



Appeal Decision

Site visit made on 22 November 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Appeal Ref: APP/C5690/C/19/3221456

124 Nelgarde Road, London SE6 4TP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lincoln Adam Moses against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 14 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a roof extension to the rear roof slope of main building and to the roof slope of the rear projection.
- The requirements of the notice are:
 1. Remove the roof extension from the rear roof of the main building and from the roof of the rear projection;
 2. Restore the roofs to their previous profile and appearance before the unauthorised development was carried out by (a) reinstating the pitch roof slope to the rear roof of the main building and to the roof of the rear projection and (b) reinstating tiles to the rear roof slope of the main building and to the roof slope of the rear projection to match the tiles on the front roof slope;
 3. Remove all materials, debris and waste resulting from compliance with requirements 1-2 above from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Lincoln Adam Moses against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Preliminary Matter

2. The Council failed to submit a planning statement by the required deadline due to a misunderstanding of the need to adhere strictly to the timescales¹. The Council has since submitted the planning enforcement report, which it says forms its main planning statement. As this was submitted late in the proceedings, the appellant did not have adequate time to make a considered response. I have therefore disregarded that report, insofar as it has been submitted as the Council's statement of case, since to take it into account would risk prejudice to the appellant.

¹ As set out in the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002.

The appeal on ground (e)

3. The main issue to consider is whether the appellant has shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, he or another person having an interest in the land has been substantially prejudiced. The appellant claims that the Council failed to serve notice upon the mortgage company, which has an interest and would be materially affected by the notice.
4. The Council has not provided a response to this claim, therefore, I must conclude that the notice was not properly served. Section 176(5) of the 1990 Act as amended provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
5. The appellant was aware of the notice prior to the date that it would have taken effect and he has not been prevented from exercising his right to appeal. Under these circumstances, I consider that neither the appellant nor the mortgage company has been substantially prejudiced. Therefore, the appeal on ground (e) fails.

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

Main Issue

6. The appeal on ground (a) is that planning permission should be granted for the matters stated in the notice. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for the construction of a roof extension to the rear roof slope of the main building and to the roof slope of the rear projection.
7. The main issue is the effect of the development on the character and appearance of the host building and the wider area.

Reasons

8. The appeal building is a two-storey terraced house located in a row of similar properties. The wider area is predominantly residential in character, although there is a school complex opposite the site. I saw from my site visit that there are other roof extensions of varying size and type in the immediate vicinity. There is a very similar roof extension at the adjoining property, No 122 Nelgarde Road.
9. There is a planning history relevant to the appeal. The Council refused to issue a Lawful Development Certificate (LDC) for a roof extension to the rear and side of 124 Nelgarde Road (Ref DC/17/102708) in September 2017. The application was made under section 191 of the 1990 Act as amended, as the development was in situ when that application was made. The Council was concerned that the plans were not representative of what had been built. I understand that it also believed condition B.2(b)(i)(bb) of Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 had not been achieved. The appellant explains that the distance from the rear wall of the main roof extension to the eaves is approximately 0.14m as opposed to the required 0.2m.

10. In addition, the artificial slate used in the construction of the roof extensions did not match the concrete tiles on the front facing roof slope.
11. The enforcement notice seeks to restore the house to its condition before the development took place. Notwithstanding the refusal of the LDC application at the appeal property, my attention has been drawn to an approval at the adjoining property, No 122, which I have taken into account. That property benefits from a LDC, dated 10 January 2018 Ref DC/17/104672, in respect of "the construction [of] rear dormer extensions ... together with the insertion of two rooflights to the front roof slope ... constitutes lawful development in accordance with Schedule 2, Part 1, Class B, C and G to the Town and Country Planning (General Permitted Development) Order". This shows that the Council considered that a very similar scheme to that enforced against would be lawful. I consider that the permitted development rights represent a valid fallback position. It is highly likely that the appellant would seek to erect a very similar roof extension to that existing should the notice be complied with. Consequently, the fallback position carries significant weight.
12. If the roof extension were to be constructed with the 0.2m set back, as required, the visual impact of that development on the host building and the wider area would be comparable with the development as constructed. I accept that the materials at the rear do not match those on the front facing roof plane. This has very limited effect as the front and rear roof slopes are not seen in the same views and it is not apparent that there is a mismatch. Overall, compliance with the enforcement notice would serve no useful purpose.
13. I accept that the size, scale and design of the roof extension is such that it amounts to a dominate addition to the host dwelling that is overly prominent in the street scene. The impact is not alleviated by the other roof extensions in the vicinity. It is thus contrary to Policies 7.4 and 7.6 of the London Plan (2016), Policy 15 of the Core Strategy (2011) and DM Policies 30 and 31 of the Development Management Local Plan (2014), which seek to secure high quality design that complements and respects its surroundings. However, the fallback position is a material consideration that carries significant weight. In this instance it outweighs the conflict with the development plan policy for the reasons set out above. I conclude therefore that the appeal on ground (a) should succeed.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

15. 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 construction of a roof extension to the rear roof slope of the main building and to the roof slope of the rear projection on land at 124 Nelgarde Road, London SE6 4TP referred to in the notice.

Debbie Moore Inspector