



Appeal Decisions

Site visit made on 13 August 2019

by Jean Russell MA MRTPI

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

Decision date: 23 October 2019

Appeal A: APP/U5930/C/18/3209691

Appeal B: APP/U5930/C/18/3209692

95 Forest Road, Leytonstone, E11 1JS

- Appeal A is made by Mr Nazir Patel and Appeal B is made by Mrs Shaheen Patel.
- The appeals are made under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 077179) issued by the Council of the London Borough of Waltham Forest on 5 July 2018.
- The breach of planning control as alleged in the enforcement notice is:
 1. *Without planning permission, the erection of an unauthorised dormer roof extension ("the extension") on the rear of the building on the Land.*
 2. *Without planning permission, the raising of the front roofplane [sic] and principle [sic] roof ridge on the building on the Land.*
- The requirements of the notice are to:
 1. *Reduce the size of the rear dormer roof extension so that it falls within Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order or remove the dormer rear dormer [sic] roof extension from the building on the Land;*
 2. *Reduce the raised front facing roofplane [sic] and raised principle [sic] roof ridge back to their original position;*
 3. *Remove all associated fixtures, fittings associated materials and debris from the land.*
- The period for compliance with the requirements is six (6) months.
- Appeal A is proceeding on the grounds set out under section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.
- Appeal B is proceeding on the grounds set out under section 174(2)(c) and (f) of the Town and Country Planning Act 1990.

Summary of decisions: Appeals A and B are dismissed, and the enforcement notice is upheld with a correction and variation as set out in the Formal Decisions below.

PRELIMINARY MATTERS

1. I shall exercise my powers of correction to remedy typographical errors in the enforcement notice; this will cause no injustice to the appellants or the Council.
2. The reasons for the enforcement notice refer to the National Planning Policy Framework (the Framework). It was revised after the notice was issued but in time to inform the representations made by the parties for these appeals.

APPEALS A & B ON GROUND (C)

3. Ground (c) is that what is alleged by the notice does not constitute a breach of planning control. The onus is on the appellants to make that case, by showing that the alleged development does not require or has been granted planning permission on the balance of probabilities.

4. The appellants claim that the dormer is permitted development (PD) as shown by a lawful development certificate (LDC) granted by the Council (ref: 162972) on 30 November 2016. Article 3 and Schedule 2, Part 1, Class B of the *Town & Country Planning (General Permitted Development) (England) Order 2015* (GPDO 2015) grant planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
5. Before I look at the appellants' evidence, it would assist to describe the alleged development in more detail. The appeal concerns a two storey, end-terraced house with a two storey (though slightly lower) outrigger at the rear. The main part of the roof is pitched, and the house was built with a gable end and parapet walls that followed the slope of the roof on each side. The outrigger has a lean-to roof.
6. As the notice alleges, the ridge of the main part of the roof has been raised, so that the front roof slope has had to be re-constructed on a steeper plane. The dormer is 'L-shaped'; it is attached to and enlarges both the main and outrigger roofs. On the main rear roof slope, the dormer is built up to the raised ridge and across to the parapet walls – which have also been raised so that they are even higher than the new ridge. The gable end of the house has the squared-off outline of the dormer and raised parapet. The dormer is also built down to and over the eaves of the main roof in order to connect to the outrigger.

The Lawful Development Certificate

7. The LDC was applied for and granted under s192 of the TCPA90 for *proposed* development – meaning that the question for the Council was whether the operations would be lawful if instituted or begun on the date of the application¹. The LDC states that the 'construction of a dormer roof extension...' would be lawful on the basis that the dormer would be PD under Class B.
8. However, it seems likely that the appellants built the dormer some months before they applied for the LDC. It is clear from a Building Regulations Final Certificate that the dormer was completed in March 2016, but the LDC application was not received by the Council until 12 September of that year².
9. I also find that the dormer was not built in accordance with the proposed LDC plans, although I accept that the appellants told their builder to do so. The plans showed that the ridge of the main roof would not be raised, the dormer would be lower than the existing ridge, and the parapet on the gable end would not be altered. I agree with the Council that the development on the ground is not the proposed development subject to the LDC on the balance of probabilities.

Permitted Development Rights, Conditions and Limitations

10. While the appellants cannot rely on the LDC, the appeals on ground (c) could still succeed if it is shown that the dormer was built as PD under Class B in March 2016. The GPDO grants planning permission subject to conditions and limitations, and the parties dispute whether the works complied with condition B.2(b):

*'The enlargement must be constructed so that (i) **other** than in the case of...an enlargement which **joins the original roof to the roof of a rear...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' [my emphasis].*

¹ The Council decided the LDC application on the basis of whether the works would have been lawful if begun on the date of their decision – but that error makes no difference to these appeals.

² The Building Regulations Final Certificate (ref: 1B4299DL) is dated 23 March 2016

11. The main part of the dormer is less than 0.2m from the eaves of the original roof and the Council refutes the appellants' claim that it was not 'practicable' to achieve that set-back. While the dormer covers two roofs and can be described as having 'main' and 'outrigger' parts, it is and must be treated in law as a single structure. It is 'an enlargement which joins the original roof to the roof of a rear...extension' and so I find that the requirements set out under B.2(b)(i)(aa) and (bb) do not apply.
12. That interpretation of B.2(b) is consistent with the advice set out in *Permitted development rights for householders – Technical Guidance* which states that:

'The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other'.
13. However, B.2(b) is not the only condition or limitation which is relevant to this case. Paragraph B.1(b) provides that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. There is no dispute that the ridge of the roof and the parapet wall were raised as part of the same development as the construction of the dormer. It follows that dormer conflicts with limitation B.1(b) and is not PD, irrespective of the fact that condition B.2(b) is not breached.

Conclusion

14. Compliance with Building Regulations does make development lawful in planning terms. The appellants have not shown that the alleged dormer is PD – or that the alleged development, as a whole, does not require or has been granted planning permission. I conclude on the balance of probabilities that there has been a breach of planning control as alleged. The appeals fail on ground (c).

APPEAL A ON GROUND (A) & THE DEEMED PLANNING APPLICATION

Main Issue

15. I consider that the main issue is the effect of the appeal development on the character and appearance of the appeal house and surrounding area.

Reasons

16. I saw that Forest Road is a long, narrow and sloping street. The south eastern side of the road, where the appeal site lies, is faced mainly by dwellinghouses which differ in their age, size, degree of set-back from the pavement, architectural style and extensions or alterations. This road frontage is further varied by the pepper-potting of small apartment and commercial buildings between the houses – while the north western side of Forest Road is mainly lined by single storey garages.
17. I consider that visual diversity is such a trait of Forest Road that there is scope for many individual householders to enlarge their properties without making much difference to the character or appearance of the area. However, it does not follow that *any* extension or alteration would be acceptable. Another feature of this street is that the different buildings generally sit together comfortably, because few are designed to be prominent.
18. Houses in the appeal terrace stand close to the back of the pavement behind short front yards. Being at the end of the terrace, however, the appeal house is also adjacent to dwellings to the south west, 97-101 Forest Road, which are set behind relatively generous front gardens. Even without any works to the roof, the side

elevation of the house would be visible from several metres away in the street, seen across and as rising above the gardens at nos. 97-101.

19. The parapet wall is raised so that the side elevation of the house continues flush upwards to form the side wall of the dormer and protrude above the raised ridge. There is a chimney breast on the side of the building and the front roof slope joins the chimney at an obviously lower point than the parapet does at the back. The works have given the house an unacceptably bulky and discordant appearance.
20. The appellants suggest that the parapet conceals the dormer, but it is not possible to separate the two; the construction of the dormer and extension of the parapet formed a single operation. Insofar as they can be distinguished, the parapet wall causes particular harm because of its height and physical integration with both the dormer and gable end. The use of a lighter colour render on the parapet than on the rest of the house also highlights the new and unsightly shape of the building.
21. I further saw that, when the house is viewed from the south west, the outrigger part of the dormer is conspicuous. It is lower in height and further from the street than the main part, and it set up from the eaves of the outrigger, but it is still another box-shaped component on the roof. It draws attention to and exacerbates the top-heavy and obtrusive appearance of the dwelling when seen in side views.
22. When I stood in front of the house, I could see that its front roof was higher and steeper than that next door, and that these works detracted from the appearance of the terrace. It would be fair to assume that not many people would notice this change; the street is too narrow in front of the terrace to encourage passers-by to look up and around, and there are no facing residential properties. However, that finding would not justify a grant of permission because the extensions and alterations to the roof appear clearly and unacceptably harmful from the side.
23. The appellant has provided photographs of houses with similar dormers and/or raised roofs in the surrounding area. I do not know the circumstances in which any of these developments were built or permitted. For this reason, and since each case must turn on its merits, the pictures of other dwellings would not justify a grant of permission for the works subject to this enforcement notice.
24. It is always necessary on ground (a) to consider whether there is any fallback position and the appellants could replace the dormer with one that would accord with PD rights. However, they have not asked me to grant permission for any dormer which is PD size, and I do not need to do so because the notice would allow the appellants to retain the existing dormer with modifications³.
25. The appellants suggest that altering the dormer in line with the notice would make a 'negligible difference'; I disagree. I have some concerns about the wording of the notice, as discussed below, but the basic requirements to reduce the dormer and lower the ridge would lessen the damaging visual impact of the development.
26. I conclude that the development causes unacceptable harm to the character and appearance of the appeal house and surrounding area. It conflicts with Policies DM4 and DM29 of the *Development Management Policies Local Plan* (DMPLP) and Policy CS15 of the *Waltham Forest Local Plan Core Strategy Local Plan*, which require that alterations and extensions relate to the original building and respect the street scene and character of the area, and that new development responds positively to its local context in terms of scale, height and massing⁴. It conflicts

³ Planning permission can be granted under ground (a) for "part of the matters".

⁴ The Council also referred to DMPLP Policy DM30 and London Plan Policy 3.5, but the former does not appear relevant while no copy was provided of the latter.

with the Framework, which expects development to be sympathetic to local character and the surrounding built environment.

Other Matters and Conclusion

27. The appellants extended the house to enable them to foster three children, siblings who needed to stay together. I do not know if the appellants are still fostering the same or any other children, but I shall assume that they still need the space that the development affords for their family.
28. However, while I have sympathy for the appellants, personal circumstances can rarely justify the approval of built development that would be both harmful and permanent. That truism must apply in this case, because refusing permission would not cause the appellants to lose their loft conversion entirely.
29. The notice allows for the retention of the dormer if it is modified in line with PD rights – so that it would be more or less the size proposed by the appellants in the LDC application. They have not explained why it would be impractical to carry out such works or shown that doing so would be unacceptably harmful to the children, whether through the loss of space or disruption.
30. I find that the circumstances of the appellants and their family do not justify or outweigh the harm caused by the development. For these reasons and with regard to all other matters raised, I conclude that it is necessary and proportionate for Appeal A to fail on ground (a) and the deemed planning application to be refused.

APPEALS A & B ON GROUND (F)

31. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
32. The appellants suggest that they should be allowed to retain the development as it is. I have properly considered those submissions in relation to ground (a) and found that permission should be refused. The arguments cannot be re-opened though ground (f). The appellants have not put forward any 'lesser steps' which would remedy the breach or harm to amenity.
33. However, I must observe that the first requirement of the notice is not worded precisely because a) the GPDO does not grant permission retrospectively, and b) I found under ground (c) that Council did not fully grasp why the dormer was not PD as built. It would make the notice clearer, while making no difference in practice, if it is varied to explain how the dormer must be reduced if it not removed. The appeals succeed on ground (f) only to that limited extent.

OVERALL CONCLUSION

34. For the reasons given, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

FORMAL DECISIONS

35. It is directed that the enforcement notice is corrected and varied by:
 - Deleting the words '*roofplane and principle*' in sub-paragraph 3.1 and substituting '*roof plane and principal*'.

- Deleting sub-paragraphs 5.1 and 5.2 in their entirety and substituting:
 1. *Remove the rear dormer roof extension OR modify it so that it does not exceed the height of the ridge of the principal roof following compliance with step 2 and the parapet walls are reduced to their original height.*
 2. *Reduce the ridge of the principal roof to its original height and reinstate the front-facing roof on its original plane.*
36. Subject to the correction and variation, Appeal A and B are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR