
Appeal Decisions

Site visit made on 4 August 2020

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 August 2020

Appeal Ref: APP/T5150/D/20/3247014 (Appeal A)

Caretakers House Christchurch JMI, 10 Clarence Road, London NW6 7TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Katrina Beechey against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/3689, dated 16 October 2019, was refused by notice dated 9 December 2019.
 - The development proposed is a rear dormer roof extension, rooflight adjacent to the dormer and front rooflight to the dwellinghouse.
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Appeal Ref: APP/N5090/C/20/3248254 (Appeal B)

Caretakers House Christchurch JMI, 10 Clarence Road, London NW6 7TG

- 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 1990 Act").
 - The appeal is made by Ms Katrina Beechey against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0481, was issued on 5 February 2020.
 - The breach of planning control as alleged in the notice is the erection of a dormer roof extension to the rear of the premises.
 - The requirements of the notice are: (1) remove the unauthorised dormer roof extension to the rear of the premises; (2) remove all associated debris, items and materials, arising from compliance with the above step, from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act.
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Decisions

Appeal A

1. The appeal is dismissed insofar as it relates to the rear dormer roof extension. The appeal is allowed insofar as it relates to the rooflights and planning permission is granted for the rooflight adjacent to the dormer and the front rooflight to the dwellinghouse at Caretakers Cottage Christchurch JMI, 10 Clarence Road, London NW6 7TG, as shown in the appellant's Planning Appeal Statement for this appeal.

Appeal B

2. It is directed that the enforcement notice be varied by: in Schedule 4, Step 1, after the word "premises", insert the following words "OR make the dormer roof extension comply with planning permission ref. 18/1397 granted on 8 June 2018"; and, in Schedule 5, delete the words "3 months" and insert the words

“6 months”. Subject to these 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 s177(5) of the 1990 Act.

Preliminary Matters

3. The description of the proposed development given on the application form for Appeal A reads as follows: *"This is a retrospective application for windows that have already been installed in a dormer window. Everything else about the planning permissions has been confirmed but the windows were not installed as per permitted hence this retrospective application for what has been installed."*
4. For purposes of dealing with the appeal and the wording of my decision, I have adopted the alternative description of the development in the Council's decision notice. The application is retrospective and I deal with the appeal on that basis.
5. Appeal A is for a dormer and rooflights. The enforcement notice subject of Appeal B relates to the dormer only. Although there is a great deal of overlap between the s78 appeal on Appeal A and the ground (a) appeal on Appeal B, and I deal with them together, Appeal A has a slightly wider scope. It follows that the Appeal B appeals under grounds (f) and (g) relate to the dormer only.
6. Finally, the appeal reference for Appeal A reads a little oddly. It has been registered as a valid appeal by the Planning Inspectorate but the code reference given for the local planning authority area, "T5150", refers to the London Borough of Barnet. I have retained the reference as it provides the heading for all the appeal correspondence. For the avoidance of doubt however, I can confirm that Brent Council is the local planning authority.

Appeal A/Appeal B – Ground (a)

Background and Main Issue

7. Planning permission was granted in 2018 for extensions to the appeal property, comprising principally a side and rear infill extension, a rear dormer extension and insertion of rooflights with various other changes to the fenestration. Following a complaint to the Council regarding the erection of the dormer and a site visit from Council officers, it became apparent that the development had not been built in accordance with the approved plans. The Council advised the appellant that it was considering enforcement action and shortly thereafter, she indicated that she would pursue a retrospective planning application in order to regularise the development as built. That application was refused and an enforcement notice subsequently issued and both are now appealed.
8. The planning application form focuses on the differences in fenestration to the dormer. The officer's report on the retrospective application details the differences between the development as built and as shown on the approved plans. It focuses on the size and positioning of the dormer, its fenestration, an additional rooflight adjacent to the dormer, changes to rooflights in the roof of the rear outrigger and the size and positioning of a rooflight to the front roof slope. There are other differences (as outlined in the report) but the report does not cite harm arising from these elements, focusing on the dormer and the front rooflight. The Council's decision notice refers to these elements plus the additional rooflight adjacent to the dormer. The appellant's appeal statement focuses on the dormer and the front rooflight.

