
Appeal Decision

Site visit made on 17 December 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal Ref: APP/W4705/C/19/3234555

Land at 63-65 Maidstone Street, Bradford BD3 8AP

- 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 Farzana Bi against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 27 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the increase in height of the roof of the building on the land and the construction thereon of two front dormer windows and one rear dormer window, as shown on the attached photographs.
 - The requirements of the notice are:
 1. Demolish the two unauthorised front dormer windows and one unauthorised rear dormer window and reinstate the roof of the building on the land to its former height and appearance.
 2. Remove from the land all materials arising from carrying out the requirements of Step 1.
 - The period for compliance with the requirements is two calendar 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be varied in paragraph 6 by the deletion of "Two calendar months" and the substitution of "Six months". Subject to this variation 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 as amended.

Appeal on ground (a), deemed planning application

Main Issue

2. The main issue in this case is the effect of the development on the character and appearance of the host property and the surrounding area.

Reasons

3. Nos. 63-65 Maidstone Street were formerly two separate dwellings which have been converted into a single dwellinghouse. The dwelling forms part of a short terrace of properties which are situated on the corner of Maidstone Street and Lapage Street. The surrounding area is characterised by two storey terraced

housing, a significant proportion of which have had dormer windows constructed within both their front and rear roof slopes.

4. In May 2017¹ planning permission was granted for two dormer windows within the front roof slope of the appeal property. The front dormers that have been constructed differ marginally from those permitted as they extend slightly above the original ridge of the roof. The raised ridge is visible to views of the front of property where glimpses of it are available between the two dormers. However, given the width and position of the front dormers, only a small proportion of the ridge is visible. In addition, the dark grey cladding which it has been faced in matches the colour of the roof slates and so these works are not visually prominent. Overall, when viewed from the front of the property the front dormers with the increase in ridge height do not to my mind have a harmful effect on the character or appearance of the host property or the street scene.
5. However, a substantial single dormer window has also been constructed within the rear roof slope. This dormer extends the full width the appeal property and extends above the original ridge of the roof. In addition, it is only marginally set in from the property's eaves and abuts the hipped roof of the existing two-storey outrigger. Overall its appearance subsumes the rear roof of the property.
6. I appreciate that dormer windows are now part of the character of this area. However, whilst there is some variation in the appearance of those other dormers, in general they have been designed so that they are positioned within the original roof slope of the host property. Thereby, the proportions and design characteristics of the original terraces remain clearly discernible. In this case the scale, bulk and form of the rear dormer is such that it engulfs the rear roof slope and has a harmful effect on the character and appearance of the host terrace. Furthermore, given the position of the property close to the corner of the street, it is visually prominent within the street scene and has a significantly harmful effect on the appearance of the area.
7. I have had regard to the support received from neighbouring residents and recognise the Government's desire to accommodate new homes and living space by utilising the airspace above existing residential and commercial premises. However, that support does not overcome the harm that I have identified in the paragraphs above. I therefore give these considerations only limited weight.
8. I conclude that whilst the front dormers do not have a harmful effect on the character and appearance of the host property and surrounding area, the rear dormer does. The development therefore conflicts with the development plan and in particular with the Policies DS1 and DS3 of Bradford's Core Strategy Development Plan Document (adopted 2017) which seek to ensure, amongst other things, that new development contributes to achieving good design and contributes to the character of the area. I also find conflict with the National Planning Policy Framework which seeks to promote good design.

Conclusion

9. For the reasons given above the appeal on ground (a) must fail.

¹ Local Planning Authority Ref: 17/01605/HOU

Appeal on ground (f)

10. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
11. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy the any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
12. The appellant considers that the requirement to completely remove the dormer windows is excessive, when you take into account the existing character of the area and recognise what could be built within permitted development tolerances. Furthermore, the appellant considers that the permission granted in May 2017 is a potential fallback position which is a material consideration.
13. I have had regard to the 2017 permission and taken into consideration what would be permitted development under the Town and Country Planning (General Permitted Development Order) (England) Order 2015. However, from the evidence before me, the 2017 permission cannot be built without contravening Building Regulations. Indeed, the breach of planning control occurred whilst seeking to implement that consent and realising that the approved design could not be constructed. It is not therefore an option available to me. In addition, it seems to me that the same problem would occur with the rear dormer if suitable head heights are to be achieved. Moreover, I have not been provided with any designs for a rear dormer that would be permitted development and would be capable of being constructed in compliance with Building Regulations.
14. I appreciate that I have found the appearance of the front dormer windows to be acceptable. However, their construction is integral to the construction of the rear dormers as they bridge the ridge of the roof. Therefore, there are no lesser steps available to me which would achieve the statutory purpose behind the notice and the appeal on ground (f) must fail.

Appeal on ground (g)

15. The issue is whether the compliance period of two calendar months is reasonable. The appellant considers that the time period is too short for the appellant to engage specialists to carryout the work or negotiate an alternative scheme with the local planning authority.
16. The dormers are substantial structures which would need to be removed by a builder. Given the extent of the works and the logistics of them, I agree with the appellant that two months is a relatively short period of time within which those services could be engaged, and the work carried out. The conclusion that I have reached is that a period of six months would be more reasonable in this instance. To this extent the appeal on ground (g) succeeds.

Human Rights

17. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would

interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol and I appreciate that the development was carried out to accommodate the needs of a growing family. However, given the harm identified and taking into account the variation to the notice to increase the time for compliance, the action is in accordance with the law and pursues legitimate aims of protecting the environment in the public interest and is necessary and proportionate to the situation.

OVERALL CONCLUSION

18. For the reasons given above, and taking into account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR