
Appeal Decisions

Site visit made on 25 February 2020

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29th February 2020

APP/V5570/C/19/3233455

Land at 90 Mildmay Grove South, London, N1 4PJ

- 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 Mr Sean Smith against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice, numbered 35/2019, was issued on 6 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a raised main roof and provision of associated front rooflights, flue, rear dormer windows, downpipes and cornice detail not in accordance with planning permission granted on 12 October 2017 (P2017/3246/FUL)
 - The requirements of the notice are:
 - (i) Remove the raised roof, with associated rooflights, dormer windows, flue and associated down pipes and; either
 - (a) Reinststate the roof height, profile and appearance in materials (to include natural slate) to match the original roof (as shown in attached drawing nos. EX01 and EX02 dated 17.08.17 and photograph marked Appendix A) so it is no higher than the adjacent properties or
 - (b) Reinststate the roof height, profile and appearance in materials (to include natural slate) to match the original roof (as shown in attached drawing nos. EX01 and EX02 dated 17.08.17 and photograph marked Appendix A) so it is no higher than the adjacent properties and insert rooflights and dormer windows and associated works in accordance with the approved plans and particulars of planning permission granted on 12 October 2017 (P2017/3246/FUL).
 - (ii) Remove the lead from the frontage of the front elevation cornice and repair and repaint stucco to match existing.
 - 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.
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Decision

1. It is directed that the enforcement notice be: corrected in Schedule 3, paragraph 2 and in Schedule 4, requirement (ii) by deleting the word "lead" wherever it appears and substituting "zinc"; and varied in Schedule 4 by deleting options (a) and (b) of requirement (i) and substituting:

“(a) Reinststate the roof height, profile and appearance to match the original roof (as shown in attached drawing nos. EX01 and EX02 dated 17.08.17 and the attached photograph marked Appendix A) so it is no higher than the adjacent properties, providing that the roof may be finished either in natural slate or in artificial slate of the same colour profile and type as currently used in the unauthorised works, or

(b) Reinstate the roof height, profile and appearance to match the original roof (as shown in attached drawing nos. EX01 and EX02 dated 17.08.17 and the attached photograph marked Appendix A) so it is no higher than the adjacent properties, providing that the roof may be finished either in natural slate or in artificial slate of the same colour profile and type as currently used in the unauthorised works, and insert rooflights and dormer windows and associated works in accordance with the approved plans and particulars of planning permission granted on 12 October 2017 (P2017/3246/FUL).

Subject to these corrections and variations 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.

The Notice

2. The notice refers to the use of lead on the front cornice and requirement (ii) demands its removal. The Council accepts that the material used was zinc, rather than lead. Although this has already been removed in any event, the notice can be corrected and varied in this regard, to reflect the true position, without causing injustice.

Ground (a)/the deemed application for planning permission

Main Issue

3. The main issue is the effect of the development on the character and appearance of the appeal property, the terrace and the Newington Green Conservation Area (CA).

Reasons

4. The appeal property is part of a long terrace of some 28 very similar houses, each with 3-storeys over basements. That terrace spans most of the gap between the junctions of Mildmay Grove South with King Henry's walk to the east and Mildmay Park to the west. The appeal property lies towards the eastern end of that terrace. Another lengthy terrace of similar houses extends west from the Mildmay Park junction. A sunken railway line separates Mildmay Grove South from Mildmay Grove North, where there are other long terraces of 3-storey houses.
5. Mildmay Grove South and North were included in the Newington Green CA following a boundary review, completed in 2014. The Newington Green Conservation Area Statement (CAS), published in March 2014, indicates that these streets of residential terrace groups date predominantly from the mid nineteenth century and are associated with the arrival of the railway in 1850.
6. Together with Mildmay Grove North, King Henry's Street, Mildmay Park and Mildmay Road, Mildmay Grove South is part of the 'Mildmay Character Zone' in the CAS. This comprises 3-storey terrace groups, more substantial than those located within the adjacent St Jude Character Zone. Along with the other houses in the terrace, the appeal property is identified as one of the "notable unlisted buildings" in the Mildmay Character Zone.