9. Having considered the parties' evidence and in the light of what I saw on my visit, it is clear to me that the main issue revolves around the differences between the rear dormer as approved and as built, while changes to the rooflights, in particular, the front rooflight, are also of concern to the Council. I shall therefore focus on these elements in my reasoning. The other departures from the approved plans are noted but the Council does not appear to find them harmful and I have no reason to disagree with that view.
10. The Council's single reason for refusal of the retrospective application cites harm to the character of the host dwelling and a failure to preserve the character or appearance of the North Kilburn Conservation Area ("the CA"). I note, however, that, as its primary reason for issuing the notice, it cites overlooking to neighbouring premises resulting in a harmful loss of privacy. I find that surprising, as there will inevitably be an element of overlooking to neighbouring land from a dormer in the rear roof slope (mainly, from my observations in this case, into the grounds of the neighbouring school).
11. My reading of its objection is that it is not to the presence of the dormer but to its design. Moreover, in its officer's report on the retrospective application, any potential harm to privacy is dismissed, the view being that it would be no greater than already experienced from rear windows to upper floors. No issue with any overlooking to the school grounds is raised nor, in its response to the ground (a) appeal, does the Council seek to defend a finding of harm from overlooking. The rear dormer as approved would anyway have facilitated an outlook to the rear. I therefore concur with the Council's view as expressed in its officer's report that no undue harm would arise to the privacy of neighbours.
12. Accordingly, my reasoning focuses on matters of design, in relation to the host dwelling and the wider CA. The main issue is the effect of the dormer and the rooflights as built on the character and appearance of the host dwelling and whether they preserve the character or appearance of the CA.

Reasons

13. I deal firstly and briefly with the rooflights. The additional rooflight to the rear roof slope appears to have been inserted to provide light to the stairwell running up to the living space in the loft. While it is one of the elements itemised as refused planning permission in the decision notice, the Council does raise objection to it in its officer's report. It is a minor feature in the roof slope alongside the dormer and is of little consequence as a component of the re-design of the rear of the property as a whole.
14. The rooflight to the front roof slope is of more concern. It has been positioned higher up the roof and that together with its width reads slightly awkwardly as a modern intrusion into the roof slope. The other examples shown of large or poorly-positioned front rooflights in the wider locality would not necessarily support the appellant's case for it if planning permission for them was never sought, and there is no evidence relating to that. However, it broadly aligns with the single window above the door and in reality it is a subservient component of views of the property's frontage and does not appear obtrusive, as evidenced in the photographs of it in place in the appellant's evidence. The appellant confirms that it has been inserted flush with the roof slope.
15. Accordingly, I conclude regarding both the rear and front rooflights, that no harm arises to the character of the host dwelling. The Council's CA Appraisal

document has little to say specifically on rooflights. While the front rooflight departs from its design guidance on such matters, I note that it is dated (1988) and should not anyway be viewed as prescriptive. No material harm arises as regards preserving either the character or the appearance of the CA. Similarly, no conflict arises in respect of the various policies cited of The London Plan, the LB of Brent Core Strategy and Brent Development Management Policies which support good design. Nor is it necessary to attach conditions to the approval hereby given for these items, to make them acceptable in planning terms.

16. I now turn to the dormer. In my view, its acceptability stands or falls on its relationship with the host dwelling. It is a tall "boxy" insertion with a deep expanse of tile-hanging above the windows and below the eaves. Its awkward proportions and the mass of tile-hanging on its front face draw attention to its overall bulk and give it a top-heavy appearance. I could see, from a distant view of it obtained outside the public house on Willesden Lane, that it is inset slightly from the ridge level of the roof but the degree of inset is marginal and the general impression given is of a flat-roofed projection from ridge level. An appearance of bulk in the dormer contrasts unfavourably with the lightweight appearance of the modern additions to the dwelling elsewhere.
17. The fenestration displays a vertical emphasis and a modern appearance. It is undivided by glazing bars and consists of four individual panels of glass which are stepped in profile, allowing them to slide one behind the other. Reflections of the sky in it emphasise this stepped profile, in which the degree of inset of the panels from the front face increases as viewed from left to right. It creates a jarring effect, contrasting with the other glazed elements at the rear. Unlike the rear elevation to the single-storey extension or the similarly fully-glazed side extension to it, it relates poorly to the retained fenestration even though those other items are also equally self-consciously modern additions. The issue is less about its modernity or that the panels are full-height (as opposed to mimicking sash windows) than about the extent to which the appearance of its glazing reinforces shortcomings in the composition as a whole.
18. The inset of the dormer from the sides of the roof exceeds that which is advocated in the Council's design guidance but I have fewer concerns regarding that, given that its extent is of an order of less than 10% of the width as approved. There is a degree of set back from the eaves level of the roof but, at 180mm (on the appellant's evidence), it is considerably less than the 490 or 500mm shown on the approved plans. That has resulted in a greater forward projection of the dormer's front face that, particularly allied to its height and bulk, will only have exacerbated the extent to which it appears top-heavy. While I would not have rejected it for the degree of set back alone, nevertheless, it only serves to contribute to the dormer's intrusive appearance.
19. Turning to the wider CA, it is evident that more wide-ranging views of the dormer will be obtained primarily from the rear of Torbay Road, across their rear gardens and the school grounds, as well as, obliquely, from rear gardens of other properties on Clarence Road. The discordant appearance of the dormer as built would register in these views, which are views from within the CA, from where it would appear as a projection from ridge height, resulting in detriment to the appearance and character of the CA taken as a whole.
20. I acknowledge the appellant's personal statement accompanying Appeal B detailing the effort expended on refurbishing the property and I accept that she

will be disappointed by my decision. From what I saw on my visit, it is clear that a great deal of care has been spent by her and her partner on what is a contemporary re-ordering of the internal layout of a traditional dwelling form. In its layout, choice of materials and the striking juxtaposition of traditional and modern features, of brickwork and glass, it imparts a distinct sense of good-quality design. My criticisms of the dormer are less about poor quality materials or execution than about the design approach.

21. That said, I attach little weight to her contentions justifying the significant departure from the approved plans. In both the 2018 applications, a dormer with conventional inset/set back and with fenestration matching that of the retained windows at the rear of the dwelling is shown. In her statement for Appeal A, she nevertheless denounces such windows as “fake” and such a design approach as misguided¹. The credibility of the planning system, which is a public process, would be fatally undermined if applicants saw it as justified to submit to the Council treatments they considered would meet its approval but nevertheless be flawed in such ways only then to implement proposals following a wholly different aesthetic. Similarly, I give little weight to the associated comparisons with modern buildings and their fenestration in the vicinity of and viewed from the appeal property but not within the CA.
22. Much is made in the appellant’s evidence of the mixed character of the locality, both within and around the CA. The appellant focuses on the designs of rear dormers in the locality, with emphasis on the sequence of rear dormers to dwellings on Torbay Road, which are within the CA. No. 14 is highlighted on account of its use of vertical panels in the design of its dormer.
23. Again, I attach only limited weight to this evidence. The appeal property sits on the edge of the CA so views out to the south and west will typically be of a more varied townscape. The CA boundary has been drawn tightly around the streets of late 19thC artisan terraced housing, largely consistent in terms of age, form, detailing and the general streetscape, whose characteristics are shared by the appeal property. However dated the design guidance, it is plain that, within the CA, dormers should be handled with care, to appear as “framed” within the roof slope. The dormer fails to adhere to that principle.
24. As for the examples of dormers on Torbay Road, which (as I could see from my visit) are inter-visible with the upper parts of the appeal property, there are plainly some egregious examples of dormers covering the whole of the roof plane. However, no indication is given of when they were built, what guidance was in place at the time, whether they were built without planning permission or, if they were, have now become lawful simply owing to the passage of time and having not been enforced against. The issue is not about size in isolation but about a combination of factors, as I have explained. With regard to the dormer to no. 14, its fenestration is very similar but (as shown on the approved plans) the panels are divided by aluminium frames and do not appear to be stepped and it is more satisfyingly inset from both the ridge and eaves.
25. Accordingly, I conclude that the dormer as built gives rise to harm to the character and appearance of the host dwelling and fails to preserve the character and appearance of the CA. For these reasons, it does not accord with the aims of the general policies of The London Plan, the LB of Brent Core Strategy and Brent Development Management Policies to which reference has

¹ See comments at pp18-19 of the appellant’s appeal statement.

already been made above. In particular, conflict arises with Policy DMP7 as regards safeguarding the significance of heritage assets. With regard to the provisions of paragraph 196 of the National Planning Policy Framework, I would describe the harm as less than substantial but in this case the benefits to weigh against such harm are predominantly private rather than public.

Appeal B – Ground (f)

26. Under s173 of the 1990 Act, a notice shall specify the steps to be taken in order to achieve those purposes set out in s173(4) – either to remedy the breach or to remedy any injury to amenity which has been caused by the breach. Since there is a ground (a) appeal, it is open to me to consider lesser steps than those set out in the notice. The Council requires that the dormer be demolished which, plainly, seeks to remedy the breach, and the Council confirms as much in its appeal statement. However, it is entirely open to the appellant to make the development (i.e. the dormer) comply with the terms of any planning permission which has been granted and that is expressly provided for in s173(4)(a) of the 1990 Act.
27. The appellant points out that the notice should require the lesser step of implementing the planning permission granted for the dormer. The Council counters that to require that would involve extensive works of demolition and re-building which would be more onerous than a simple and unambiguous requirement to demolish.
28. I have no detailed evidence regarding the costs and practicalities involved in these alternatives. I accept the Council's contention that a requirement to make the development comply with the approved details, if it involves wholly or even largely demolishing the existing structure followed by re-building, would be more onerous than a requirement simply to demolish. However, I am not able to judge matters with any certainty. However, it is open to me to vary the notice's requirements in a way which is consistent with the notice's purpose by allowing the appellant to pursue either alternative.
29. I note that both parties refer to planning permission ref. 18/1397 in their submissions on this ground. This is the permission granted earlier in 2018, which relates to the dormer and front roof slope only. However, the approved details for the dormer were mirrored in the later, more wide-ranging approval for extensions which included it. I have indicated that s173(4) allows for a remedy of the breach by making the development comply with "any planning permission" granted in respect of the land. In the light of this, I shall vary the notice accordingly. To that extent, the ground (f) appeal partially succeeds.

Appeal B – Ground (g)

30. The appellant considers that a compliance period of three months is too short, bearing in mind the time taken to apply for planning permission for and implement an alternative design. The Council points out that the period for compliance relates either to demolishing the dormer or altering it to comply with the approved details so there is no need to set aside time for a further planning application to be submitted, and considers three months adequate.
31. It will be evident from my reasoning on Appeal A and the ground (a) appeal on this appeal that I consider that it may be possible for the appellant to pursue an alternative design for the dormer which retains more of its built fabric. This

may avoid the need for extensive demolition works or to re-build it strictly to conform to the approved details. I bear in mind the comment in the appellant's evidence that pursuing the latter option including the approved fenestration would in any event give rise to structural issues. It will be evident from the above that my reasoning focuses on matters of height and the treatment of the front face and its fenestration.

32. The legislative provisions relating to a ground (f) appeal do not allow me to vary the notice's requirements to allow for this, in the absence of clear and precise evidence regarding such an alternative as part of the ground (a) appeal or, for that matter, the appeal on ground (f). Nevertheless, it is open to me to extend the compliance period to allow for the possibility that the appellants may consider it expedient, having regard to the disruption and costs involved in complying with the notice's requirements, to pursue a further alternative. I am mindful of the Council's comment about seeming to issue a temporary planning permission but I consider it reasonable and fair to invite this possibility and I shall vary the notice to stipulate a period of 6 months for compliance, as is requested. The ground (g) appeal therefore succeeds.

Conclusions

33. For the reasons given above I conclude that the appeal subject of Appeal A should be allowed in part and dismissed in part and the ground (a) appeal subject of Appeal B should be dismissed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application subject of Appeal B.

C M Hoult

INSPECTOR