
Appeal Decision

Site visit made on 7 July 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11th October 2021

Appeal Ref: APP/N5090/C/21/3266781

1 Beaulieu Close, London NW9 6SB

- 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 Mary Baker against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 8 December 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of roof extensions including hip to gable on both sides and a rear dormer window.
 - The requirements of the notice are
 1. Restore the roof to its original state prior to the current breach in planning control by removing the rear dormer and gable extensions and restoring the roof to its original specification with tiles to match existing. The roof restoration should be in line with the drawing plan reference number 102 (Revision P1) of application reference 19/5748/192.
 2. Permanently remove from the property of all constituent materials resulting from the works in 1 above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made under ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by:
 - i) adding the following wording after requirement 1
"OR
Alter the development so that it accords with drawings plan reference numbers 105 (Revision P1) and 104 (Revision P1) of application reference 19/5748/192 which was approved on the 21 November 2019."
 - ii) Deleting the words "*4 months*" from the period for compliance and substituting a period of "*6 months*".
2. 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 section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The requirements of the notice refer to the restoration of the roof in accordance with a plan that was not provided when the notice was served. However, I do consider that the wording which refers to the restoration of the roof to its original state is sufficiently clear for the appellant to understand the requirements.
4. During the course of the appeal, a revised National Planning Policy Framework (the 'Framework') was published on 20 July 2021. The main parties have had the opportunity to comment on the revised Framework and I have taken any comments into account where they are relevant.

The appeal under ground (a) and the deemed planning application (DPA)

Main Issue

5. The main issue is the effect of the development on the character and appearance of the dwelling and the surrounding area.

Reasons

6. Beaulieu Close is a cul de sac of largely semi-detached dwellings in a residential area. The detached appeal dwelling is at the beginning of the Close with a gap at the side between the appeal dwelling and the boundary of No 3 Beaulieu Close. However, the other side of the appeal dwelling is on the shared boundary with rear gardens of Sheaveshill Avenue.
7. The development is described as roof extensions to include hip to gable at both sides with a rear dormer window. The Council granted a Certificate of Lawful Development (the Certificate) for "roof extension including rear hip to gable, dormer windows to both sides, rear gable window and 1 no rooflight to front roofslope" on the 21 November 2019.
8. The appellant states that she had no intention of breaching planning rules and that the development falls outside the terms of the Certificate due to issues with her builder. On the Council's advice, the appellant made an application for a second certificate for the development as referred to in the notice but that was refused. The application was refused as the development falls outside the scope of permitted development rights pursuant to the General Permitted Development Order largely due to its size which is around 58 cubic metres. The Council then issued the enforcement notice, the subject of the appeal, and states that the development is large and incongruous.
9. Although described as roof extensions with a rear dormer window, the development particularly viewed from the rear appears as a third storey above the second storey rather than as dormer extensions within an existing roof. The box type appearance completely subsumes the original roof shape at the rear. The size of the development does result in the balance of the appeal dwelling being lost as it now appears as a three storey dwelling without a roof. Whilst there are some views of other dormer extensions from the rear garden, they do not appear to be as extensive as the development and do not occupy the same position as the appeal dwelling in relation to other dwellings.

10. With regard to the effect of the development on the wider streetscene, there are views of the side of the development nearest to No 3 when approaching the appeal dwelling from the far end of the cul de sac which emphasise the solid gable end which has replaced the original pitched roof. There are unlikely to be extensive views of the development from gardens backing onto the rear of the development, due to the distance and the presence of trees and shrubbery. However, due to its location at the end of Beaulieu Close, rear gardens of dwellings on Sheaveshill Avenue back onto the side of the appeal dwelling that is on the shared boundary. The extent of the side of the development as viewed from the adjoining garden in Sheaveshill as shown in the photographs provided by the Council is over dominant and incongruous.
11. Although the appellant refers to the development being slightly bigger than what was permitted under the Certificate, the development does fall outside the Certificate and is not comparable in terms of size or design. Drawing Number 105 Revision 1 "Proposed Elevations" formed part of the Certificate application and shows the addition of a single window at roof level at the rear within the triangular roof with the dormer element visible behind the roof. This is in contrast to the development which has two windows within a rectangular extension with no original roof visible from rear views. The development is the same width as the second storey of the appeal dwelling.
12. I therefore do find that the development does harm the character and appearance of the dwelling itself due to its mass, size, bulk, and position. The wider street scene is in my view less affected by the development but, nevertheless, there is harm outside the appeal site particularly due to the position of the gardens at Sheaveshill Avenue. The development is therefore in conflict with Policy DM01 of the Barnet's Development Management Policies (DPD) which, amongst other things, refers to high quality design.
13. It would also be contrary to Policy CS5 of the Barnet's Local Plan (Core Strategy) which, amongst other things, refers to local context. Further, it is in conflict with Barnet's Residential Design Guidance Supplementary Planning Guidance 2016 which states that roof extensions should normally be subordinate features on the roof and should not occupy more than half the width or half the depth of the roof slope. It also states that to retain the balance of the house, the dormer roof extension should not be wider than the window below it.

