



Appeal Decision

Site visit made on 16 November 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/G5750/C/21/3276039

1 Watson Avenue, East Ham, London E6 2BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ravinder Singh Basi against an enforcement notice issued by London Borough of Newham.
 - The notice was issued on 29 April 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of a roof extension.
 - The requirements of the notice are to:
 1. *Demolish the roof extension (as shown edged in yellow on the photograph attached at Appendix 1) and return the affected elevations of the property to the form prior to the unauthorised works being undertaken.*
 2. *On completion of step 1 above, remove all materials and debris from the site.*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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 is varied by the substitution of the period for compliance from 3 months to that of 9 months. Subject to the variation, the appeal is dismissed, 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.

Preliminary Matters

2. The grounds of appeal contain what I consider to be a “hidden” ground under s.174(2)(f) – that the requirements of the notice exceed what is necessary to remedy the breach. I wrote to the Council to advise them that I would consider this ground, and to give them an opportunity to comment on it, which they did. In turn, the appellant was provided with an opportunity to make representations on the Council’s comments. I shall deal with this ground below.
3. The grounds of appeal suggest that arguments relevant to ground (d) might be raised during the appeal, that, at the time the notice was issued, it was too late to take enforcement action. However, no evidence was submitted in support of such a ground, and I shall not pursue this matter further.

Appeal on ground (c) – that the matters alleged in the notice do not constitute a breach of planning control

4. Planning permission (Ref: 16/00309/FUL) was granted on 12 December 2016 for a proposed loft conversion with hip to gable roof with rear dormer and installation of velux windows to form an additional bedroom to a first floor flat. The approved scheme allowed a change of the hipped roof to a much steeper mansard-type roof, with a rear dormer extension which was shown as being set back from the ridge, the eaves and the boundary with 3 Watson Road and the side elevation. One rooflight window is shown in the side-facing part of the roof and two in the rear-facing wall of the dormer.
5. The development carried out has squared-off the roof to create a vertical gable. A roof extension has been added which is as high as the ridge, and continues vertically from the rear wall, as well as extending across the whole of the rear elevation. Three windows have been inserted in the side elevation, and three in the rear elevation, along with rain-water goods. I consider that the scale and appearance of the development as carried out is materially different from the approved scheme. It is not the development which was approved by the Council, and it constitutes a breach of planning control.
6. The appellant argues that the approved plans did not accurately portray the height of the roof ridge. Be that as it may, this does not alter the fact that the development has been carried out without planning permission. The appellant also suggests that there is confusion about the permitted development rights, which in some circumstances may allow large full width and full height dormer extensions. However, that is irrelevant to the need for planning permission in this instance, as permitted development rights for roof extensions would only apply to a dwellinghouse. The building here is in mixed use as a shop with flats above and is not a dwellinghouse.
7. I therefore conclude on this issue that the matters alleged in the notice constitute a breach of planning control, and the appeal on ground (c) fails.

Appeal on ground (a) – that planning permission should be granted

Main Issue

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

Reasons

9. The site comprises an end-of-terrace building which lies in a prominent position on the north-east quadrant of a crossroads. Whilst the roof extension is at the rear of the property, it is nevertheless highly visible in the street scene, and the rear extension can be seen for a considerable distance along Leigh Road.
10. When seen from the side and rear, the effect of the development is to change a pitched roof building to a flat roofed one. It appears top heavy and is out of character with the majority of buildings in the vicinity, nearly all of which have pitched roofs. Whilst there are some rear roof extensions nearby, they do not "square off" the building as is the case here. The extension's prominent appearance makes it appear incongruous and it relates poorly to the host building and those in the rest of the terrace. It fails to achieve a high-quality design which is sought by Newham Local Plan Policies H1, SP1, SP3 and SP8,

which respectively deal with building sustainable mixed communities, borough place making and quality urban design. Nor does it comply with the aim of the National Planning Policy Framework which says that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

11. Accordingly, I conclude on the main issue that the development results in material harm to the character and appearance of the surrounding area, and conflicts with the development plan policies referred to above. For the reasons given above, I find that the development conflicts with the development plan as a whole, and the appeal on ground (a) fails and planning permission is refused.

Appeal on ground (f) – that the requirements exceed what is necessary to remedy the breach

12. The notice does no more than require the building to be returned to its condition before the unlawful development took place. The Council has made it clear that the purpose of issuing the notice is to remedy the breach of planning control, and the notice does no more than is necessary to remedy that breach. Even so, as an appeal has been made under ground (a), I am bound to consider whether there is any solution short of a complete remedy of the breach which is acceptable in planning and amenity terms.
13. The appellant has suggested that the notice be varied to allow the construction of the roof extension permitted under planning application Ref:16/00309/FUL. However, that permission is no longer extant, and therefore cannot be relied on as a fallback position. However, the fact that the Council has previously granted a planning permission for a roof extension is a relevant consideration, and it may be the case that the Council may grant planning permission for an appropriately designed one should an application be made. Even though no appeal has been made on ground (g), I shall extend the compliance period to 9 months to allow sufficient time for a new planning application to be submitted and considered, and if approved, to be implemented. Any future grant of planning permission would mean that the notice shall cease to have effect so far as inconsistent with that permission.

Other matters

14. The appellant has criticised the Council for the length of time it has taken to bring enforcement proceedings in this case. The law allows 4 years from the substantial completion of a building in which to take enforcement action, and on the evidence before me, this time limit has been met. However, the delay in taking action reinforces my reasons for extending the time limit for compliance.

Conclusion

15. 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.

JP Roberts

INSPECTOR