



Appeal Decision

Site visit made on 20 July 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2020

Appeal Ref: APP/X5990/C/19/3243754

The buildings and associated land at 53B Clifton Hill, London, NW8 0QE

- 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 Act).
 - The appeal is made by Mr Samuel Green against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 26 November 2019.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 4 years, the erection of a dormer roof extension to the rear of 53B Clifton Hill.
 - The requirements of the notice are:
 - "B.i. Set back the central projection of the full width rear dormer extension, outlined blue in Photograph B, attached, so that it is 250mm from the existing boundary wall, in accordance with Drawing No A-01c, which was approved planning permission granted on the 01st December 2015 (LPA Ref: 15/01668/FULL); and
 - B.ii. Following the completion of step B.i., you must permanently fix shut all the opaque glazed rear dormer windows, outlined red in Photograph C, attached, and maintain the windows fixed shut with opaque glazing for the lifetime of the development; and
 - B.iii. Repair any damage to the Property and remove from the Property any debris arising from compliance with B.i."
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting requirement 'B.ii.' Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a dormer roof extension to the rear of 53B Clifton Hill as shown on the plans and photographs attached to the notice and subject to the following condition:

The dormer roof extension hereby permitted shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 2 months of the date of this decision a scheme for:

- a) the setting back the central projection extension element of the full width dormer extension, outlined in blue in Photograph B attached to the notice, so that it will be 250mm from the existing boundary wall,

b) the existing and proposed window opening restrictors for retention and installation within all of the rear dormer windows as outlined in red on Photograph C attached to the notice;

c) the proposed and existing opaque/obscure glazing for retention and installation within the rear dormer windows;

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

The approved scheme specified in this condition, shall be implemented and the details as approved shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matters

2. The development as alleged is the whole of the "dormer roof extension". From the evidence and submissions, what exists on site is materially different from the development that had been approved through 15/01668/FULL. Reference to that planning permission on the notice is with respect to the requirement that the approved plan is complied with and not that the planning permission as a whole is implemented. The enforcement notice has also been expressly issued under the provisions of S171(A)(a) of the Act relating to the carrying out of development without planning permission rather than a breach of any planning condition on that permission.
3. The notice at section 'B.i.', does not require the demolition of the whole of the structure, only the adaptation of it to comply with the previously approved plans. The purpose is therefore as set out in S173(4)(b) of the Act to remedy the injury to amenity that has been caused by the breach. In other words, the notice is seeking to under-enforce the breach of planning control.
4. The second requirement at section 'B.ii.' seeks the permanent fixing of windows and then their maintenance. This is an attempt to control these things in a similar way to a planning condition with an ongoing requirement. Including an open-ended requirement like this on an enforcement notice is problematic because it attempts to control that element of the development beyond the period for compliance. Furthermore, where under enforcement is involved, S173(11) will not be satisfied until all the requirements have been complied with. An open-ended requirement such as this would mean that the

development as a whole would never gain the planning permission deemed by S173(11).

5. To get the notice in order, it is necessary to delete requirement 'B.ii'. I can consider doing that under the powers given to me by S176(a) of the Act where it would not cause injustice to the appellant or the Council. Removing this requirement could potentially cause injustice to the Council because it would not retain control over a matter which they consider is important to secure suitable living conditions for neighbouring residents. However, I have an appeal under ground (a) and will therefore be able to consider the merits of what the Council is seeking to achieve. In these circumstances, no injustice would be caused to the Council by my deletion of this requirement to get the notice in order. I can then consider the planning merits of these matters which both the Council and the appellant have had an opportunity to comment on.
6. The appellant states that what has been constructed is within the parameters of the previous planning permission with a 'de minimis' (inconsequential and not worthy of attention) change. There has been no appeal under ground (c) (that the allegation does not constitute a breach of planning control) and the appellant is represented by a firm of planning agents who I would expect to understand that the details of approved plans need to be adhered to in order to implement a planning permission. I have understood the context of the comments to be clearly related to the appeal on ground (a) and that they do not constitute a hidden appeal on ground (c).

Ground (a) appeal and the Deemed Planning Application

Main issue

7. The property adjoins 53 Clifton Hill which is a Grade II Listed Building and is within the St John's Conservation Area. The Council has not objected to the development on the basis of its design. I agree that the development preserves the Listed Building as well as its setting and also preserves the character and appearance of the Conservation Area.
8. The main issue is therefore the effect of the development on the living conditions of the neighbouring dwelling at No 56 Abbey Road.

Reasons

9. The appeal site is a former coach house that has been converted and altered to enable its occupation as a dwelling. The dormer has extended the property at first floor level and it appears above the high wall that defines the boundary between the rear of the appeal site and the garden of No 56 Abbey Road.
10. The windows in the dormer have a high vantage point over the garden of No 56, only a short distance from the conservatory and other part of the dwelling which runs parallel with the boundary as well as over the lawned area between. The height, degree of obscurity assisted by the restricted opening mechanisms that have been fitted to the windows, means that occupants within the dwelling at the appeal site, would not be able to look down into the garden or into the dwelling at No 56. However, when viewing from that neighbouring property, the central windows within the dormer are positioned very close to the boundary and loom over the garden. The glazing is highly obscured but the central windows create a significant sense of being overlooked for the occupants of No 56 when in their garden and also when in the building which is

extensively glazed. This would be emphasized when lights are on within the unauthorised dormer, drawing attention to the close relationship of the windows to the neighbouring occupiers. I could see that without any windows the garden and building of No 56 would be very secluded and private whereas the development, due to the position and height of the central windows in particular, has detrimentally affected those attributes.

11. The Council in this case is not seeking to have the unauthorised development removed entirely and is allowing the development to remain on the proviso that the central dormer is altered to comply more closely to what was previously approved. Given that the dwelling on the appeal site has such a close relationship with the boundary with No 56, ensuring that the windows are set back by 250mm would help to reduce the impact upon the adjoining residents. I consider that attaching a condition to the deemed planning permission requiring further details to be submitted and implemented would have a similar effect to the first requirement ('B.i.') of the notice and would achieve the same result. The version of 'Drawing No A-01c' that I have is not sufficiently clear for me to be confident that simply referring to that would be precise enough.
12. As set out above, I consider that the second requirement of the notice (B.ii.) is invalid and requires deletion from the notice. Furthermore, I do not consider that the rear windows in the dormer need to be permanently fixed shut. The opening restrictors that have been installed adequately prevent views down into the neighbouring property. However, conditional control should also be imposed to seek the submission of the details of those existing opening restrictors, the retention of them and the obscure glazing as well as the re-positioning of the central windows which should also be installed with obscure glazing and opening restrictors.
13. With the safeguards provided by the planning condition as set out above, the development would not cause a material loss of or an infringement of residential amenity or privacy. In relation to the main issue, the development would have a satisfactory effect on the living conditions of the neighbouring dwelling at No 56 Abbey Road. This would comply with the Westminster City Council's Unitary Development Plan (2007) saved Policies DES 6 and ENV 13 and the Westminster City Plan (2016) Policy S29.

Form of planning condition

14. Further details need to be submitted and implemented in order to make the development acceptable. It is not possible to impose pre-commencement conditions because the development has already been undertaken. It is necessary therefore to word the condition to make sure the Council retain control over the development. The development will remain unlawful if the requirements of the condition I have imposed are not met.

Conclusion

15. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a dormer roof extension to the rear of 53B Clifton Hill as described in the notice as corrected.

A Harwood

INSPECTOR