



Appeal Decision

Site visit made on 2 September 2021

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/Y5420/C/20/3256981

Land at 263 Mount Pleasant Road, London N17 6HD

- 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 Akiva Schreiber (Fast Home Trading Limited) 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 roof extension.
- The requirements of the notice are:
 1. Demolish the rear dormer in its entirety.
 2. Return the roof slope to its original state, prior to the works-taking.
 3. Remove all resultant debris.
- The period for compliance with the requirements is Five (5) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.

Summary of Decision: The appeal succeeds in part and planning permission is granted for that part, but otherwise the appeal fails and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

REASONS

Enforcement notice and ground (c) appeal

1. No 263 is a two storey mid-terrace residential property which has a two storey outrigger at the back. The property has been extended by a single storey rear extension and two roof extensions, one to the main roof and the second above the outrigger. The building has been converted into two flats.
2. In March 2019 planning permission was refused for the retention of the rear roof dormer on top of the main house together with the change of use from a single dwellinghouse to three flats. A subsequent appeal was dismissed by a decision dated 3 July 2020¹. The main issue focused on the rear dormer, which had already been constructed. The Inspector found the dormer harmed the character and appearance of the host property and area. Very shortly after, the Council issued the enforcement notice that is the subject of this appeal.

¹ Appeal ref APP/Y5420/W/19/3225867

3. The appeal on grounds (c) and (f) were made in the event the enforcement notice was directed at both roof extensions. The Council has confirmed that is not the case and also agreed with the appellant that the roof extension over the outrigger was constructed as permitted development.
4. There is power under section 176(1) to correct any defect, error or misdescription in the wording of the notice provided that doing so would cause no injustice to either the appellant or the local planning authority. In view of the confirmation given by the Council I consider that it is appropriate to make corrections to the notice accordingly. More specifically the wording of the alleged breach of planning control shall be corrected to state: Without planning permission, the erection of a rear dormer roof extension on the main part of the building. To provide consistency in the wording of the notice a similar correction will be made to the wording of steps 1 and 2 in the requirements. I am satisfied these corrections will not cause any injustice.
5. The appellant confirmed that if such corrections are made the appeal on grounds (c) and (f) are not relevant.
6. However, there is a second aspect of the planning history to consider. On 23 July 2020 application was made for 'the retention of a reduced rear roof dormer on top of the main house'. Planning permission was refused on 15 October 2020. A subsequent appeal was successful² and by a decision dated 23 July 2021 planning permission was granted for the development, with the description amended to read 'a rear roof dormer on top of the main roof of the house'. The appellant submitted by reference to reasoning in the decision that the Inspector considered the dormer in its current state, a ground (c) appeal now applies and that section 180 of the 1990 Act is engaged.
7. In order to succeed on a ground (c) appeal the onus is on the appellant to demonstrate that the matter alleged in the notice does not constitute a breach of planning control. The evidence indicates that the development granted planning permission on appeal is not the same as the development carried out and targeted by the notice. The description in the planning application stated it was for 'a reduced rear roof dormer', that is a smaller dormer than currently constructed in an attempt to address the concerns of the Inspector in the 2020 appeal decision. The Council has confirmed that was the case. The section 78 right of appeal is against local planning authority's refusal of planning permission. The permission granted on appeal is in accordance with the terms of the application. The position remains that the dormer as built is not authorised by planning permission.
8. To conclude on the ground (c) issue, the rear dormer roof extension on the main building is not permitted development and the necessary planning permission has not been granted for this dormer. A breach of planning control has occurred and the appeal on ground (c) fails.

Appeal on ground (a)

9. The development forming the deemed planning application is derived directly from the description of the alleged breach of planning control (as corrected). Therefore the appellant is seeking permission for the dormer constructed within the rear roof of the main building.

² Appeal reference APP/Y5420/W/20/3261354

10. The main issue is the effect of the rear dormer on the character and appearance of the host property and the surrounding residential area, taking into account the identified fallback scheme.
11. The development plan includes the London Plan published 2021, the Haringey Development Management DPD adopted in 2017 (the DPD) and the Haringey Local Plan Strategic Policies 2013-2026, consolidated with alterations since 2017. As a material consideration the revised National Planning Policy Framework was published in July 2021. High quality design is a policy requirement. The supporting text to Policy DM12 of the DPD states that extensions to the roof should be restricted to the rear and their size, location and design should be such that they appear subordinate on the roof.
12. The previous appeal decisions for dormer roof extensions at No 263 are considerations and I recognise the importance of consistency in decision making.
13. Before the outrigger roof extension and the rear dormer were constructed the property largely retained its traditional built form, characterised by the principal two storey dwelling across the full width of the plot and an attached two storey outrigger set in from one of the side boundaries. Both elements had pitched roofs, the front roof incorporating a gable. This design was repeated in the neighbouring properties in the terrace. Extensions were confined to ground floor rear additions. The terrace had consistency in scale and rhythm that resulted in uniformity of character and appearance as part of the local identity of the area. To a large extent this consistency and identity is retained.
14. The appellant explained that in March 2018, works started on the erection of a roof dormer solely on top of the outrigger. An internal staircase was created to provide access from the first floor within the outrigger to the newly built roof extension. I note that the plans of the 'pre-existing' internal layout show the roof space above the front part of the main dwelling was accessed by an internal staircase and rooflights were inserted, indicating the roof space provided useable floorspace.
15. The Council accepted that the dormer above the outrigger was built under permitted development rights. Even so the extension is visually dominant when viewed from the back of the property, significantly increasing the height of the outrigger and introducing a sizeable flat roofed addition against the backdrop of the original pitched roof.
16. The appellant also explained that after the completion of the roof extension above the outrigger, the owner decided to erect a roof dormer above the main house. The appellant maintains that the dormer extension above the outrigger remains a totally independent structure to the dormer above the main roof. That may well be the case as far as the internal layout and access function but the plans show that the two structures physically adjoin, with the building envelope of the side elevation to the outrigger carried through to the rear dormer. The two structures cannot be viewed in isolation.
17. The plans of the development and the site visit confirmed that the dormer enforced against does not exceed the width of the outrigger and hence it does not extend across the full width of the principal roof. The height is contained just below the ridge line and consequently the structure is not visible from Mount Pleasant Road and has not detracted from the appearance of the front

elevation of the property or the terrace. Nevertheless, as shown on plan, the dormer exceeds the height of the extension on the outrigger, it adjoins the boundary to No 265 and it extends up from the eaves to the principal building. In my judgement the dormer is not subordinate to the roof.

18. Like my colleague in 2020, I do not agree with the appellant that the dormer infills an unsightly void and integrates the extension above the outrigger to the main structure of the house. In my view the dormer adds to the overall scale and increases the mass of the extension at roof level to a harmful degree. In addition, it is not in keeping with the roof profile of the terrace. Whilst not visible from the street, the dormer extension to the main roof in all probability is seen from nearby properties. The structure may also be seen from the public accessway on the estate to the rear when garden vegetation is not in full leaf.
19. In conclusion the development is not of high quality design and is harmful to the character and appearance of the host property, this section of the terrace and the immediate area. There is conflict with Policy SP11 of the Strategic Policies Local Plan and Policies DM1 and DM12 of the DPD.
20. The dormer extension allows for an increase in living space within the loft area but this slight benefit is not sufficient to outweigh the harm identified in the main issue.
21. As to whether it was expedient for the Council to have issued an enforcement notice is not within my remit to consider in this appeal. Whether it would be excessive to require the rear dormer to be demolished is a matter for consideration under a ground (f) appeal, having regard to the purpose of the notice.

The fallback

22. In the representations the appellant put forward a fallback scheme. The scheme also was considered, albeit without any reasoned explanation, to form part of the development as built and an obvious alternative for which permission could be granted.
23. By way of background, the roof extension to the outrigger is said by the appellant to be 36 cubic metres. The proposal is to utilise the remaining 4 cubic metres allowed under permitted development rights to build a small infill roof extension above the main roof slope, as shown on the submitted plans.
24. However, the property is converted into flats. The permitted development rights for development within the curtilage of a dwelling house in Part 1 of Schedule 2 to the GPDO³ do not apply to flats. Therefore the infill roof extension could not be constructed as permitted development. In that sense it does not represent a fallback and provides no weight in favour of granting permission for the harmful existing dormer roof extension.