7. The CAS notes that, throughout the terrace groups on Mildmay Grove North and Mildmay Grove South, the "rooflines vary...with a pitched roof and overhanging eaves supported by ornate console brackets on numbers 51 to 109 Mildmay Grove North...Elsewhere the main roofs are concealed behind a raised parapet..." This latter description applies to the terrace on Mildmay Grove South, which includes the appeal property. Indeed, the roofs, including the appeal property's raised roof, are not visible from street level on Mildmay Grove South.
8. However, from Mildmay Grove North, the separation caused by the railway affords extensive, wide views of the terrace and its roof line on Mildmay Grove South. In those views, despite the loss of some original features and architectural detailing, the general uniformity of the terrace, including the roof line is apparent. The exceptions are the appeal property and No 50¹, near the other end of the terrace, where the roofs have been raised. Nevertheless, the predominant roof line is consistent. This adds to the pleasing, coherent appearance of the terrace and is an important element of local distinctiveness.
9. Almost opposite the appeal site, on Mildmay Grove North, the roof line of that terrace, does change towards the eastern end. However, this is an original design feature. There is a corresponding reduction in eaves height and lower fenestration, as the terrace steps down to accommodate a change in land levels. As such, this is not a jarring anomaly, compared to where one roof is raised above the others either side.
10. In relation to the CA generally, the CAS states:

"Roof extensions will not be permitted where a section of roofscape remains substantially unaltered and is without extensions..."

The roofscape is an important part of the streetscape. As these roof details form an important part of the visual and architectural character of both the buildings, terrace groups and the wider conservation area, alterations which are not in keeping with the existing buildings can be very damaging to the appearance of the street and the area as a whole."
11. The increase in the height and pitch of the roof in this case is modest, but it is obvious from Mildmay Grove North. The appellant suggests the eye is drawn to the cornice. This is one of the few remaining cornices on the terrace and the appellant has made a good job of repairing and restoring it, but this does not divert attention from the incongruous roof.
12. The CAS is reinforced by the Council's Urban Design Guide Supplementary Planning Document (UDG), which was adopted in January 2017, following public consultation. The UDG emphasises that the roofline is an important factor in contributing to the rhythm and uniformity of a residential terrace or street. This is especially so in CAs, where the UDG says proposals for roof extensions anywhere along an unaltered roofline will not generally be acceptable.
13. In views from Mildmay Grove North, the altered roof line is the main cause for concern, as it disrupts the rhythm and uniformity of the terrace. However, its impact is exacerbated by the rooflights and roof access, the use of artificial

¹ I am told that this roof was altered before the area was included in the CA.

slates, which conflicts with advice in the CAS, and the addition of a small flue. Two rooflights and a roof access were approved under planning permission Ref P2017/3246/FUL (the 2017 permission). However, the position and shape of the approved roof lights would have been well related to the first and second floor front windows below, the roof access would have been positioned in the centre and a natural slate roof was envisaged. By contrast, together with the flue, the openings in the as-built scheme are somewhat randomly located in the roof slope.

14. Turning to the rear elevation, from public vantage points on King Henry's Walk, the increased height and pitch of the appeal property's roof are apparent, but this mainly serves to emphasise the prominence of the dormers as built. These are significantly larger than those approved by the 2017 permission. They extend closer to ridge height and dominate the roof slope. The overall bulk of the dormers, including their hefty side cheeks and their setting within the raised roof, give the appeal property a top-heavy appearance. Notwithstanding, the existence of some dormers to the west, this creates a stark and unfavourable contrast with the general appearance of the terrace's rear elevation, further disrupting the rhythm and uniformity of the terrace. Compared to those approved, these substantial dormers relate very poorly to the windows below, which decrease in size with each rise in storey level. The poorly located downpipes exacerbate the negative impact on the host property and add to its prominence. The scheme as built is significantly more harmful than the approved scheme would have been.
15. The design of the dormers clearly conflicts with advice in the UDG. This also states that, whilst extensions on the rear roofline may be acceptable in CAs, it will be important that they are invisible from the public realm. The rear elevation is not as prominent or important as the front, but there are public views from King Henry's Walk, the road serving the adventure playground and from numerous private properties, including the flats immediately to the south and their car parking area.
16. The CAS notes that each character zone within the CA has distinctive attributes that contribute to the general character of each and the wider CA, with the predominant building type being mid nineteenth century terrace groups to the south and east of Newington Green. As a "notable unlisted building", the appeal property and the rest of the terrace at Mildmay Grove South make a valuable contribution to the significance of the CA, as a designated heritage asset.
17. For the reasons already given the appeal development detracts from the character and appearance of the appeal property, the terrace and the wider CA.
18. The appellant suggests an alternative scheme involving the retention of the roof ridge and front rooflights, but alteration of other aspects, namely: the replacement of the dormers in accordance with the 2017 permission; the removal of downpipes; and the removal/relocation of the flue on the front roof slope. Such a scheme would clearly involve less cost and disruption than the works required by the notice. The Council doubts it would be technically possible for me to grant planning permission for such a scheme as "part of" the development enforced against and suggests the dormers could not be constructed in accordance with the 2017 permission, when the roof has been raised. However, even if the Council is wrong on this score, the alternative

scheme would not address the main cause of the harm, namely the impact of the raised roof.

19. The heritage statement submitted with the appeal acknowledges that the works carried out have resulted in harm to the significance of the designated heritage asset, but suggests that this is less than substantial, and indeed very minor.
20. The harm in this case is less than substantial, but it is material and means the character and appearance of the CA is not preserved. As the National Planning Policy Framework (the Framework) advises, great weight should be given to the conservation of designated heritage assets, irrespective of whether any harm amounts to substantial harm, total loss or less than substantial harm to its significance. It follows that considerable importance and weight attaches to this less than substantial harm and I will have to weigh this against any public benefits.
21. The public benefits cited by the appellant are principally:
 - (i) Extensive repair works to the building which was in a very poor state of repair;
 - (ii) Restoration of the external facades resulting in significant visual enhancement to the building, wider terrace and immediate conservation area;
 - (iii) Significant energy savings through the extensive repair and restoration works to the building; and
 - (iv) Provision of increased habitable residential floor space to a family sized dwelling.
22. There is nothing to indicate that (i) to (iii) could not have been achieved either through implementation of the 2017 permission, or just works of repair and maintenance that would not have needed planning permission. Similarly, there is no reason to believe these benefits would be lost if the appeal is dismissed. As far as (iv) is concerned, the unauthorised works have delivered some high-quality additional living space and there is a modest public benefit associated with that. However, taken together, these factors do not outweigh the harm to the significance of the CA, which carries considerable importance and weight.

Overall conclusion and planning balance

23. The harm to the character and appearance of the appeal building, the terrace and the CA result in conflict with the following development plan policies:

Policies 7.4 and 7.8 of the London Plan March 2016 (Consolidated with Alterations Since 2011);

Policies CS8 and CS9 of Islington's Core Strategy 2011; and

Policies DM2.1 and DM2.3 of the Islington development management Policies 2013.

The parties agree that these are the relevant policies. They are consistent with the Framework, which promotes high quality design generally and the conservation of heritage assets. I conclude that the development conflicts with

the development plan as a whole, as well as with the Framework, the CAS and the UDG, which are important material considerations.

24. Adjoining neighbours support the appeal and I note their concern that compliance with the enforcement notice will lead to disruption for them. I also acknowledge that dismissal of the appeal will involve some interference with the appellant's right to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. Subject to consideration of grounds (f) and (g), the interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the environment.
25. I conclude that the appeal on ground (a) should be dismissed and planning permission should be refused for the development already carried out.

Ground (f)

26. Success on ground (f) depends on my finding that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
27. Having regard to its requirements, the purpose of the notice is arguably to remedy the breach of planning control but, in any event, given my findings on ground (a), nothing short of removal of the raised roof will remedy the breach or the injury to amenity caused by it. The appellant's suggestions involve retaining the raised roof, which is the principal cause of harm. Its removal necessitates removal of the associated rooflights, dormer windows, flue and downpipes, though there is the option to reinstate the original roof height, profile and materials.
28. In terms of materials, the notice requires reinstatement with natural slate, whether the appellant adopts option (a) or (b) of requirement (i). The appellant asserts the roof has not benefited from natural slate roof tiles for many years, although he says it is not possible to confirm this with any tangible evidence. The appellant should be well placed to provide such evidence, but I also note that the Council's evidence, including the photograph attached to the notice, does not clearly establish that the previous roof was covered in natural slate.
29. From my own inspection, I am satisfied that most of the roofs in the terrace utilise natural slate, but some appear to be of artificial slate, and one appears to have interlocking concrete tiles. The roofing materials are not visible from street level on Mildmay Grove South, but only in longer views from Mildmay Grove North. I understand the Council's desire, underpinned by the CAS, to encourage the use of natural materials. However, given its colour and profile, artificial slate of the kind used in this development is not, on its own, significantly detrimental in the context of this specific site. Furthermore, the Council does not dispute the appellant's contention that the roofing materials on these houses could be changed at any time using permitted development rights.
30. In all the circumstances and, given the uncertainty about the previous roof covering, I am not persuaded that the use of natural slate is necessary to remedy the breach of planning control or any injury to amenity. To this limited

extent, the appeal succeeds on ground (f) and I will vary the requirements accordingly to allow the use of artificial slate, as an alternative to natural slate and as a more proportionate measure.

31. I have already indicated that requirement (ii) should be varied to refer to zinc, rather than lead. The appellant initially suggested that requirement (ii) was no longer necessary, as it has effectively been complied with. However, compliance does not mean the requirement was unnecessary and it should not be deleted under ground (f). The appellant appeared to accept this in his final comments.

Ground (g)

32. This ground is that the 6-month compliance period falls short of what should reasonably be allowed. On consideration of the appeal and the extent of the works required, the Council does not object to the appellant's suggestion that 12 months should be allowed. I see no reason to take a different view and conclude that 12 months is more proportionate. I allow the appeals on this ground and will vary the notice accordingly.

J A Murray

INSPECTOR