property in the street but this would not justify the replication of any past errors. Whatever may have been approved

elsewhere, I can only decide this appeal by applying the prevailing GPDO to the particulars of this case.

12. I have been referred to the document published by the Department for Communities and Local Government in April 2017 "*Permitted development rights for householders, Technical Guidance*" (TG). The TG is a material consideration albeit only guidance.
13. On a plain reading of paragraph B.2 (b) (i), the conditions which follow in (aa) and (bb) only apply in cases where there would not be a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension.
14. The TG (pages 36 and 37 relating to Condition B.2 (b)) can be interpreted to suggest that a dormer which connects the main roof of a dwellinghouse to that of an original outrigger or later extension would normally be "...an enlargement which joins the original roof to the roof of a rear or side extension...", meaning that it is exempt from Condition B.2 (b) (i) (aa) and (bb) of Class B. I consider that this is the situation at the appeal property to the extent that the requirements in (aa) and (bb) would not apply where the subject enlargement joins the main original roof and the dormer upon it to the roof of the original outrigger; in other words inside the corner of the resulting L-shaped dormer roof extension created by the subject enlargement.
15. However, where the rear part of the subject roof extension simply extends over the outrigger's roof, there should be a 0.2 metre setback from the rear and open side of the outrigger's flat roof. There is nothing to suggest it would not be practicable to achieve the required setbacks. As such, I agree with the Council that there has been a failure to meet a relevant condition applying to such development, so that the development did not amount to permitted development and did not benefit from the planning permission granted through the GPDO.
16. Having taken into account all other matters raised, I see nothing to deflect from my finding on the balance of probabilities that the matter alleged in the enforcement notice constitutes development for which there is no grant of planning permission through the GPDO or otherwise. The matter so alleged therefore constitutes a breach of planning control. I conclude that the appeal on ground (c) should not succeed.

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

17. Reading the reasons given in the enforcement notice for its issue, I consider the main issue in deciding whether planning permission ought to be granted for the **roof extension on the rear outrigger** is its effect upon the character and appearance of the house and its surroundings.
18. The notice says that "*The rear roof extension on the outrigger is unacceptable by reason of its depth, size, bulkiness and massing...*". The Council's statement of case declares that "*The roof extension that has been built extends over the full width of the main rear roof slope and across the whole of the original two-storey outrigger.*" This latter comment is potentially misleading as the dormer on the main rear roof is not directly before me given the description of the alleged breach in the notice and the requirements of the notice which call for it to be

restored or refaced upon the demolition of the rear roof extension on the rear outrigger, in the event of the notice being upheld without variation.

19. The rear roof extension on the rear outrigger cannot be seen from any public vantage points. The erection of it has not required any ancillary alterations to the front of the dwelling or to the roof ridge. Although it is likely to be visible from the rear of adjacent private properties on this street and on Southey Road, this would be against the backdrop of the flat-roofed dormer and raised party walls on the main roof of the parent building and in the context of the back of a terrace where some of the main roofs and the pairs of handed outriggers have already been interrupted by roof extensions. The closest example of such changes is at 34 Roslyn Road and I noticed a few other examples too.
20. The rear dormer on the main roof effectively replaced the original pitched roof at the rear with a flat roof across its full width. It was bookended by raised party walls. Before the rear roof extension on the rear outrigger was built, the main part of the house had the appearance at the rear of being three storeys high. Thus, the roof extension on the rear outrigger does not fundamentally change the character and appearance of the house. The pre-existing flat-roofed form of the outrigger is simply carried on upwards with tiles being used to match the first roof extension. On the matter of size, there is no suggestion that the development has increased the volume of the original roof space of the terraced house by more than 40 cubic metres. I consider that the size, bulk, mass, location and design of the extension over the outrigger are such that it appears sufficiently subordinate on the roof and complementary to the specific form and setting of the host building.
21. In this area of relatively high density terraced residential development, I lay some importance on the absence of objections from neighbours in response to this appeal. This confirms my view that the development is not objectionable in visual terms and runs counter to the Council's assertions (made in its statement but not in the notice) that the development dominates the outlook from neighbours' gardens and creates an unacceptable sense of enclosure. I did not gain either of these impressions at my site visit for this extension at roof level.
22. Continuing with the matters raised on ground (c) and reading through the written representations on ground (f), it is apparent to me that had I found the development to be objectionable I would have varied the requirements of the notice (through ground (f)) to give the appellant the choice of either carrying out the development as certified in January 2017 under ref. HGY/2017/0178 or demolishing the rear roof extension on the rear outrigger. In that way the subject extension would have been brought into line with what might have been built as permitted development which would be remedial rather than punitive.
23. Going on from that scenario described in the paragraph above, in my experience 0.2 metre setbacks are more of an obvious visual improvement for pitched roofs where the separation from the eaves can be clearly appreciated along the original roof slope. For flat roofs, like this case, the visual benefit is not as clear-cut; rather, the narrow strips of the outrigger's flat roof that would be left would appear awkward and the drainage arrangements for them would not be straightforward. Be that as it may, I judge that there would be no significant difference between what has been built and that which could have been built as permitted development (the fallback) in terms of the depth, size, bulkiness and

massing of the structure and the effect on the character and appearance of the house and its surroundings.

24. The Council has not sought to rely on any previous appeal decisions including the one at Document 23 of the appellant's Documents Booklet relating to the property at 16 Seaford Road, London N15 5DY. The development, the site context and the arguments before that Inspector were not identical to those in front of me. The other certificates issued for dormers in Roslyn Road referred to in paragraph 6.2 of the appellant's statement are noted but they have limited relevance to the assessment of the planning merits on ground (a).
25. Drawing these threads together, I therefore find on the main issue that the roof extension on the rear outrigger does not have an adverse effect upon the character and appearance of the house and its surroundings. This outcome respects Policies 7.4 and 7.6 of the London Plan, Policies SP2 and SP11 of Haringey's Local Plan Strategic Policies and Policies DM1 and DM12 of the Development Management Development Plan Document which, when read together, broadly seek to encourage high quality design, protect the quality of the built environment and respect local architectural character.
26. The Council has not suggested any conditions in the event of the appeal on ground (a) succeeding and I see no need for any. My finding on the main issue determines the outcome of the ground (a) appeal. Having taken into account all other matters raised, I conclude that the appeal on ground (a) should succeed and that planning permission should be granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on grounds (f) and (g)

27. The enforcement notice has been quashed after the success of the appeal on ground (a). Grounds (f) and (g) no longer fall to be formally considered.

Andrew Dale

INSPECTOR