Other Matters

14. The appellant has referred to her personal circumstances including ill health and her daughter's change of circumstances. However, any grant of planning permission would run with the land and extend beyond any occupation of the appellant and her family. I do not find that personal circumstances outweigh the harm that I have found.

An appeal under ground (f)

15. An appeal under ground (f) is that the requirements of the notice are excessive having regard to its purpose. At s173(4), the Act provides that an enforcement notice can achieve two purposes which are remedy the breach of planning control or remedy injury to amenity. The current requirement is to

restore the roof to its condition prior to the development taking place so the purpose is to remedy the breach of planning control rather than remedy injury to amenity.

16. The development exceeds the permitted development rights and the whole of the development is therefore unauthorised. However, the Council states that had the Council been contacted earlier, a time scale for bringing the development within the terms of the Certificate by an alternative builder could have brought about compliance with the terms of the Certificate. However, it is still the case that the Certificate exists and the appellant has referred in her appeal form to making alterations or corrections which suggests that the appellant may still wish to carry out the works authorised by the Certificate.
17. The Council has confirmed that the purpose of the notice is to remove the unacceptable development but not to remove any planning permission that the appellant may have. Whilst not strictly a planning permission, the Council has not indicated that the notice has in any way altered the status of the Certificate.
18. Section 173(4) of the Act also provides for remedying the breach by making the development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where planning permission is granted by the GPDO. It would be the responsibility of the appellant to ensure that the work permitted by the Certificate are constructed in accordance with those drawings. Therefore, providing for the Certificate to be an alternative to demolition represents an obvious alternative which may overcome the planning difficulties at less cost and disruption than total demolition whilst still remedying the breach. This reflects the remedial intentions of the enforcement procedure, as endorsed by the Courts.
19. For reasons of certainty and also having regard to the potential penalties for failing to comply, the appellant is entitled to be able to ascertain exactly what they are required to do from the enforcement notice. It may be that altering the development to comply with the Certificate is more costly than total demolition, and it is matter for the appellant in consultation with her builders as to which option is preferable. For the above reasons, whilst I find that the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that limited extent. I shall vary the notice accordingly.

An appeal under ground (g)

20. An appeal under ground (g) relates to the period allowed for compliance which is 4 months. The parties were asked to comment upon this ground as the appellant is unrepresented and had referred to difficulties with her builder in complying in her appeal form. In particular, the appellant states that her builder is un co-operative and she is likely to have to take him to the small claims court to get any work rectified. The Council has referred to the Covid restrictions now have been lifted nationally and four months being enough time to arrange for works to be carried out and for occupants to find

alternative accommodation if they have to move out whilst works are ongoing.

21. However, demolition of the development or carrying out alterations would take some time to arrange with quotes and appointing a contractor if an alternative builder is required. Although the Covid restrictions have been lifted, it still may be difficult for her to find an alternative builder and /or take court action and achieve compliance within 4 months as Covid restrictions have created a backlog of work. In the circumstances, I consider that a compliance period of 6 months is more appropriate and a balance between achieving compliance and the appellant's circumstances. To that extent, the appeal under ground (g) succeeds and I will amend the notice accordingly.

Conclusion

22. The appeal on ground (g) succeeds and the appeal under ground (f) succeeds to the extent of adding an alternative. However, the appeal on ground (a) fails and I shall refuse planning permission on the deemed application and uphold the notice as varied.

E. Griffin

INSPECTOR