



Appeal Decision

Site visit made on 27 July 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/A5270/C/20/3248342

22 St Andrews Road, Acton W3 7NE

- 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 Harwant Virk against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered 19EN1474, was issued on 5 February 2020.
 - The breach of planning control as alleged in the notice is the erection of a mansard roof extension and the erection of a 2-storey side extension.
 - The requirements of the notice are:
 - A. Remove the mansard roof extension in its entirety;
 - B. Restore the roof to its condition prior to the breach of planning control occurring;
 - C. Remove the 2-storey side extension; and
 - D. Remove all resultant debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Harwant Virk. This application is the subject of a separate Decision.

Procedural matters

3. I note that some of the appellant's evidence relates to the merits of the development, however ground (a) has not been expressly appealed against. Therefore, these are not a determining factor for this appeal under ground (c). Matters relating to the location of the boundary also fall outside the scope of this appeal.
4. The enforcement notice targets both the mansard roof extension and the two storey extension. Whilst they appear to have been built together, they are two distinct areas of development for the purposes of considering this appeal. I shall therefore consider the evidence for each element separately.

Reasons

5. The appeal site comprises a detached dwelling that occupies a corner plot at the junction with St Andrews Road and Brassies Avenue. At the time of my site visit, works on the roof and the extension were unfinished.
6. The appeal has been lodged on ground (c) only, that the matters stated in the notice do not constitute a breach of planning control. This is a legal ground where the burden of proof is on the appellant to make out the case that there has not been a breach of planning control. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it's not corroborated. If there is no evidence to contradict or make the appellants version of events, less than probable and their evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground.
7. The gist of the appellant's case is that both the mansard roof and the two storey extension benefit from rights conveyed by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO).

Extension

8. Schedule 2 Part 1, Class A of the GDPO 'The enlargement, improvement or other alteration of a dwellinghouse', sets out the permitted development (PD) rights for householders, subject to certain conditions and limitations. The main area of disagreement is whether the extension complies with A.1 (j) ii of Class A, which states that: (j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would — (i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse. It is clear that the extension has more than one storey.
9. It is the appellant's case that the elevation that faces onto Brassie Avenue is the principal elevation. Therefore, it is their view that the extension is built onto the rear elevation, rather than a side elevation.
10. The Permitted development rights for householders Technical Guidance (April 2017) (the TG), gives additional information to assist in the interpretation of the GDPO. This makes it clear that in most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
11. The appellant has provided a number of explanations as to why he considers that the principle elevation is the one facing Brassie Avenue. I recognise that matters such as garden size and shape, the relationship to the building line, and internal layout may in some cases, be indicative, but are not necessarily determinative. I have not been provided with any evidence before me to support the cited planning position in the 1930's and 1940's, or when the property was first built. I can therefore give only limited weight to the appellant's assertions. Nonetheless, it is still necessary to carry out a further

assessment based on the submitted evidence and the particular circumstances pertaining to this site.

12. From my site visit, it is clear that the main architectural features are to the west elevation fronting St Andrews Road, with the arched entrance feature and fenestration, providing interest and significance to this elevation. A traditional front door to the property is sited centrally in this elevation and is accessed through a decorative pedestrian gate set into the boundary wall from St Andrews Road. This entrance has the appearance of the main pedestrian entrance to the dwelling. The door on this elevation has a letterbox and the house number adding to the sense that this is the main entrance to the dwelling. In contrast the door in the northern elevation has the appearance of being a secondary garden or patio door, with no corresponding entrance from the highway or break in the boundary wall.
13. There is a notable lack of any current, or remaining historic architectural features to the north elevation. The appellant has provided a photograph that shows an internal path leading to this secondary door. However, this appears to run along the wall of the property, rather than providing a direct route from Brassie Avenue to what is claimed to be the original main entrance to the property, even if the gate was located directly on the junction. I have had regard to the photographs of other properties where there are chimney arches in the side elevation. However, whilst this may be the case for those sites photographed, it does not follow that these provide proof that it is the same position at the appeal dwelling.
14. I acknowledge that a property will evolve over time. However, to my mind the north elevation has the appearance of a side elevation, when compared to the west. This view is supported by the previous plans submitted to the Council for the property and the previous appeal decision dated 21 December 2015 (APP/A5270/C/15/3017317 and 3007985).
15. For the above reasons, I find that the appellant has failed to demonstrate, that on the balance of probability, the north elevation should be considered to be the principle elevation of the dwelling, for the purposes of interpreting the GDPO. Consequently, I find that the extension has been built to the side elevation and requires express planning permission.

Mansard roof

16. The evidence provided by the appellant to support ground (c) is limited, although there is reference to the 50 cubic metre volume limitation set out in the GDPO.
17. Schedule 2, Part 1, Class B of the GDPO makes it clear that under (b) development is not permitted where any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof; and at (c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
18. From the evidence before me, it is clear that the alterations to the roof have exceeded the height of the existing roof. Moreover, I have already found that the west elevation is considered to be the principle elevation for the purposes of interpreting the GDPO. The works to provide the mansard roof extend

beyond the plane of that roof slope. Consequently, the mansard roof also requires planning permission.

19. Drawing all of the above points together, I find that planning permission is required for the matters alleged in the notice and the appeal on ground (c), with regard to both the extension and the mansard roof therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR