
Appeal Decisions

Site visit made on 15 September 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal A Ref: APP/N5090/C/20/3245157

Land at 345 Hendon Way, London NW4 3NW

Appeal B Ref: APP/N5090/C/20/3245158

Land at 347 Hendon Way, London NW4 3NW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals made by Mr Aviram Cohen against enforcement notices issued by the Council of the London Borough of Barnet.
 - The enforcement notices were issued on 17 December 2019.
 - The breach of planning control as alleged in the notices is: Without planning permission, the construction of a rear dormer window roof extension.
 - The requirements of the notices are:
 - 1 Demolish the rear dormer roof extension
 - 2 Permanently remove all constituent materials from the works in 1. above from the property.
 - The period for compliance with the requirements is 5 Months.
 - The appeals are 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 appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act as amended.
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Decisions

1. The appeals are dismissed and the enforcement notices are upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. I have dealt with another appeal (APP/N5090/W/20/3259620) on this site. That appeal is the subject of a separate decision.

Appeal A and Appeal B on ground (c)

3. The ground is that the matters alleged do not constitute a breach of planning control.
4. In order to benefit from the provisions of Class B, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order, 2015, as amended (GPDO) the development must comply with paragraph B.2. Condition B.2 (b) (i) states that the enlargement must be constructed so that:

- (i) Other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –
 - (aa) the eaves of the original roof are maintained or reinstated; and
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and.....
- 5. In this case it is clear from the Appellant's as built drawing¹ and my own observations on my site visit, that the eaves of the original roof have not been maintained or reinstated as part of the construction of the dormer extensions. In addition, the edge of the enlarged roof closest to the eaves of the original roof is less than 0.2metres from the eaves when measured along the roof slope from the outside edge of the eaves. Furthermore, I note that the Appellant does not appear to dispute that this condition has not been complied with. Consequently, the dormer window roof extensions are not permitted development and there is no record of a specific permission being granted for that development on the Land.
- 6. My conclusion is that a breach of planning control occurred and the appeal on ground (c) fails.

Appeal A and Appeal B on ground (a), deemed planning applications

Main Issue

- 7. The main issue in this case is the effect on the character and appearance of the host property and surrounding area.

Reasons

- 8. Hendon Way in the vicinity of the appeal site is characterised by modest semi-detached two-storey dwellings which have simple pitched roofs with projecting front gables. The appeal premises are a pair of semi-detached dwellings which have been extended at roof level by the construction of rear dormers.
- 9. The dormers extend up from the rear wall of the semi-detached pair and stretch across the full width of the host properties rear elevation. Consequently, the original roof plane of the rear elevation has been subsumed and is no longer visible. By reason of its size and design, including the prominent artificial projecting eaves, the dormer dominates and detracts from the original form and simple design characteristics of the host property. The scale and incongruity of the dormers are such that they have a harmful effect on the character and appearance of the area.
- 10. I conclude that the dormer extensions have a harmful effect on the character and appearance of the host property and surrounding area. There is conflict with the development plan and in particular with Policies CS1 and CS5 of Barnet's Local Plan Core Strategy, Development Plan Document, 2012 and Policy DM01 of Barnet's Local Plan Development Management Policies, Development Plan Document, 2012 which seek, amongst other things, to ensure that new development respects local context, preserves or enhances

¹ Drawing No. HW.345-347.AB.03 dated 06./01/2020 prepared by AJ Plans

local character and appearance and secures good design. The development is also in conflict with Barnet's Residential Design Guidance, Supplementary Planning Document, 2016 which provides clear design guidance on extensions and dormer additions.

Other Matters

11. I accept that once the requirements of the notice have been complied with the Appellant has a fallback position available in the form of a smaller dormer extension which would benefit from permitted development rights under Class B of the GPDO. Appendix 3 of the Appellant's Statement of Case illustrates the form of dormer that would benefit from those rights². However, for significant weight to be afforded to the fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission were refused, but it would also need to be equally or more harmful than the scheme for which permission is sought. Despite the cost of reverting to the fallback position, from the evidence before me I am satisfied that there is a reasonable prospect of the fallback position being carried out in the event that planning permission were to be refused. However, the dormers that have been constructed are significantly larger and their design more incongruous than what would be permitted under Class B. Consequently, the overall appearance of the unauthorised development is significantly more harmful than the fallback position. I therefore give this consideration very little weight.
12. Section 177(1)(a) of the Town and Country Planning Act, 1990, as amended (the Act) allows permission to be given under the appeal on grounds (a) to any part of the matters alleged in the notice. To that end, the appellant submits that consideration should be given to granting permission for the permitted development scheme (Appendix 3). However, given that it would be necessary to reconstruct the walls of the dormer either in full (in the case of the rear elevation), and in part (in the case of the side walls and its roof), the permitted development dormer extension would not to my mind form part of the development which is being enforced against, but would be a different development. It is not therefore an alternative that could be granted planning permission under the ground (a) appeal.

Conclusion

13. For the reasons set out above and taking into account all other matters raised, I conclude that the appeals on ground (a) must fail.

Appeal A and Appeal B on ground (f)

14. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice. In this case the requirements are to demolish the rear dormer roof extensions and remove all constituent materials arising from the demolition from the Land.
15. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to

² Drawing Nos. HW.345-347.PR.02 & PR02, dated 06.01.20201 prepared by AJ Plans

amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.

16. It can be seen by my decision on APP/N5090/W/20/3259620 that I have granted planning permission for a different dormer extension at the appeal properties. I have considered varying the steps required to specify compliance with that planning permission. However, the purpose of the notices is to remedy the breach of planning control, which can only be achieved by demolition of the dormer roof extension. Instead of varying the requirements of the notice, Section 180 (1) of the Act provides that: "Where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that planning permission, the notice shall cease to have effect so far as inconsistent with that permission." The appellant is therefore able to rely on the provisions of Section 180 (1) should they implement the planning permission granted for the alternative dormer extensions.
17. I conclude that the requirements are not excessive to achieve the statutory purpose of the notice and the appeals on ground (f) fail.

Appeal A and Appeal B on ground (g)

18. The issue is whether the compliance period of five months is reasonable. The Appellant considers that given that the roof space is currently occupied by tenants who would need to vacate it, and with the implications of The Coronavirus Act 2020, a period of 12 months would be more reasonable to complete the works.
19. It seems to me that a period of five months is a relatively short period of time to vacate the roof space and carry out the works required. The conclusion that I have come to is that a period of 9 months strikes the right balance and is a reasonable time frame within which the notice can be complied with in full. To this extent the appeals on ground (g) succeed.

Appeals A and B – Overall Conclusions

20. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the applications deemed to have been made under section 175 (5) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR