



Appeal Decision

Site visit made on 26 November 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 January 2020

Appeal Ref: APP/N5090/C/18/3217293

Land at 5 Bosworth Road, Barnet EN5 5LZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Margaret Cox against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 24 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the construction of a side and rear dormer window roof extension as outlined in red on figures 1, 2 and 3.
- The requirements of the notice are: -
 1. Demolish the side and rear dormer roof dormer window roof extension as shown outlined in red on figures 1, 2 and 3 and restore the roof back to the state it was prior to the breach of planning control, as shown outlined in figure 4.
 2. Permanently remove all constituent materials resulting from the works in 1. Above from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. There appears to be a typographical error in point 1 of the requirements as the description of the development required to be demolished does not correlate with the description of the development within paragraph 3 of the enforcement notice. However, the error entails the addition of words that are superfluous as such, I intend to remove the words '*dormer roof*' that are after the word '*rear*' in point 1 of paragraph 5. I can make the necessary correction to the notice without causing injustice to the appeal parties.
3. It is clear that the first part of point 1 requires the demolition of the side and rear dormer window roof extension and the restoration of the roof back to its condition prior to the breach of planning control. I consider that the reference to figure 4 is therefore not necessary and could be misleading as it does not

illustrate the whole of the roof involved. Consequently, I intend to correct the notice by deleting the wording '*as shown outlined in figure 4*' from point 1. I can make the necessary correction to the notice without causing injustice to the appeal parties.

The ground (a) appeal and deemed planning application

Main Issue

4. The main issue is the effect on the character and appearance of the host dwelling and the surrounding area.

Reasons

Background

5. In 2017 a Certificate of Lawful Development (CLD) was granted by the Council for extensions to the roof including, 1 no rear dormer window with Juliet balcony, 1 no side dormer window to existing rear projection, 2 no roof lights to front elevation and the erection of a single storey garage to the rear garden.
6. There is no dispute that the side and rear dormer window roof extension (the dormer) that has been constructed at the appeal property is not in accordance with the plans that accompanied the CLD.

Character and appearance

7. The appeal dwelling is one half of a semi-detached dwelling located in a predominantly residential area. The semi-detached dwelling is of traditional design and has an outrigger to the rear and the ridge line of that roof is at a noticeably lower level to that of the main roof ridge line. I observed that there is variety to the age, architectural style and type of dwellings in the surrounding area. Nevertheless, I noted that most of the dwellings' roofs have a traditional double pitched design. Moreover, even though there are a number of other examples of dormer windows visible in the immediate vicinity of the appeal site they generally only involve dormers across a rear roof slope. Furthermore, the majority of dwellings in the surrounding area do not appear to have dormer window extensions.
8. The dormer that has been erected at the appeal property is of a contemporary design, incorporating a mix of traditional and modern materials. As the dormer has been built up off external walls of the dwelling it occupies the entire main rear roof slope and the entire side roof of the outrigger. It incorporates a predominantly flat roof similar in terms of its overall height to the ridge line of the dwelling's main roof slope, including the section over the outrigger. Additionally, the one wall of the side dormer appears to have incorporated and extended the parapet/firewall that was above the ridge line of the outrigger's roof. That wall and the rear wall of the dormer have been built in brickwork.
9. Due to the above factors, the dormer appears as a bulky, box-like structure, completely dominating the rear of the dwelling in visual terms and significantly eroding the original eaves and roof profiles at the rear of the dwelling. Its distinctly box-like appearance contrasts markedly with the neat and uncluttered roof forms of the majority of the houses on this side of Bosworth Road. This, together with the extent of the works and their elevated nature means that the dormer has the appearance of a flat roofed 3rd storey to the

rear of the dwelling rather than a traditional dormer window extension. This tends to make it look very top-heavy, ungainly and out of keeping with the essentially simple form and modest proportions of the host building, exacerbating the adverse visual impact of the development.

10. The appellant has drawn my attention to an appeal decision¹ where the Inspector considered that the fallback position provided by a CLD was a material consideration and gave it significant weight. In this case, there is also a reasonable prospect of the dormers approved under the CLD being constructed if I dismiss the appeal. However, the flat roof level of those dormers would be appreciably lower than the ridge line of the main dwelling and they would be set in from the eaves of the dwelling and the outrigger.
11. Moreover, it is not clear from the evidence before me as to whether the dormer over the outrigger would have incorporated and extended the firewall/parapet wall. Nonetheless, as the dividing line between the semi-detached dwellings appears to run through the centre line of that wall it is highly likely that the incorporation and extension of that wall did not form part of the CLD. In any case the visible part of the dormer above that parapet would have been significantly lower than the wall as built. Consequently, I consider that the dormer as constructed has an appreciably greater visual impact than the CLD. As such, the CLD has little weight as a fallback position in this respect.
12. The appellant has suggested that she would accept a planning condition to alter the materials of the dormer if I considered that this would mitigate the harm identified. However, I do not consider that changing or cladding the walls of the dormer would appreciably reduce the visual impact of the development as its bulky, box like structure would still remain.
13. Overall therefore, the dormer appears as a bulky and incongruous addition to the dwelling and it is at odds with other development in the vicinity. The dormer is partly visible from Woodville Road through the gap between the dwellings, it can also be clearly seen from the drive to the rear of the appeal property that provides access to a number of garages/outbuildings and it can be viewed from adjacent residential properties. The impact of the development on the character and appearance of the wider area when viewed from the public realm is modest. Nonetheless, the harmful effects of the dormer are apparent from the neighbouring properties and I can find nothing in local and national planning policy to suggest that the requirement for high quality design only applies to development that is prominent within the public realm.
14. As a result, the dormer harms the character and appearance of the area and conflicts with Policies CS1 and CS5 of Barnet's Local Plan Core Strategy (CS) which, amongst other things, seek the highest standards of urban design and development in Barnet which respects local context creating buildings of high quality design.

Conclusion on ground (a) and the deemed planning application

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

¹ APP/N5090/D/18/3206392

Ground (f) appeal

16. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or to remedy any harm to amenity resulting from the breach. Given that the requirements in paragraph 5 of the notice require the complete removal of the dormer, the purpose of the notice is clearly to remedy the breach of planning control.
17. The appellant argues that the requirements of the notice could be amended to ensure that the dormer would accord with the plans that accompanied the CLD. However, whilst section 173(4)(a) of the 1990 Act allows a breach of planning control to be remedied by making a development comply with the terms of a planning permission, a CLD under section 192 of that Act is not the equivalent in law of a planning permission. It is simply a statement of what would have been lawful at the date the application was made. Furthermore, that development was not carried out and the CLD is for proposed development and does not apply retrospectively.
18. The Courts have held that if there is an obvious alternative to total demolition which would overcome the planning difficulties at less cost and disruption, then I should consider it. I acknowledge the enforcement system is intended to be remedial rather than punitive and, in my view, nothing would be gained by requiring the complete removal of the development if it could subsequently be rebuilt in a modified form.
19. However, it would appear that to comply with the CLD extensive alterations to the built fabric and structure of the dormer as constructed would be required. In addition, the Council have stated that it considers that the inaccurate eaves height on the plans associated with the CLD means that the roof extension was in fact an increase in volume of 62 cubic metres. As such, it is not clear as to whether the proposed development as part of the CLD could be lawfully implemented if it has been assessed against inaccurate plans that do not reflect the actual position that exists. To that end, I am unable to conclude that it would provide an obvious alternative under this ground (f) appeal.
20. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

Ground (g) appeal

21. The ground of appeal is that the time for compliance is unreasonably short. The appellant submits that six months is not a reasonable period of time to comply with the requirements of the notice and that this should be increased to 12 months. This is to ensure that she is able to raise sufficient funds to complete the building works which she concedes would take approximately 3 months.
22. However, little evidence has been provided of the difficulties she may have in financing or completing the works. Moreover, there is a need for expedience in remedying the harm caused to the character and appearance of the area.
23. In the circumstances, I consider that the compliance period set out in the notice is reasonable and proportionate. Therefore, the appeal on ground (g) fails.

Overall Conclusion

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

25. It is directed that the enforcement notice be corrected by: -

- removing the words '*dormer roof*' that are after the word '*rear*' in point 1 of paragraph 5;
- deleting the wording '*as shown outlined in figure 4*' from point 1 of paragraph 5.

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR