
Appeal Decision

Site visit made on 3 August 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2021

Appeal Ref: APP/Y5420//C/20/3257657
152 Park Lane, London N17 0JN

- 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 Richard Schwartz against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 6 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear dormer and material change of use to a House in Multiple Occupation (*sui generis*).
- The requirements of the notice are:
 1. Remove the rear dormer window in its entirety;
 2. Reinstate the roof profile to what it was before the unauthorised works were carried out;
 3. Cease the use of the property as a House in Multiple Occupation;
 4. Remove from the property any internal door locks into habitable rooms facilitating the use of the property as a House in Multiple Occupation; and
 5. Remove from the property all resultant debris.
- The period for compliance with the requirements is 5 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.

Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "Five (5) months" within section 5 (what you are required to do) and its replacement with "Six (6) months".
2. 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.

Procedural Matters

3. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.

4. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

5. The main issues are:

- the effect of the rear dormer on the character and appearance of the host building and the surrounding area; and
- Whether the HMO use is acceptable, having regard to the effect on the supply of smaller family dwelling houses.

Character and appearance

6. The appeal property is a mid terraced traditional two storey dwelling, located in a terrace characterised by similar traditional two storey terraced properties. The relatively consistent design, materials, and style of these traditional properties in the terrace provides a high degree of uniformity. The appeal property has been extended with an unauthorised L-shaped rear dormer (subject of this appeal). In addition to the L-shaped rear dormer, the property has been extended with a single storey rear extension.
7. Despite the overall ridge height being maintained and the use of matching materials, the size, scale, and bulk of the L-shaped dormer extends across most of the original main rear roof slope and the roof of the back addition. This results in an unduly dominant and incongruous feature which is clearly visible from public vantage points on Denmark Street. Therefore, the unauthorised rear dormer results in harm to the character and appearance of the host building and the terrace as a whole.
8. The appellant refers to the rear dormer which was previously approved under the Certificate of Lawful Development Application (LDC)¹. However, the appellant states that the rear dormer extension has been built 1.63m longer than this approved one. Therefore, the approved scheme would not be as substantial as the scheme before me. For this reason, I give the permitted development fall-back argument little weight.
9. Therefore, in relation to the first main issue, the rear dormer has a harmful impact upon the character and appearance of the host building and area generally. The development is therefore contrary to Policy SP11 of the Haringey's Local Plan (2017), and Policies DM1 and DM12 of the Haringey's Development Management Development Plan Document, 2017 (DPD). Amongst other things, these state that all new development and changes of use must achieve a high standard of design and contribute to the distinctive character and amenity of the local area.

Supply of Smaller Family Houses

¹ Council Ref: HGY/2016/3780

10. Part A a) of Policy DM17 of the DPD states that proposals for the conversion of larger homes to Houses in Multiple Occupation (HMO) will only be permitted where the gross original internal floor space of the existing dwelling is greater than 120m². The supporting text for this policy, whilst recognising the need for HMO accommodation, highlights that many HMOs in Haringey reduce the availability of smaller family housing, for which there is significant need. This policy accords with the National Planning Policy Framework, 2021 (the Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
11. Although the property has been previously extended with a single storey rear extension and the unauthorised rear dormer, the Council state that based on floor plans submitted under application ref: HGY/2016/3684, the gross original internal floor space was 103m². This measurement has not been disputed by the appellant and is well below the minimum 120m² required. Therefore, the unauthorised change of use has resulted in a loss of house suitable for a small family, for which there is an identified housing need in the Borough in conflict with Part A) a) of Policy DM17 of the DPD.
12. I conclude that the development has an unacceptably harmful impact on the supply of smaller family dwelling houses, contrary to Policy DM17 of the DPD, which seek the aforementioned aims.

Other Matters

13. Whilst not specifically referred to within the enforcement notice, the Council's appeal statement also raises additional concerns relating to the effect of the use of the property as HMO on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. The appellant considers that the HMO use has no greater impact on the living conditions of neighbouring occupiers than the former use as a family dwelling, and also highlights that the property currently benefits from an HMO license that was issued on 29 May 2019, which permits up to 8 persons occupying 7 rooms. However, the licence does no more than confirm the suitability of the house for the number of occupants and that the manager of the house is considered to be fit and proper. It does not negate the need for planning permission.
14. The plans submitted by the appellant shows that the HMO has 9 bedrooms and therefore has the potential for up to 9 unrelated individuals. All of these occupiers would have separate work/domestic regimes and would attract their own visitors and deliveries at different times during the day and evening. In this respect, the HMO use is more likely to increase the volume of movements to and from the property, than a single family dwelling, and the range of times when these activities take place. I consider that the introduction of the HMO use would result in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupiers. This derives from noise generated from 'comings and goings' outside of the building and increased vehicular and pedestrian movements. I therefore agree with the Council that the change of use to a HMO has the potential to result in a harm to the living conditions of neighbouring occupiers, with regards to noise and disturbance, in conflict with Part A b) of Policy DM17 of the DPD, which states that proposals for the conversion of larger homes to Houses in Multiple Occupation (HMO) will only be permitted where they do not give rise to any significant adverse amenity impacts on the surrounding neighbourhood.

Conclusion on Ground (a) and the Deemed Planning Application

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the unacceptable loss of a small family dwelling house, harm to the character and appearance of the host building and area and to the living conditions for nearby occupiers with regards to noise and disturbance. None of the other matters raised by the appellant, including the standard of the accommodation provided, the lack of objections from neighbours or the need for affordable smaller properties outweighs these harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
16. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

17. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
18. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
19. The appellant states that the requirement to remove the entire rear dormer is excessive and that they should be able to modify the rear dormer to comply with the drawings approved under the previously approved LDC². However, to revert to this scheme would not remedy the breach.
20. Furthermore, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. An extension, such as the current appeal development, which exceeds the tolerances under the relevant part of the GPDO is entirely outside PD rights.
21. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
22. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

23. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 5 to 15 months. The appellant states that due to the Covid-19 pandemic landlords must provide their tenants with 6 months'

² Council Ref: Ref HGY/2016/3780

notice and that another 6 months is required to apply to the court for a standard possession order if tenants do not leave and that a further three months is required for remedial works.

24. However, since the appeal statements were received, we are now in a different position with the pandemic, and I observed during the site visit that the appeal site appeared to be vacant and unoccupied. I therefore attach less weight to this argument. I have also found under the ground a) appeal that the unauthorised development results in the unacceptable loss of a small family dwelling house, harms the character and appearance of the host building and area, and results in unacceptable living conditions for nearby occupiers with regards to noise and disturbance. As such, the 15 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.

25. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view 6 months would strike a more reasonable and proportionate balance. I shall therefore extend the period from 5 to 6 months for compliance with the notice.

26. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

27. For the reasons given above 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR