The Planning Inspectorate

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/19/3221484
122 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 Anita O'Donnell 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 six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

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

Preliminary Matter

1. 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 main building and to the roof slope of the rear projection.

Main Issue

2. The main issue is the effect of the development on the character and appearance of the host building and the wider area.

Reasons

3. 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. The adjoining property at No 124 has a roof extension of the same design and proportions as that erected at the appeal property.

4. The appeal property benefits from a Lawful Development Certificate (LDC), dated 10 January 2018 Ref DC/17/104672, in respect of "the construction [of] rear dormer extensions at 122 Nelgarde Road SE6, 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 have been lawful had it been constructed in accordance with the submitted plans at the date of that application. The LDC represents a valid fallback position to which I attach significant weight.

5. The appellant says that the difference between the scheme for which the LDC was sought, and that subsequently built, is that the external wall of the dormer to the main roof is 0.1m closer to the eaves than was shown on the plans. In all other aspects, it is claimed that the appeal proposal is the same. The Council has not provided any evidence to the contrary although I saw that there are some relatively minor differences in the fenestration.

6. The enforcement notice seeks to restore the house to its condition before the development took place. However, the existence of the LDC is critical as it strongly indicates that a very similar scheme could be erected. Under the circumstances, I consider it highly likely that the appellant would seek to rebuild the lawful roof extensions. If the scheme that has been deemed to the lawful were to be built, I consider that there would be no discernible difference between that and the development as constructed. The impact on the host building and the street scene would be comparable. Consequently, compliance with the enforcement notice would serve no useful purpose.

7. I accept that the roof extensions amount to a visually dominant addition to the roof of the host dwelling. The development stands out in the street scene and appears incongruous, despite the existence of other similar extensions in the area. 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 LDC 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

8. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on grounds (f) and (g) do not therefore need to be considered.

Formal Decision

9. 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 main building and to the roof slope of the rear projection on land at 122 Nelgarde Road, London SE6 4TP referred to in the notice.

Debbie Moore

Inspector