



Appeal Decision

Site visit made on 14 November 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2019

Appeal Ref: APP/U5930/C/18/3207793

265 Chingford Road, Walthamstow, London E17 5AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by R Iqbal against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 22 June 2018 under ref. 077125.
 - The breach of planning control as alleged in the notice is: "1. *Without planning permission, the erection of an unauthorised L-shaped rear dormer roof extension ("the extension") 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 (sic) or remove the rear dormer roof extension from the building on the Land;*
2. *Remove all associated fixtures, fittings associated (sic) materials and debris therefrom from the Land.*"
 - The period for compliance with these requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected and varied by deleting requirements 1 and 2 in paragraph 5 in their entirety and replacing them with the following requirements:
 - 1) **Either** reduce the size of the L-shaped rear dormer roof extension so that it falls within the limitations and conditions set out in Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 **or** remove the L-shaped rear dormer roof extension from the building on the Land;
 - 2) Remove all associated fixtures, fittings, materials and debris therefrom from the Land.Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural matter regarding site visits to the appeal property

2. No. 265, a 2-storey terraced dwelling with a double height projecting bay to the front, is typical of the properties found on the same (western) side of Chingford Road. In 2019, a total of 4 attempts were made to arrange for an accompanied site visit to be undertaken at this property but all (9 May, 26 July, 12 September and 14 November) were unsuccessful, owing to

problems originating from the appellant's side. In letters sent out to the parties on 16 September and 18 October, it was made clear that should access to the property not be forthcoming on 14 November, then the Inspector will give consideration to proceeding to a decision based on the information on the file, including the photographs submitted by the appellant, the Council and the third parties (the occupiers of 267 Chingford Road). It was also explained that it would not be in the public interest for the appeal to continue undetermined. This decision is thus made on the basis of the information available to me and takes into account what I could see at my visit on 14 November from public vantage points, after the Council's representative had departed.

The enforcement notice and grounds of appeal

3. In the interests of precision, my decision above provides for minor corrections or variations to the requirements of the notice which should be fairly self-explanatory. I found it easier to rewrite them in full. In the first requirement, its alternative options are highlighted, the L-shaped nature of the dormer set out in the breach is repeated, the full title of the relevant legislation is provided and confirmation is given to the fact that it is the relevant limitations and conditions set out within that legislation which should be followed. In the second requirement, I address a missing comma and the unnecessary repetition of the word "associated". I am satisfied that the corrections and variations would not cause injustice to any party.
4. I should point out that as no appeal has been brought on ground (a), the planning merits of the development alleged in the enforcement notice do not fall to be considered. I say this because both the appellant's and the Council's written representations stray into this area.
5. Although no appeal has been brought on ground (c) – that the matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control – the appellant's written representations, by and large, actually fall within this territory. The Council covered these issues in its statement and I shall consider the potential ground (c) appeal.

The appeal on ground (b)

6. In order to succeed on this ground, the burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact. The relevant date for assessing whether the alleged breach of planning control set out in a notice has taken place is the date of issue of the notice. Hence, my focus must be on any pertinent matters which had occurred by the time the notice was issued on 22 June 2018.
7. The appellant, who is not represented, may have misunderstood this ground of appeal. He starts by saying that "There has **not** been a breach of planning control." Such an argument is more relevant to the potential ground (c) appeal, as are some of the facts put in to support that argument. The issue for ground (b) is simply whether the L-shaped rear dormer roof extension has been erected at all. The photographs, when

viewed together, clearly show the existence of the subject extension, which is an L-shaped, flat-roofed dormer extension, with a tiled finish, projecting across the rear roof slope of the main part of the house and extending along the north-facing roof slope of the 2-storey rear outrigger. The Council's enforcement investigation, opened in April 2017, revealed that this extension was constructed between June 2015 and August 2016.

8. I conclude on the balance of probability that what has occurred is the erection of an L-shaped rear dormer roof extension, as stated in the enforcement notice. The appeal on ground (b) must fail.

The implied or potential appeal on ground (c)

9. If an appeal had been made on ground (c), the onus would have been on the appellant to demonstrate on the balance of probability that the matters stated in the enforcement notice, when they occurred, did not amount to a breach of planning control. The matter of whether the works have infringed The Party Wall Act or The Building Regulations is also of some concern to the third parties, but it is beyond the scope of this appeal which is made under a Planning Act.
10. The main issue here is whether the extension would have been granted planning permission by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which was in force when the development was begun.
11. 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. Any contravention of the limitations on, or conditions belonging to, permitted development rights under the GPDO constitutes a breach of planning control against which enforcement action may be taken.
12. 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;..."
13. The photographs confirm the points being made by the Council and the third parties that the original eaves along the main rear roof and along the north-facing roof of the rear 2-storey outrigger have not clearly been maintained or reinstated (requirement (aa)) and secondly that the edges of

the enlargement closest to those same eaves have not been kept at least 0.2 metres from those eaves, when it would appear practicable to have done so (requirement (bb)). Rather, new eaves have been fitted in the form of uPVC soffit boxing with guttering which projects out beyond the original eaves lines. Whilst the dormer is probably set back from both of those new eaves lines by 200 mm behind a band of new roof tiling, they are not “*the eaves of the original roof*”.

14. 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.
15. The Government’s document titled “*Permitted development rights for householders, Technical Guidance*” (TG) is a material consideration albeit only guidance. The TG (page 36, the final paragraph relating to Condition B.2 (b)) can be interpreted to suggest that an L-shaped 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 roof enlargement joins the main original roof to the roof of the outrigger; in other words the part where, by necessity, it overlaps the original rear eaves of the main roof.
16. However, where the dormer simply extends down over the outrigger’s roof, the original north-facing eaves of the rear outrigger should have been fully maintained or reinstated and there should have been a clear 0.2 metres set back from those eaves. Similarly, the short section of original eaves on the rear elevation, next to the common boundary with no. 267 and directly above a first floor window, should have been fully maintained or reinstated and there should have been a clear 0.2 metres set back from those eaves. Rather, those rear and side elevations of the L-shaped dormer extend continuously upwards from the walls below.
17. 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. No express planning permission has been sought or obtained. On the balance of probability, I find that the development (when it occurred) would not have been lawful. The matter alleged in the enforcement notice therefore constitutes a breach of planning control. Any appeal brought on ground (c) would, therefore, have failed.

Andrew Dale

INSPECTOR