Obvious alternative

25. By section 177(1)(a) of the 1990 Act, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to

³ The Town and Country Planning (General Permitted Development) (England) Order 2015

which the notice relates. In this instance whether the proposed infill extension forms part of the dormer to the main roof is a matter of planning judgement. Case law has indicated that a narrow view should not be taken in making such a judgement.

26. The infill roof extension would occupy part of the roof slope covered by the existing dormer. In order to construct it a certain amount of demolition and rebuilding would have to take place to form the new external envelope to the extension. The internal staircase would have to be repositioned. However, partial demolition and new works do not necessarily preclude the infill extension being considered as part of unauthorised development. The local planning authority described it as a reduced form of development attacked by the notice and the appellant described the infill as retention of a reduced rear roof dormer. Both descriptions are consistent with the infill being considered as part of the existing dormer.
27. My conclusion is that as a matter of fact and degree the proposed infill roof extension forms part of the development enforced against and as such is an obvious alternative that can be considered under the ground (a) appeal as part of the deemed planning application.
28. The plans show that the infill roof extension would be well below the ridge line of the main roof and the flat roof would align with the roof of the outrigger extension. The structure would be about 1.8 metres in width from the common boundary and hence set in from the side elevation of the outrigger. As a result the proposed extension would be much smaller than the dormer as built and appear subordinate on the roof. The addition would not cause the harm seen with the existing dormer, whilst it would also provide slightly more space within the loft area. Accordingly, the proposal would be a better designed roof extension when compared to the dormer as built. The outcome would be significantly different and beneficial.
29. The smaller dormer extension complies with Policy SP11 of the Strategic Policies Local Plan and Policies DM1 and DM12 of the DPD. Planning permission will be granted in accordance with the direction provided by the development plan as there are no considerations that indicate otherwise.

Conclusion

30. The appeal on ground (a) succeeds in part only.

Appeal on ground (f)

31. The issue is whether the requirements of the enforcement notice are excessive, having regard to the purpose of the notice to remedy the breach of planning control.
32. I have already addressed the appellant's concern on step 1. The proposed corrections to the wording of the allegation and step 1 will make clear the notice does not require the roof extension above the outrigger to be demolished.
33. In light of my decision to grant permission for part of the matter stated to constitute the breach of planning control, it is not necessary to incorporate reference in the requirements to the planning permission granted on appeal by the decision dated 23 July 2021. In the event the appellant established that the

July 2021 permission is for the rear dormer as built the notice would cease to have effect by virtue of section 180 of the 1990 Act.

34. A correction to a minor typographical error in the wording of step 2 is required so that the second phrase states 'prior to the works taking place'.

Appeal on ground (g)

35. The issue is whether a period of compliance of five months is reasonable.
36. The appellant has asked for a period of a minimum of eight months in order to allow the existing tenant to find alternative accommodation.
37. An increase of three months to comply with the requirements of the notice strikes a reasonable balance between securing a remedy to the harm, allowing adequate time for building works to be carried out and recognising the disruption to existing occupiers.
38. The appeal on ground (g) succeeds to this extent.

Conclusion

39. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and a variation and refuse to grant planning permission on the development as a whole. By virtue of section 180 of the 1990 Act the requirements of the upheld notice will cease to have effect in so far as inconsistent with the permission which I will grant.

DECISION

40. It is directed that the enforcement notice be corrected by:
- in paragraph 3, after the word "extension" add the words "on the main part of the building";
 - in paragraph 5 step 1 after the words "rear dormer" add the words "on the roof of the main part of the building";
 - in paragraph 5 step 2 after the words "roof slope" add the words "to the main part of the building"; and
 - in paragraph 5 step 2 delete the words "works-taking" and substitute the words "works taking place".
41. The appeal is allowed insofar as it relates to the erection of an infill dormer roof extension on the rear north western corner of the main roof slope. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for part of the rear dormer roof extension on the main part of the building at 263 Mount Pleasant Road, London N17 6HD, subject to the planning condition that the development shall be in accordance with plans MPR.263.PR.101 and MPR.263.PR.102 submitted in support of the application deemed to have been made.
42. It is directed that the enforcement notice be varied by the substitution of Eight (8) months as the period for compliance.

43. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, for the main roof dormer as built at 263 Mount Pleasant Road, London N17 6HD. Planning permission is refused in respect of the erection of a rear dormer roof extension, as a whole, on the main part of the building, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector